
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन सतवीम जिल पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015 079-26305065	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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क फाइल संख्या : File No : **V2/173/GNR/2018-19 & V2/49/RA/GNR/2018-19/10852 to 10857**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-09-10-19-20**

दिनांक Date : **24-05-2019** जारी करने की तारीख Date of Issue:

31/05/2019

C. file

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग **अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-CEX-003-ADC-PMR-001-18-19 दिनांक : 27-12-2018 से सृजित**

Arising out of Order-in-Original: **AHM-CEX-003-ADC-PMR-001-18-19**, Date: **27-12-2018**
 Issued by: Additional Commissioner, CGST, Div: RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

घ **अपीलकर्ता एवं प्रतिवादी का नाम एवं पता**

Name & Address of the **Appellant** & Respondent

M/s. Ab N Dhruv Autocraft Pvt. Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

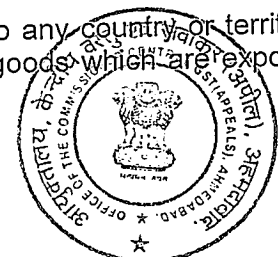
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores, Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

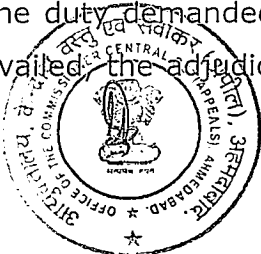


ORDER-IN-APPEAL

M/s Ab Dhruv Autocraft (I) Pvt Ltd, Shet No.C-13, Electronic Estate, Sector 25, GIDC, Gandhinagar [hereinafter referred to as 'the appellant'] has filed an appeal (No.173/GNR/18-19) against Order-in-Original No.AHM-CEX-003-ADC-PMR-001-18-19 dated 27.12.2018 [hereinafter referred to as 'the impugned order'] passed by the Additional Commissioner, CGST, Gandhinagar Commissionerate [hereinafter referred to as 'the adjudicating authority'].

2. Another appeal (No.49/RA/GNR/18-19) has also been filed by the Assistant Commissioner of CGST, Gandhinagar Division, Gandhinagar Commissionerate [hereinafter referred to as 'the department'] against the 'impugned order' referred to above, as per Review Order No.38/2018-19 dated 08.03.2019 of the Commissioner of CGST, Gandhinagar.

3. The brief facts of the case is that the appellant is engaged in the manufacture of body building of motor vehicle on duty paid chassis such as tipper body bumper, tanker etc and were classifying the said products under chapter heading 87041010. During the course of audit of the records of the appellant, it was observed that they were availing value based SSI exemption under notification No.08/2003-CE dated 01.03.2003 as amended for the financial years 2013-14 to 2015-16 and paid duty on subsequent clearance; that they have not paid any duty on the clearances made during 2012-13. It was further observed that the goods covered under Chapter heading 8701 to 8706 are not eligible for the benefit of value based exemption under the said notification, as the same are not specified under Annexure to the said notification. Therefore, the goods manufactured by the appellant falling under chapter heading 8704 is not eligible for SSI exemption and liable for duty at the applicable rate from the first clearance during 2012-13 to 2015-16. Further, it was also observed that the appellant had also availed Cenvat credit amounting to Rs.1,22,631/- by way of transitional credit in respect of input lying in stock as on 15.02.2014 and also availed the said credit on the strength of invoice prior to 15.02.2014 which resulted double credit on the same input. A show cause notice dated 04.07.2017 was issued to the appellant for demand of Central Excise duty of Rs.86,75,725/- not paid by the appellant during the relevant period and Cenvat credit of Rs.1,22,631/- wrongly availed with interest. The said show cause notice also proposes for imposition of penalty under Section 11AC of Central Excise Act, 1944. Vide impugned order, the adjudicating authority has classified the goods manufactured by the appellant under chapter heading 8707 and allowed SSI benefit under notification No.08/2001-3CE. Accordingly, he dropped the demand of Rs.74,37,000/- pertaining to the period of 2013-14 to 2015-16 and confirmed the demand of Rs.12,38,725/- pertaining to the period of 2012-13 with interest. He also imposed penalty equal to the duty demanded under Section 11AC of CEA. As regards Cenvat credit wrongly availed, the adjudicating authority has also dropped the said amount.

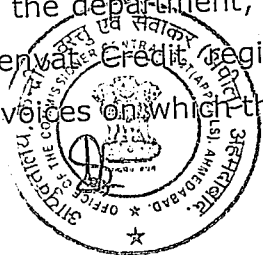


3. Being aggrieved with the confirmation of duty, interest and imposition of penalty, the appellant has filed the instant appeal on the grounds that:

- In most of the cases in the year 2012-13, the appellant had carried out trading and repair work on vehicles of the suppliers which were returned to supplier after completing repair work and charging due amount from supplier for work the work done. Therefore, confirmation of duty demand on trading and repair work on vehicles of suppliers with interest and penalty imposed is not correct. The adjudicating authority has not attempt to take any verification in this regard.
- The issue was even otherwise brought in to the notice of the department and therefore, there is no justification in issuing show cause notice, invoking extended period.

4. The appeal filed by the department (as mentioned at para 2 above) is filed against the demands dropped on the following grounds:

- The show cause notice nowhere proposes to deny the classification followed by the appellant but only alleges that the appellant had wrongly availed the benefit of exemption notification No.08/2003-CE as the goods of chapter heading 8704 are exclude from the ambit of said notification; that as per settled position of law, the adjudicating authority cannot be travel beyond the scope of SCN.
- The adjudicating authority has made error in classifying the product under chapter heading 8707; that chapter 8704 covers motor vehicles for transportation of goods such as Dumper, Ordinary lorries (trucks and vans etc of various capacity and chapter note 5 of chapter 87 also states that building a body or fabrication or amounting or fitting structures or equipment on the chassis falling under heading 8706 shall amount to manufacture of motor vehicle; that all these facts and HSN Explanatory notes for heading 8704 transpires that motor vehicles manufactured by the manufacturer other than manufacturer of chassis are classifiable under chapter 8702,8703,8704 or 8716.
- The adjudicating authority has also made error in relying various case laws regarding classification of goods under chapter 8707 as the said decisions were based on the provisions of chapter note prevailing prior to 2001.
- While allowing the Cenvat credit wrongly taken by the appellant, the adjudicating authority had placed the onus of the department that the department has failed to give details about the invoices/documents against which the credit taken; that the onus is on the appellant to avail the credit and cannot be shifted to the department; that the adjudicating authority has failed to peruse the Cenvat Credit Register for the year 2013-14 which contains the details of invoices on which the credit has been availed.



5. The appellant has filed the cross-objection against the appeal filed by the department vide letter dated 26.04.2019, wherein, they, inter-alia, stated that while defending the show cause notice, they contended their production activity and stated that their goods is classifiable under 8707 on the basis of Hon'ble Supreme Court's decision; that inadvertent mention of a wrong classification 8704 would not debar the appellant from correcting it. When considering all the facts, including admissibility of exemption notification under chapter heading 8704, correctness of classification of goods is a logic judicial decision and the adjudicating authority has correctly conclude the classification on the basis of their submissions and Apex court's decision. They further stated that when all the facts were known to the department, the SCN invoking larger period is not acceptable and illegal, hence the entire demand itself is time barred.

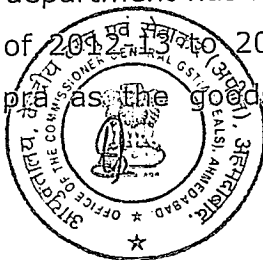
6. Personal hearing in the matter was held on 07.05.2019. Shri P.P.Jadeja, Authorized Representative appeared for the same and reiterated the grounds of appeal and grounds of cross-objection. He further pleaded that extended period cannot be invocable on the ground of limitation in matter of classification. He also submitted citations in appellant's favour.

7. I have considered all the facts submitted by the appellant in their appeal memorandum and cross-objection filed against the appeal filed by the department. I have also considered the submissions made by the department in their appeal.

8. At the outset, I observe that in the matter that the issue revolves regarding classification of body building of motor vehicle under chapter heading 87041010 and eligibility of SSI exemption benefit under Notification 08/2013-CE dated 01.03.2003 as amended, for the period from 2012-13 to 2015-16. There are two appeals filed against the impugned order passed by the adjudicating authority. First appeal is filed by the appellant against confirmation of duty amount of Rs.12,38,725/- with interest and penalty imposed thereof for the period of 2012-13 and other appeal is filed by the department against the demand of Rs. 74,37,000/- and recovery of Cenvat credit amounting to Rs.1,22,631/- dropped by the adjudicating authority.

8. First, I take the appeal filed by the appellant.

8.1 I find that the appellant was engaged in manufacture of body building of motor vehicle on duty paid chassis by classifying chapter heading 87041010. They were also availing SSI exemption benefit under notification No.08/2003- as amended. The appellant has registered with the department on 24.05.2013 and paying central excise duty after crossing the limit of SSI exemption for the period from 2013-14. I find that the department has issued demand of Rs. 86,75,725/- to the appellant for the period of 2012-13 to 2015-16 for denying the SSI benefit availed under notification supra as the goods classified under CH 8704 is not

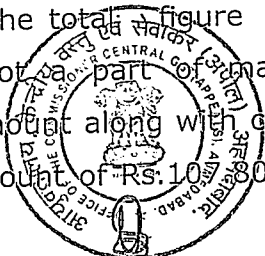


covered in the notification supra for availing the benefit. However, I find that the adjudicating authority, in the impugned order, has classified the goods in question under chapter heading 8707 and dropped the demand of Rs.74,37,000/- for the period pertaining to 2013-14 to 2015-16 and confirmed the demand of Rs.12,38,72/- for the period pertaining to 2012-13 as the appellant have not paid central excise duty for the said period after crossing the limit of SSI exemption.

8.2 The appellant has mainly argued that the demand hits by limitation as the matter is relating to classification of goods and eligibility of SSI exemption and it was well within the knowledge of the department that they were classifying the goods under chapter 8704. They further contended that they were not crossed the limit of SSI exemption of Rs.1.50 Crore during 2012-13 and the department has taken total assessable value including trading activities and other services. The appellant has submitted details of such clearance along with copies of invoices.

8.3 The question of invoking extended period for the demand pertaining to 2012-13 is disputable. Generally, any assessee whose turnover is above Rs.90 lakhs, is required to file a declaration before the department as per instruction as per notification No.36/2001- CE (NT) dated 26.06.2001. In this case, there was no such allegation by the department in the show cause notice that the appellant had not followed the said procedure prescribed. I find that the appellant have got registered with the department on 24.05.2013 as the product in question appeared to be dutiable after crossing exemption limit of Rs.1.50 Crore during 2013-14. Prima facie, the department has to scrutinize the clearance value of prior period while granting registration to safeguard the revenue, if SSI declaration prior to the period was not filed. In this case no such discussion has been made in the show cause notice nor was the matter looked into. Further, I find that the show cause notice was issued in the month of July 2017, covering the period from April 2012 to March 2016 (based on audit observation in 2017). As regards demand of 2012-13, the notice stipulated only that the appellant have not paid any duty from April 2012 to March 2013. In the circumstances, if the declaration was filed, the whole demand hits by limitation as no extended period is invokable. As discussed above, the SCN is completely silent about filing of the declaration. Therefore, there is no allegation that the said declaration has not been filed. In view this, the extended period is not invokable for the period 2012-13.

8.4 However, I would also like to discuss the issue on merit. I find that the adjudicating authority has taken the clearance value of 2012-13 from the sales ledger account and he has shown the figures of Rs.250.22 as taxable value. The appellant has furnished copy of sales ledger account for the said period. Further, they also submitted that the total figure shown in the sales ledger includes "trading sales" which is not a part of manufacturing clearance value. They submitted details of such amount along with corresponding invoices. On perusal of the same, I find that an amount of Rs.10,38,000 lacs is pertaining to "trading sales"



during the relevant period which is deductible from the total, while determining clearance value of excisable goods. In the circumstances, I find merit in the contention of the appellant that they had not crossed the SSI limitation of Rs.1.50 crore in the financial year 2012-13. Since the appellant has cleared goods as "trading sales", having clearance value of Rs.107.80 lacs during 2012-13, the said amount is required to be deducted from the total amount of Rs.250.22 lacs. If so, the clearance value for 2012-13 is well within the ambit of Rs.150 Crore and no duty is demandable for the said period. In the circumstances, I hold that the appellant is not liable to pay duty for the year 2012-13 as they have not crossed the limit of SSI exemption.

9. Now, I take the appeal filed by the department.

9.1 The department has filed the appeal mentioned at para 2 above by [i] challenging the demand of Rs. 74,37,000/- for the period pertaining to 2013-14 to 2015-16 and [ii] dropping the proceedings against recovery of Cenvat credit amounting to Rs.1,22,631/-.

9.2 As regards [i] above, the department has contended that the adjudicating authority travelled beyond the grounds of show cause notice as in the notice, the department not raised the issue of classification but only denied eligibility of SSI exemption under notification No.08/2003-CE towards chapter heading 8704. The department further contended that the goods manufactured by the appellant classifiable under chapter heading 8704 only according to the chapter note 5 of chapter 87 and HSN explanatory note to chapter 8704. On other hand, the appellant has contended that their goods is classifiable under 8707 on the basis of Hon'ble Supreme Court's decision in case of M/s Ram Body Builders [1997 (94) ELT]. They also contended that the demand is not at all sustainable on the grounds of limitation as they have filed monthly return, claiming classification of goods under chapter heading 8704 and thereby availing SSI exemption.

9.3 The contention of the department is no more *res integra*, in view of Hon'ble Supreme Court's decision *supra* in classification of goods in dispute. The Hon'ble Court has held that

"Motor vehicles - Bus/trucks bodies built chassis supplied by the customer classifiable under Heading 87.07 of the Central Excise Tariff - Benefit of SSI exemption under Notification No. 175/86-C.E. available".

The said decision was followed by various Hon'ble Tribunals. Therefore, as regards the issue relating to classification of goods manufactured by the appellant, I do not find any merit or worth to discuss the grounds mentioned by the department in their appeal as there is no merit in the appeal as the Hon'ble Apex Court settled the issue by classifying the product in question under chapter heading 8707. Therefore,

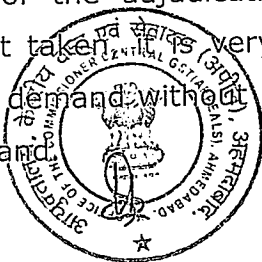


I find that the adjudicating authority has correctly classified the goods under chapter heading 8707.

9.4 However, the department has further alleged that the adjudicating authority has travelled beyond show cause notice as the show cause notice was issued not for classification dispute but for denying SSI exemption. The said argument is not acceptable, looking into the facts of the case. The issue raised in the show cause notice pertains to eligibility of SSI exemption under notification 08/2003-CE availed by appellant. The said exemption was availed based on classification of the said product. It is fact that they have shown classification of the product in question as 8704 which was later on disputed in reply to show cause notice as well as before the adjudicating authority that they had shown the said chapter heading inadvertently. Classification being a question of law can be raised and considered at any stage and according to judicial discipline, correct classification of the product is required to be determined. Therefore, the argument that the adjudicating authority travelled beyond the scope of show cause notice does not have any merit.

9.5 Further, the appellant has mainly contended that the department appeal is not sustainable on the ground of limitation. They submitted that since the appellant has disclosed all the materials before the department at the time of registration and in the monthly return thereafter, show cause notice issued by invoking extended period cannot be sustainable in law. When the appellant has placed all relevant facts before the department, it was for the Department to come to a finding about proper classification based on relevant material at the material time. The department should have deferred the classification and other facts in the year 2013 itself. In the circumstances, the demand is not sustainable and the department appeal for the said reason of limitation itself. Therefore, I find that on merit as well as ground of limitation, the department appeal fails.

9.6 As regards the issue mentioned at [ii] of para 9.1, I find that the department has contended that the appellant had availed the Cenvat credit of Rs.1,22,631/- covered under invoice dated prior to 15.02.2014 (the date on which transitional credit was taken); that since they had taken the said credit already under transitional credit, the Cenvat taken amounts to double benefit. In the impugned order, the adjudicating authority has held that the in the show cause notice, it was not substantiated how the excess credit was taken by the appellant and on which invoice, the excess credit was taken. He further contended that in some case goods covered under invoices prior to 15.02.2014 was received after 15.02.2014. I totally agreed with the contention of the adjudicating authority. In absence of any substantiation of excess credit taken, it is very difficult to hold the demand and there is no point to hold such demand without any valid grounds or specific proof. Therefore, I set aside the demand.



9.7 In view of above discussion, I do not find any merit in the appeal filed by the department, hence rejected.

10. In the foregoing discussion [i] I allow the appeal filed by the appellant and [ii] reject the appeal filed by the department. Both the appeals stand disposed of accordingly.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : .05.2019

Attested

Mohanan V.V.
(Mohanan V.V.)
Superintendent (Appeal),
Central Tax, Ahmedabad.

BY R.P.A.D



To,

M/s Ab Dhruv Autocraft (I) Pvt Ltd,
Shet No.C-13, Electronic Estate

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Principal Commissioner, Central Tax, Gandhinagar.
3. The Additional Commissioner, CGST, Gandhinagar
4. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
5. The Assistant Commissioner, Gandhinagar Division.
- ✓ 6. Guard file.
7. P.A file.