



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



By SPEED POST

DIN:- 20231264SW000071237A

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1429/2023-APPEAL / 14063-3062
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-131/2023-24 and 24.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. AC/S.R./56/ST/KADI/2022-23 dated 25.01.2023 passed by the Assistant Commissioner, CGST, Division - Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vijay Karshandas Sadhu (Prop. M/s Keshar Engineering), B/28, Alaknanda Society, Kalyanpura Road, Kadi, Mehsana, Gujarat-382715

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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 में हो माल की प्रक्रिया के दौरान हुई हो।

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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।

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

(घ) 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।

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 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.

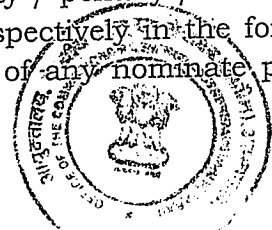
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

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

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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी 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 filled 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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:

- (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.

(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।

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."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Vijay Karshandas Sadhu (Prop. M/s Keshar Engineering), B/28, Alaknanda Society, Kalyanpura Road, Kadi, Mehsana, Gujarat-382715 (hereinafter referred to as the "*appellant*") against Order-In-Original No. AC/S.R./56/ST/KADI/2022-23 dated 25.01.2023 [hereinafter referred to as the "*impugned order*"] passed by the Assistant Commissioner, CGST, Division: Kadi, Commissionerate: Gandhinagar [hereinafter referred to as the "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant was registered with Income Tax Department having PAN No. BEUPS7784G. As per the information received from the Income Tax department, it was observed that the total income declared in Income Tax Returns/26AS was above the exemption limit of Service Tax and Service Tax Registration was also not obtained by the appellant. In order to further verification, letters dated 05.01.2021 & 07.09.2021 were issued to appellant for submission of Balance Sheet, Profit & Loss A/c, Income Tax Returns, 26As & Sales Ledger for F.Y. 2016-17 & 2017-18 (up to June-2017). The appellant vide email dated 10.09.2021 submitted the documents. It was also observed by the Service Tax authorities that as per 26AS, the appellant have received substantial income under Section 194C of Income Tax Act, 1961 during the period F.Y. 2016-17 & 2017-18 (up to June-2017). It was also observed that the nature of services provided by the appellant were covered under the definition of 'Service' as per Section 65B(44) of the Finance Act, 1994, and their services were not covered under the 'Negative List' as per Section 66D of the Finance Act, 1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

3. Accordingly, a Show Cause Notice vide F. No. GEXCOM/SCN/ST/6845/2021-CGST-DIV-KADI-COMMRTE-GANDHINAGAR dated 01.10.2021 was issued to the appellant, wherein it was proposed to:

- Demand and recover service tax amounting to Rs.6,81,420/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 ;



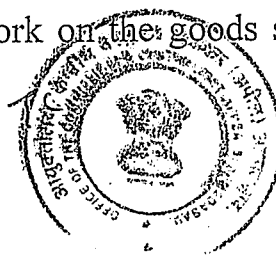
- Impose penalty under Section 70, 77, and 78 of the Finance Act, 1994;

4. The said Show Cause Notice was adjudicated vide the impugned order wherein:

- Demand for Rs. 6,81,271/- was confirmed under Section 73(1) of the Finance Act, 1994 along with the interest under Section 75 of the Finance Act, 1994 and drop the demand of Rs.150/-.
- Penalty amounting to Rs. 6,81,271/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii);
- Penalty of Rs.20,000/- was imposed under Section 70 of the Finance Act, 1994 for non-filing of each ST-3 returns for the period from F. Y. 2016-17 to F. Y. 2017-18 (upto June-2017);

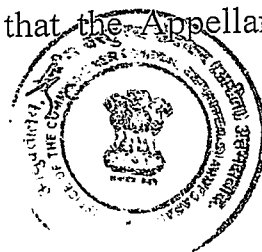
5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on following grounds:

- The appellant was running business of doing job work of engineering on goods (Raw Materials) supplied by principal manufacturer viz M/s Parle Elizabeth Tools Private Limited and earned labour income amounting to Rs. 38,05,610/- during the F.Y. 2016-17 and Rs. 7,37,190/- the F.Y. 2017-18 (upto June-2017). They has filed Income Tax return for the F.Y. 2016-17 declaring sales of service of Rs. 38,05,610/-.
- The appellant has stated that he is carrying job work for engineering goods and his taxable turnover for the relevant financial year is below threshold exemption limit as envisaged under Notification No. 08/2008-ST dated 01.03.2008.. Appellant also stated that during the F.Y. 2016-17, he has purchased/consumed materials to the extent of Rs. 27,44,000/- to provide services of Rs. 38,05,610/- which reveals the fact that value addition is to the extent of Rs.6,15,689/-only.
- Adjudicating Authority has then issued Show Cause cum demand Notice dated 01.10.2021 and in response to the said SCN Appellant has submitted detailed reply dated 25.10.2021 objecting the SCN and also raised various contentions therein. Appellant has submitted that we are engaged in the business of carrying out manufacturing job work on the goods supplied by



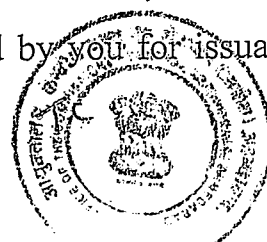
the customer. We are mainly doing manufacturing job work of engineering goods. During the period 2016-17 and 2017-18 up to 30/06/2017, we have done manufacturing job work of on semi-finished goods of M/s. Parle Elizabeth Tools Pvt. Ltd., Sanand, Ahmedabad – 382110 (hereinafter referred as Principal Manufacturer) who is holding registration under the provisions of Central Excise Act with ECC No. AAECF7357AEM003 registered with Range III, Division –III, Sanand.

- It was further submitted that the inputs required for carrying out job work were provided by the Principal as provided under Rule 4(5)(a) of the Cenvat Credit Rules, 2001. The sample copy of the challan No. 000298 dated 12/08/2016 was also submitted for record and perusal. Thereafter, Appellant had submitted scan copy of all the Challan. Taxpayer has carried out job work process on the inputs supplied by the Principal Manufacturer. After carrying out job work process, the finished products were sent back to the Principal under our gate pass/delivery Challan.
- The appellant also submitted that as provided under the Mega exemption notification No. 25/2012 dated 20/06/2012 in Sr. No. 30 carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is exempted from payment of service tax.
- The adjudicating authority has not rejected the contentions of the taxpayer nor the documents produced namely Gate Pass/Challan of Principal Manufacturer issued under Rule 4(5)(a) of the Cenvat Credit Rules, 2001 which establishes the fact that Appellant was doing the jobwork on the inputs supplied by Principal Manufacturer who is registered under Excise Laws and who is liable to pay the appropriate duties. On demand by Adjudicating Authority, Appellant has submitted unsigned copies of the Invoices raised for labour work as samples to show how the invoices were raised for labour work done. Appellant has printed the copies of the Invoices from ERP/Accounting Software when demanded by Adjudicating Authority and ERP/Software has by mistake printed details of GSTIN in the format. Adjudicating Authority has erred in understanding the fact that the Appellant has submitted unsigned copies of all unsigned copies of invoices as PDF as generated by Accounting Software as samples of format only and without understanding in proper perspective alleged that the Appellant had issued



retail invoice for supply which is also made on a later stage as evident from the retail invoices submitted by the Appellant.

- Adjudicating Authority also confirmed and accepted fact that the noticee also submitted the copy of Challan issued by M/s Parle Elizabeth Tools Pvt. Ltd in which it is mentioned that the semi finished goods were sent to the noticee firm for job work and returned back however has raised issue that the same is not matching with the retail invoice submitted by the noticee. It is surprising that Adjudicating Authority has casually alleged that the Copy of Challan and Retail Invoices are not matching without specifying how they are different. Adjudicating Authority further raised the issue that Appellant did not produce copy of undertaking in support of their claim which would have been submitted by the Principal Manufacturer to the Assistant Commissioner of Central Excise division having jurisdiction over the factory of job worker in case of job work processing in relation to manufacturing of excisable goods as envisaged under Notification No. 214/86-CE dated 25.03.1986 as amended. It is usefully be noted that the Adjudicating Authority has never demanded the same from us.
- Adjudicating Authority irrelevantly alleged in Para 21 of Order in Original that in the instant case, I find that Appellant have submitted contradictory submissions during verification and after issuance of show cause notice. It is very strange that Adjudicating Authority has without applying mind alleged that contradictory submissions were made by Appellant. The noticee also submitted fabricated documents to substantiate their claim. Therefore, I am of the opinion that earlier submissions made by the Noticee while filing of the Income Tax Return is to be taken into consideration and accordingly service tax demand made by show cause notice dated 01.10.2021 is proper and liable to be confirmed.
- The erstwhile figure of "Sales/ Receipts from Service" of Rs. 38,05,610/- & Rs. 7,37,190/- for FY. 2016-17 and 2017-18 respectively on basis of which the entire demand order has been raised by the Adjudicating Officer is unsupported by any figures in the ITR filed by the appellant or the 26AS of the appellant for the concerned F.Y. 2016-17 & F.Y. 2017-18.
- Adjudicating Authority has not furnished analysis done by CBDT to taxpayer to prepare defence for rebuttal of the said information, because your office is under duty to furnish the information relied by you for issuance of SCN as



per clause 13 of the Master Circular which is binding on the field formation staff and also necessary to give an opportunity to rebut third party material relied in terms of doctrine of natural justice.

- Adjudicating Authority has tried to justify issuance of SCN on the ground of contraventions of provisions of Finance Act, 1994 and Service Tax Rule, 1994 on illusory grounds because your office has no cogent and tenable materials/information to take benefits of extended period of five years to issue SCN. In absence of cogent information, you are raising allegations on assumptions and presumptions which are not tenable under any law.
- SCN is barred by limitation. The said section lays down a time limit of 30 months from the relevant date. The relevant date is separately provided under section 73(6) as the date when the return was due to be filed.
- The appellant's 26AS for the referenced F.Y. 2016-17 clearly indicates that payments have been made/ credited to the assessee on account of job work income from Parle Elizabeth Tools Pvt Ltd. on the basis of which proceeding was based however Adjudicating Authority has rejected the fact that Appellant has done job work of Parle Elizabeth Tools Pvt. Ltd and acted casually and arbitrarily.
- Adjudicating Authority has raised demand denying the exemption under Mega Exemption on the basis of irrelevant Notification No. 214/86-CE dated 25.03.1986 which is applicable for claiming exemption in Central Excise laws.
- Adjudicating Authority has wrongly denied exemption granted by Entry No. 30 of Mega exemption notification No. 25/2012 dated 20/06/2012 for carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is exempted from payment of service tax on illogical and irrelevant and arbitrary grounds as the said exemption is unconditional.
- Therefore, the order of the Adjudicating Authority/proper officer in confirming and imposing tax on the said supply is bad in law and contrary to the facts of the case.
- The Adjudicating Authority has thus erred in confirming and imposing interest u/s 75 and penalty u/s 77 & 78 of the Finance Act, 1994.
- The order of the Adjudicating Authority is bad in law, illegal, unjustified and against the principles of natural justice.

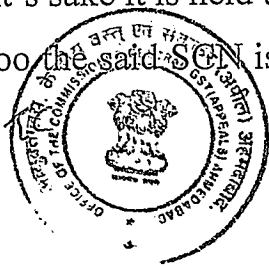


6. Personal hearing in the case was held on 22.09.2023. Shri Piyush Patel, Chartered Accountant, appeared for hearing as authorized representative of the appellant. He reiterated the submissions made in their appeal memorandum and submitted an additional written submission during the course of hearing. He further stated that the appellant provided jobwork of machining on the lathe machine. The materials for job work provided by the principals, were returned after doing the job work. Since the liability to pay excise duty was on the principals, the appellant was not liable to pay any duty. However, the adjudicating authority in the impugned order has confirmed demand of service tax stating non-compliance of the procedures under Excise Act by the principals. The appellant has submitted that in case exemption for job work under the Excise Act is not applicable, the activity undertaken by the appellant amounts to manufacture and therefore, subject to service tax. In view of the above, whether it is considered as job work or not, the question of liability to service tax does not arise. Therefore, he requested to set aside the impugned order.

6.1 Personal hearing was again held on 20.10.2023 due to change of Appellate Authority. Shri Piyush Patel, Chartered Accountant and the appellant appeared for personal hearing. He reiterated the contents of the written submission and requested to allow their appeal.

7. Subsequently, the appellant submitted additional written submission dated 22.09.2023 & 20.10.2023 during the course of hearing, wherein they inter alia submitted the following grounds :

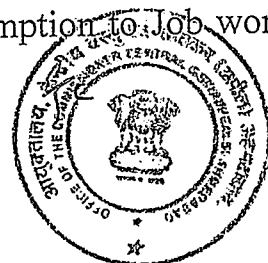
- Adjudicating Authority has tried to justify issuance of SCN on the ground of contraventions of provisions of Finance Act, 1994 and Service Tax Rule, 1994 on illusory grounds because your office has no cogent and tenable materials/information to take benefits of extended period of five years to issue SCN. In absence of cogent information, you are raising allegations on assumptions and presumptions which are not tenable under any law.
- SCN is barred by limitation. The said section lays down a time limit of 30 months from the relevant date. The relevant date is separately provided under section 73(6) as the date when the return was due to be filed.
- Further, they submitted that even if for argument's sake it is held that section 73(1) is applicable by any stroke of luck then too the said SCN is barred by



limitation. The said section lays down a time limit of 30 months from the relevant date. The relevant date is separately provided under section 73(6) as the date when the return was due to be filed. Therefore, for the period FY 2015-16 to June 2017 the 30 months time period relevant date has expired before the said SCN have been served on the persons concerned.

FY 2016-17	Quarterly due date (relevant date)	30 months from due date (30 months from relevant date)
Q 1 – April to June	5 th / 6 th Of July, 2016	5 th / 6 th of December, 2018
Q2 – July to September	5 th / 6 th of October, 2016	5 th / 6 th of March, 2019
Q3 – October to December	5 th / 6 th of January, 2017	5 th / 6 th of June, 2019
Q4 – January to March	31 st March, 2017	31 st September, 2019

- The officers have issued the SCNs apparently on the basis of an extended period of 5 years from the relevant date. However, the said extended period of 5 years is applicable only in following situations:
- (I) Fraud
 - (II) Collusion
 - (III) Misstatement
 - (IV) Concealing information with the wilful intent to defraud revenue
 - (V) Not following any provisions of law.
- It is seen that the said SCN are strangely silent on any instance or details citing any of the above elements. The SCN merely cite the relevant provision of law but the fact of instance is totally absent. They relied up on the following judgments of Hon'ble Apex Court in the case of M/s. Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)].
- The adjudicating authority has raised demand denying the exemption under Mega Exemption on the basis of irrelevant Notification No. 214/86-CE dated 25.03.1986 which is applicable for claiming exemption in Central Excise laws. Alternatively, Adjudicating Authority should have initiated proceeding for levy of Excise Duty.
- The appellant submitted that Adjudicating Authority has not applied mind while denying exemption provided under Mega Exemption (Entry No. 30 of Mega exemption notification No. 25/2012) because the Notification No. 214/86-CE dated 25.03.1986 is for granting exemption to Job worker from



levy of Excise. For the sake of argument if it is the duty of Principal to file declaration and he has not filed then consequences would be that Excise duty will be payable by Job Worker because he will be considered as manufacturer. Then how the adjudicating authority can raise the demand of Service Tax? They should initiate proceeding to levy Excise Duty on manufacturing activities because the said Notification imposes liability of Excise Duty on failure of principal to file Declaration. They relied upon the various judgements of Hon'ble Courts & Tribunal :

- Kartar Rolling Mills vs CCE,
 - Thermax Babcock & Wilcox Ltd. vs CCE Pune I 14 [2018 (364) ELT 945 (Tri-LB),
- Adjudicating Authority has wrongly denied exemption granted by Entry No. 30 of Mega exemption notification No. 25/2012 dated 20/06/2012 for carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is exempted from payment of service tax on illogical and irrelevant and arbitrary grounds as the said exemption is unconditional.
- As provided under the Mega exemption notification No. 25/2012 dated 20/06/2012 in Sr. No. 30 carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is exempted from payment of service tax.
- They submitted that Sr. No. 30C of Mega Exemption clearly indicates that Carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the manufacturer then services of Job Worker is exempt. Adjudicating Authority has not disputed the fact that appropriate duty is not payable by the Principal Manufacturer nor stated that duty is not paid by the principal manufacturer. Appellant has not violated any terms and conditions of Notification of Mega Exemption nor the Adjudicating Authority has averred anywhere about any violation.
- Adjudicating Authority has not rejected the contentions of the taxpayer nor the documents produced namely Gate Pass/Challan of Principal Manufacturer issued under Rule 4(5)(a) of the Cenvat Credit Rules, 2001 which establishes the fact that Appellant was doing the jobwork on the inputs supplied by Principal Manufacturer who is registered under Excise



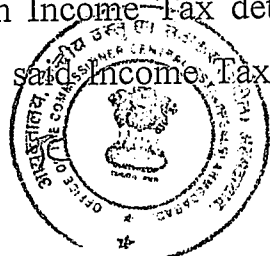
Laws and who is liable to pay the appropriate duties. Adjudicating Authority also confirmed and accepted fact that the noticee also submitted the copy of Challan issued by M/s Parle Elizabeth Tools Pvt. Ltd in which it is mentioned that the semi finished goods were sent to the noticee firm for job work and returned back however has raised issue that the same is not matching with the retail invoice submitted by the noticee. It is surprising that Adjudicating Authority has casually alleged that the Copy of Challan and Retail Invoices are not matching without specifying how they are different. Adjudicating Authority further raised the issue that Appellant did not produce copy of undertaking in support of their claim which would have been submitted by the Principal Manufacturer to the Assistant Commissioner of Central Excise division having jurisdiction over the factory of job worker in case of job work processing in relation to manufacturing of excisable goods as envisaged under Notification No. 214/86-CE dated 25.03.1986 as amended. It is usefully be noted that the Adjudicating Authority has never demanded the same from us.

- Adjudicating Authority has acted casually without clarity, they should decide either way whether they want to treat services rendered by Appellant as manufacturing activity while considering violation of terms and condition as regarding filing of declaration as mandated by Notification No. 214/86-CE dated 25.03.1986 then how they can raise demand of Service Tax. Alternatively if they want to consider the service rendered is of Job Work then if Appellant has complied with the terms and conditions envisaged in Entry No. 30 of Mega exemption notification No. 25/2012 dated 20/06/2012, then there is no good for denying exemption under Mega Exemption Notification. Adjudicating Authority has no where stated that the Appellant has not complied with the terms and conditions envisaged in Entry No. 30 of Mega exemption notification No. 25/2012 dated 20/06/2012.
- The Adjudicating Authority has in Para 19 of the OIO stated analysis to support reasoning to reach the conclusion to confirm the levy of Service Tax as per SCN. As observed by Adjudicating officer that the Noticee has made contradictory submissions during Third party Verification stage and during the submissions of reply after issuance of SCN. Noticee has submitted at the time of verification stage that the firm is engaged in carrying out job work for engineering goods on small scale and their turnover for all financial year



is below the exemption limit of Rs. 10 lakhs. Noticee has also given break up of material purchase and labour expenses in their reply whereas in reply to SCN the Noticee has submitted that he is engaged in carrying out job work service on the goods supplied by the Principal Manufacturer i.e. M/s Parle Elizabeth Tools Pvt. Ltd.. (C. Ex. Reg No. AAEC7357AEM003). The Noticee further submitted that the inputs required for carrying out job work were provided by the Principal Manufacturer as provide under Cenvat Credit Rules, 2001 and also submitted copy of Challan in this regard. In Para 20 of the OIO, Adjudicating Authority has observed that the Noticee also provided the copy of Challan issued by M/s Parle Elizabeth Tools Pvt. Ltd in which it is mentioned that the semi finished goods were sent to the Noticee firm for the job work and returned back but the same is not matching with the retail invoices submitted by the noticee. Adjudicating Authority has further observed that noticee did not produce copy of undertaking in support of their claim which would had been submitted by the Principal manufacturer to office having jurisdiction over the factory of job worker as envisaged under Notification No. 214/86-CE dated 25.03.1986.

- On the basis of analysis stated above, the Adjudicating Authority has observed in Para 21 of OIO that noticee has submitted contradictory submissions during verification and after issuance of SCN and therefore adjudicating officer is of opinion that the earlier submissions made by the Noticee while filing of Income Tax return is to be taken into consideration. Thus, the Adjudicating Authority has rejected the submissions given in response to the SCN regarding Job Work done on behalf of principal manufacturer and accepted submissions made during verification stage about Income tax Return wherein by mistake Noticee has shown Sale of Service during F.Y. 2016-17 amounting to Rs. 38,05,610/-.
- Our submissions is that if the Adjudicating Authority has accepted our earlier submission regarding Income Tax Return wherein breakup of material consumed and labour expenses given is accepted then the said submissions must be accepted in toto. Adjudicating Authority can not accept submissions partially that means Adjudicating Authority is considering sale of service as declared in Return of Income and not considering facts regarding material consumed. They had given Income-Tax details at that time also and they are enclosing herewith the said Income Tax Return for



your Office's perusal and record. Income Tax return shows sale of Service amounting to Rs. 38,05,610/ as against that Purchases or Material consumed declared in the same Return amounting to Rs.33,59,689/- that means Service Component is to the extent of Rs.4,45,921/- (Rs.38,05,610/- less Rs. 33,59,689/-). In this case also the value of Services is less than threshold limit of Rs. 10 lakhs. The Adjudicating Authority has not acted fairly and unbiased and acted injudiciously. He/she has considered the submissions partially to the detriment of noticee which is not tenable at law.

- They further submitted that if Adjudicating Authority has accepted the submissions made in response to SCN regarding Job Work made on behalf of Principal Manufacturer which are in fact true and which he/she should accept because Gate Pass/Delivery Challan as per Cenvat Credit Rules are all on record issued by the Principal Manufacturer and Adjudicating Authority has not disputed the same but has not accepted this submissions because Noticee could not produce copy of undertaking in support of their claim which would had been submitted by the Principal manufacturer to the Central excise Division Office having jurisdiction over the factory of job worker as envisaged under Notification No. 214/86-CE dated 25.03.1986. Our submissions regarding non production of such undertaking are given in earlier Paras.
- Adjudicating Authority has while calculating Service Tax on value of Services amounting to Rs. 3805610/ during FY 2016-17 has not considered threshold exemption of Rs. 10 lakhs vide Notification No 8/2008.

8. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, additional written submissions and materials available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand against the appellant alongwith interest and penalty is legal and proper. The demand pertains to the period F. Y. 2016-17 to F. Y. 2017-18 (upto June-2017).

9. Upon verification of the documents submitted by the appellant, I find that during the period F. Y. 2016-17 to F. Y. 2017-18 (upto June-2017), they were engaged in the activity of Job Work of engineering on goods for their principal



manufacturer viz. M/s Parle Elizabeth Tools Private Limited. Copies of Challan/Gate Pass issued by their principal manufacturer under Rule 4(5)(a) of the Cenvat Credit Rules, 2001 for movement of inouts or partially processed goods from once factory to another factory for further processing/operations submitted by them establish the fact that they are engaged in the activity of 'Job Work' and finished goods were returned to their principal manufacturer. Further, as per the Form 26AS for the F. Y. 2016-17 to F. Y. 2017-18 (upto June-2017), it is also evident that the amount of Rs.38,05,610/- & Rs.7,36,190/- had been credited under Section 194C of the Income Tax Act, 1961 by their principal manufacturer viz. M/s Parle Elizabeth Tools Private Limited only. These documents also establish the fact that they are engaged in the activity of 'Job Work'.

9.1 As contended by the appellant, I also find that in terms of provision of 30(C) of Mega Exemption Notification No. 25/2012-Service Tax dated 20th June, 2012, the activity of 'Job Work' is exempted from Service Tax. Relevant portion of the said notification is reproduced below :

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 25/2012-Service Tax

New Delhi , the 20 th June, 2012

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210 (E), dated the 17 th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

.....

30. Carrying out an intermediate production process as job work in relation to -

(a)

(b)

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

.....

9.2 Considering the above legal provisions with the facts of the case, I find that the activity of 'Job Work' carried out by the appellant during the period F. Y. 2016-17 to F. Y. 2017-18 (upto June-2017) stands covered under the provision of 30(C) of Mega Exemption Notification No. 25/2012-Service Tax dated 20th June, 2012, and the activity of 'Job Work' is not liable for payment of Service Tax.



10. In view of above discussions, I am of the considered view that the 'Job Work' activity amounting to Rs.38,05,610/- & Rs.7,36,190/- done by the appellant during the period F. Y. 2016-17 & F. Y. 2017-18 (upto June-2017) respectively is not to be considered as a taxable value under Service Tax. Therefore, the demand of Service Tax amounting to Rs.6,81,271/- confirmed vide the impugned order fails to sustain on merits. As the demand of service tax fails to sustain, question of interest and penalty does not arise.

11. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

12. 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.

G.C./
24.11.23
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 24th November, 2023

सत्यापित/Attested :

रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D



To,

M/s Vijay Karshandas Sadhu

(Prop. M/s Keshar Engineering),

B/28, Alaknanda Society,

Kalyanpura Road, Kadi,

Mehsana, Gujarat-382715.

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Deputy/Assistant Commissioner, CGST & C.Ex., Division-Kadi, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.