आयुक्त(अपील)का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN : **20220164SW0000555D01**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1471/2021 / 5863 TO 5867

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-89/2021-22**
दिनाँक Date : **13-01-2022** जारी करने की तारीख Date of Issue 20.01.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-MSC-005 to 008-20-21** दिनाँक: **31.12.2020** issued by Additional Commissioner, CGST& Central Excise, HQ, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Johnson Controls-Hitachi Air Conditioning India Ltd
Formerly know as Hitachi Home & Life Solutions (India) Ltd
Hitachi Complex, Karannagar, Kadi-Kalol Road,
Kadi, Mehsana

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।

Any person aggrieved by this Order-In-Appeal 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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 हानिकार खाने 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 मे हो माल की प्रकिया 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.

(क) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

(c) 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 दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.क्र मुख्य शीर्ष 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 रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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 amour 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. Registar 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 होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(67) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(clxxxiv) amount determined under Section 11 D;
(clxxxv) amount of erroneous Cenvat Credit taken;
(clxxxvi) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Johnson Controls-Hitachi Air-Conditioning India Limited (formerly known as Hitachi Home & Life Solutions (India) Limited), Hitachi Complex, Karannagar, Taluka : Kadi, District : Mehsana (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-MSC-005 to 008-20-21 dated 31.12.2020 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST & Central Excise, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are engaged in the manufacture of Room Air-Conditioners, Split/Package type Air Conditioners and Parts thereof. They were holding Central Excise Registration No. AABCA2392KXM003 and were also holding Service Tax Registration No. AHD-III/MEH/MRS-CSI/009. During the course of audit of the records of the appellant for the period October, 2004 to February, 2006, it was noticed that the appellant had received Commission of Rs.2,76,69,481/- from M/s.Hitachi (Asia) Home & Life Solution Ltd., Singapore (hereinafter referred to as HMLSL) and had not paid service tax on the same. It appeared that the commission received by the appellant falls under the definition of Business Auxiliary Services in terms of Section 65 (19) of the Finance Act, 1994 and was, therefore, liable to service tax. The appellant submitted that they had procured orders from Indian market on behalf of HMLSL and imported the goods from Singapore and delivered it to the customers in India. They had received commission in convertible currency and, therefore, they had exported the service from India and were not liable to Service Tax.

2.1 The Export of Service Tax Rules, 2005 which came in to force from 15.03.2005 provides definition of 'export' and exempts service tax on export of taxable service, subject to certain conditions. However, under Rule 3 (1) (a) of the said Rules, it has been provided that such services must be delivered outside India and used in business or for any other

purpose outside India. In the instant case, it appeared that the appellant had provided and used the service in India itself, therefore, they were liable to pay service tax on the same. Therefore, the appellant was issued a SCN dated 14.02.2007 demanding Service Tax amounting to Rs.22,27,167/-, on the commission received by them, under Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalty was also proposed to be imposed under Section 76, 77 and 78 of the Finance Act, 1994.

2.2 The appellant was also issued three more periodic SCNs on the same issue, which are : 1) SCN demanding Service Tax amounting to Rs.16,85,893/- for the period from March, 2006 to July, 2006 ; 2) SCN demanding Service Tax amounting to Rs.16,94,321/- for the period from August, 2006 to January, 2007 ; and 3) SCN demanding Service Tax amounting to Rs.7,50,607/- for the period from February, 2007 to March, 2007.

2.3 All the four SCNs issued to the appellant were adjudicated vide OIO No. 19 to 22/Addl.Commr/2008 dated 26.03.2008 wherein the demand for service tax was confirmed along with interest. Penalties were also imposed under Section 76,77 and 78 of the Finance Act, 1994.

2.4 Being Aggrieved, the appellant filed appeals before the Commissioner (Appeals), Ahmedabad who vide OIA No. 159/2009(Ahd-III)CE/KCG/Commr(A) dated 29.04.2009 held that the services rendered by the appellant during the period subsequent to 15.03.2005 have been exported and are entitled for exemption. Therefore, the demands pertaining to the period subsequent to 15.03.2005 were set aside and penalties were also reduced accordingly. The said order was accepted by the department.

2.5 The appellant filed appeal against the order of the Commissioner (Appeals), Ahmedabad before the Hon'ble Tribunal, Ahmedabad. The Hon'ble Tribunal vide Order No. A/11179/2018 dated 30.05.2018 held that

the matter required verification and remanded back to the adjudicating authority. The appellant was directed to produce records to establish that the foreign exchange received by them was not repatriated outside India. The adjudicating authority was also directed to look into the matter in the denovo proceedings.

2.6 In the denovo proceedings, the matter was adjudicated vide the impugned order wherein the Service Tax amounting to Rs.7,73,090/- for the period from September,2004 to February, 2006 was confirmed. The remaining part of the demand amounting to Rs.14,54,077/- was dropped. The demands raised vide the three SCNs for the period from March, 2006 to March, 2007 were also dropped. Penalty was imposed under Section 76, 77 and 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

i. They are exempted from Service Tax for the period prior to 15.03.2005 in terms of Notification No. 21/2003 dated 20.11.2003. The SCN records the fact that the payment for service were received in convertible foreign currency and hence, the same is fully exempted. The benefit of the said notification is denied on the ground that they had failed to categorically state that the payments received in convertible foreign exchange were not repatriated.

ii. It is not the case of the department that there was repatriation of foreign currency. The objection is only that specific claim/statement has not been made as to repatriation.

iii. They had claimed exemption and the payments were received in convertible currency. These facts are not denied in the impugned order. Therefore, the question of denial of exemption would arise only if there was any proof or evidence of repatriation of foreign currency. If the amount is repatriated, then, possibly, evidences would be available which can be produced. However, if the amount was not repatriated, the production of positive evidence is not

possible and, therefore, the only method is by filing an affidavit. They had accordingly, submitted an affidavit to assert that no such repatriation has taken place.

iv. The SCN No. 15-64 records the fact that the payments for the service were received in convertible foreign currency and hence the same is fully exempted. There is no discussion or objection in the notice for this period. The only objection taken in para 3 relates to period after 15.03.2005 and hence for this period the demand cannot be sustained.

v. For the period prior to 15.03.2005, the benefit of the said notification is denied only on the ground that they had failed to categorically state that the payments received in convertible foreign currency were not repatriated. It is not the case of the department, either in the notice or in the order, that there was repatriation of foreign currency.

vi. The question of denial of exemption would arise only if there was any proof or evidence of repatriation of foreign currency. If the foreign currency was repatriated, then possibly, evidences would be available which can be produced. However, it is not repatriated, the production of positive evidence is not possible.

vii. Much before the issuance of notice, the department was put to notice as to their claim of exemption, being export of service. The department did not make any allegation of repatriation in the notice. Therefore, now casual remark about other foreign exchange transactions cannot be permitted. Having separate transactions in foreign currency does not imply or indicate that there is repatriation.

viii. In the impugned order it has been observed that since the transactions were shown in schedule to the Balance Sheet, the appellant should have explained the transactions and the claim that the appellant were not in a position to explain the same is not acceptable.

ix. The department does not have any remote evidence or basis, except for doubt to reject their claim that there was no repatriation. Such

doubt cannot create presumption in favour of the department and it is not sufficient to deny benefit of notification.

x. They submit copies of the debit notes raised for the commission receivable and also bank advise under which the amount was received. Copies of ledger account of HMLSL is also submitted.

xi. The demand is also barred by limitation. The demand pertains to the period upto 15.03.2005 and the return for the period was required to be filed in April, 2005. The SCN is dated 14.02.2007. There is no invocation of extended period in the notice. Mere mention of suppression is not sufficient to invoke the extended period of limitation.

xii. They had obtained legal opinion that they were not liable to tax. Therefore, there was not only inaction bit well informed legal opinion as to non liability to tax. Thus, there was no question of suppression or concealment.

xiii. When demand would not be sustained, the question of interest or penalty would not arise.

xiv. The quantification made in the impugned order is ex-facie incorrect. During the period prior to 2011, the liability to make service tax payment was only upon receipt of the consideration. Thus, in the cases where the consideration were received after 15.03.2005 no tax can be demanded.

xv. Penalty under Section 76 would only apply in case where there is an assessment or filing of return, where amount were ascertained and not paid. When the demand is under Section 73, there cannot be penalty under Section 76, as the penalty would be governed by Section 78.

xvi. Simultaneous penalty under Section 76 and 78 cannot be imposed. They rely upon the decision of the Hon'ble Gujarat High Court in the case of Raval Trading.

xvii. Penalty under Section 77 would not be tenable since the notice itself invokes Section 76 and 78 for penalty. Section 77 is only applicable where no separate penalty is provided.

xviii. Section 78 cannot be invoked since there is no allegation of suppression of mis-statement etc. with intent to evade tax in the notice. The notices did not seek to refer to the conditions necessary for invoking extended period. In the absence of allegation, the penalty under Section 78 cannot be invoked.

4. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Shri S.J.Vyas, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the submissions made at the time of personal hearing. It is observed that the demand confirmed pertains to the period prior to 15.03.2005, i.e. the date on which the Export of Service Tax Rules, 2005 came in to force. The appellant had during the said period received commission from HMLSL and the payment was received in foreign convertible exchange. In terms of Notification No. 21/2003-ST dated 20.11.2003, services, in respect of which payment is received in India in convertible foreign exchange, was exempted from the whole of the service tax leviable thereon. The exemption in terms of the said notification was subject to the condition that the payment received in India in convertible foreign exchange is not repatriated or sent outside India. The demand for service tax has been confirmed against the appellant vide the impugned order on the grounds that they have failed to categorically state that the payments received in convertible foreign exchange has not been repatriated outside India. Therefore, the limited issue before me for decision is whether the appellant have complied with the conditions of Notification No. 21/2003-ST dated 20.11.2003 to be eligible for exemption and whether the quantification of demand in the impugned order is proper.

6. I find that the Hon'ble Tribunal, Ahmedabad had, while remanding back the case, observed at Para 5 of their Final Order No.A/11179/2018 dated 30.05.2018, that :

> 5. We find that there is no dispute that the payment was received against the services provided to foreign company. The condition of the Notification No.21/2003-ST is that the payment received should not be repatriated or sent out of India. The evidence to this fact has not been produced by the appellant by providing necessary documents such as ledger, etc. Therefore, to ascertain these facts the appellant has to produce the documents. Accordingly, being the matter needs verification, it is remanded to the Adjudicating Authority. The appellant shall produce the records to establish that the foreign exchange received has not been repatriated outside India or otherwise. The appeal is allowed by way of remand."
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> 6. Shri S.J.Vyas, Ld. Counsel also added that the dispute of quantification may also be kept open for consideration of the adjudicating authority. We agree with this request of the Ld. Counsel. The Adjudicating Authority shall also look into the matter of requantification while passing the denovo order."

6.1 I find that the Hon 'ble Tribunal had remanded back the matter to the adjudicating authority for denovo proceedings on two issues viz. 1) Re-quantification of the demand and 2) Verification of documents to ascertain whether the convertible foreign exchange was repatriated outside India or otherwise.

6.2 As regards re-quantification of the demand, I find that the adjudicating authority has quantified the demand for service tax by considering only the debit notes, relating to commission, issued prior to 15.03.2005 and has dropped the demand for the period after 15.03.2005. The appellant have contested the quantification of the demand confirmed in the impugned order on the ground that for consideration received after 15.03.2005, no tax can be demanded. I do not find any merit in the contention of the appellant. The charge of service tax is in terms of Section 66 of the Finance Act, 1994 and the liability to pay service tax is created the moment a taxable service is rendered. Only the date of payment of service tax has been shifted to a later date in terms of Rule 6 of the Service Tax Rules, 1994, as it stood at the relevant point of time. Therefore, though the commission was received subsequent to 15.03.2005, the taxable service was rendered prior to 15.03.2005 and accordingly, the taxable event has taken place prior to 15.03.2005. Consequently, the appellant's liability to pay service tax, if otherwise not exempted, was already created before 15.03.2005. Therefore, I do not find any infirmity in the

quantification of demand arrived at by the adjudicating authority. Accordingly, I reject the contention of the appellant as regards quantification of demand for service tax confirmed in the impugned order.

6.3 Regarding the issue of submission of documents, I find that in view of the specific direction of the Hon'ble Tribunal, the appellant was required to submit the necessary documents before the adjudicating authority. The adjudicating authority has in denovo proceedings recorded at Para 21 of the impugned order that " *the assessee vide letter dated 15-12-2020 has been asked by JRO to submit the Bank Account Statement/Realization receipt copy of the same directly to O & A Section (HQ), however they have neither submitted any documents to establish to produce the records to establish that the foreign exchange received has not been repatriated outside India. The assessee has failed to categorically state that the payments received in India in convertible foreign exchange for taxable services rendered were not repatriated from, or sent outside India".* The appellant have in this regard submitted in their appeal memorandum that if the amount is repatriated, then, possibly, evidences would be available which can be produced. However, if the amount is not repatriated, the production of positive evidence is not possible.

6.4 I find that specific directions of the Hon'ble Tribunal regarding submission of documents have not been complied with by the appellant. The documents called for by the adjudicating authority/JRO have not been submitted by the appellant. Without complying with the directions of the Hon'ble Tribunal and by not submitting the called for documents, the appellant cannot take the stand that production of positive evidences is not possible. Neither can the affidavit submitted by the appellant be a substitute for the documents called for by the adjudicating authority. However, in the interest of justice, I am inclined towards giving the appellant one more opportunity to comply with the directions of the Hon'ble Tribunal and submit the documents called for by the adjudicating authority. Accordingly, the matter is being remanded back to the adjudicating authority.

7. In view of the facts discussed herein above, the appeal is allowed by way of remand for the limited purpose of enabling the appellant to submit the documents called for by the adjudicating authority so that their eligibility for exemption under Notification No. 12/2003-ST dated 20.11.2003 can be determined. The appellant is directed to submit the documents called for by the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall decide the matter afresh after considering the documents submitted by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

13 January, 2022

(Akhilesh Kumar)
Commissioner (Appeals)
Date: .01.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Johnson Controls-Hitachi Air-Conditioning India Limited, Appellant
(formerly known as Hitachi Home & Life Solutions (India) Limited)
Hitachi Complex,
Karannagar,
Taluka : Kadi,
District : Mehsana

The Additional Commissioner, Respondent
CGST & Central Excise,
Commissionerate : Gandhinagar

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
   (for uploading the OIA)
4. Guard File.
5. P.A. File.