आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW000000C9E9

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/531/2023-APPEAL /9093-97
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-145/2023-24 and 30.11.2023
(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. AHM-CEX-003-JC-SP-004-22-23 dated 14.11.2022 passed by the Joint Commissioner, CGST & Central Excise, Commissionerate : Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	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

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 पूवोक्त 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 मे हो माल की प्रकिया 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 मामलें 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 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।

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 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 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 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 अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
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 2ndfloor, 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. 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 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 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 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 संषोधित की अनुसूची -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 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 in 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 अपीलो 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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. 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-JC-SP-004-22-23 dated 14.11.2022 [*hereinafter referred to as "impugned order"*] passed by the Joint Commissioner, CGST & Central Excise, Commissionerate : Gandhinagar [*hereinafter referred to as "adjudicating authority"*].

2. Briefly stated, the facts of the case are that the appellant are engaged in the manufacturing of Air-Conditioners and trading of Refrigerators falling under Chapter 84 of Central Excise Tariff Act, 1985. They were holding Central Excise Registration No. AABCA2392KXM003 and were also holding Service Tax Registration No. AABCA2392KST001 and were availing CENVAT credit facility under Cenvat Credit Rules, 2004.

2.1 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) on which service tax was not paid. It appeared that the commission received by the appellant falls under the definition of '*Business Auxiliary Services*' defined in Section 65 (19) of the Finance Act, 1994. Hence they were 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 from HMLSL, Singapore. As they had exported the service from India they were not liable to Service Tax.

2.2 The Export of Service Tax Rules, 2005 came in to force from 15.03.2005 which provides the 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.

2.3 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.

2.4 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 proposed therein were confirmed along with interest. Penalties were also imposed under Section 76, 77 and 78 of the Finance Act, 1994.

2.5 Aggrieved by the aforesaid OIO, the appellant filed appeals before the Commissioner (Appeals), Ahmedabad, who vide O-I-A 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.

2.6 The appellant however 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 the matter 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 de-novo proceedings.

2.7 In the de-novo proceedings, the matter was adjudicated vide OIO No. AHM-CEX-003-ADC-MSC-005 to 008-20-21 dated 31.12.2020, wherein for the period from September, 2004 to February, 2006 the Service Tax demand of Rs.7,73,090/- was confirmed alongwith interest. Penalty of Rs.1000/- u/s 77; Penalty of Rs.7,73,090/- u/s 78 and Penalty of Rs.200/per day u/s 76 were also imposed. However, the remaining part of the demand amounting to Rs.14,54,077/- was dropped. He also dropped the demands raised vide three SCNs dtd 14.02.2007, 22.05.2007 & 02.08.2007 covering period from March, 2006 to March, 2007.

2.8 Being aggrieved, the appellant filed appeal and the Commissioner (Appeals), Ahmedabad vide O-I-A No. AHM-EXCUS-003-APP-089/2021-22 dated 13.01.2022 held that;

XXXX

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.

XXXX"

2.9 In the remand proceeding, the matter was decided afresh by the adjudicating authority vide impugned order. Who after considering the documents submitted by the appellant confirmed the Service Tax demand amounting to Rs.7,73,090/- for the period from September,2004 to February, 2006 alongwith interest. Penalties were also 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;

- The appellant had filed detailed documents in support of its claim that there was no repatriation of the foreign currency repatriated. These documents are also listed in the impugned order in a table. Para 13 deals with the documents submitted. There is discussion or examination of the documents submitted. However still the conclusion is reached that the documents were not submitted. The adjudicating authority has not mentioned which documents were required to come to conclusions to non repatriation of the foreign currency. Mere conclusion without any basis is incorrect and not tenable.

- Similar issue came before Tribunal in the case of Commissioner of Service Tax, Kolkata. Versus M/s. Superintendence Company of India Pvt. Ltd. And Vice-Versa - 2019 (4) Tmi 1082 - Cestat Kolkata. In that case a certificate of CA was accepted as good evidence for no repatriation of the foreign currency. Appellant is present case has filed affidavit as well as all relevant records. Certainly the documents filed were sufficient to conclude that there was no repatriation.

- It must be noted here that there is no evidence / doubt that there was repatriation. There is not even suspicion in this regards.

- The order has two main aspects, viz. claim for exemption and quantification. The earlier order relied upon report of Range office, though no copy is furnished to appellant.

- It is submitted that the appellant is exempted from service tax for the period prior to 15-3-2005. Prior to 15-3-2005 the Services were fully exempted under Notification No 21/2003 dated 20-11-2003.

- The notice 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. The benefit of Notification is denied only on the ground that the applicant had failed to categorically state that the payments received in convertible foreign exchange were not repatriated. The fact that the payments were received in foreign currencies was not in dispute. The only objection is regarding repatriation condition. It is not the case of the department, either in the notice or in the order, that there was repatriation of foreign currency. The objection is only that specific claim /statement was not made as to repatriation.

- The applicant submits that the applicant had claimed the 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 is 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 is not repatriated, the production of positive evidence is not possible and therefore the only method is by filing an affidavit and the appellant had accordingly enclosed an Affidavit to assert that no such repatriation has taken place. Applicant has enclosed copy of the affidavit filed in this behalf.

- Prior to 15-3-2005 the Services were fully exempted under Notification No 21/2003 dated 20-11-2003. The notice 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. For the period prior to 15.3.2005, benefit of Notification is denied only on the ground that the appellant had failed to categorically state that the payments received in convertible foreign exchange were not repatriated. 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 and therefore the only method is by filing an affidavit and the appellant has accordingly enclosed an Affidavit to assert that no such repatriation has taken place. Appellant has enclosed copy of the affidavit filed in this behalf.

- Much before the issuance of notice, the department was put to notice as to appellant's 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.

- The notice relies on the statement recorded and past correspondence. However neither the statement nor the correspondence supports the case of the department.

- In the impugned order, the adjudicating authority has observed that since the transactions were shown in schedule to Balance Sheet, the appellant should have

explained the transactions and the claim that appellant was not in a position to explain the same is not acceptable. Such doubt cannot create presumption in favor of the department. Appellant has enclosed copies of the debit notes raised for the commission receivable and also bank advise under which the amount is received. Also enclosed copies of ledger account of Hitachi Asia Ltd.

- The demand is also barred by limitation. The demand relevant in this appeal is for the period up to 15-3-05 and the return for that period was required to be filed in April 05. The notice is dated 14-2-07. There no invocation of extended period in the notice.

- There was no invocation of extended period in notice. However the appellant submit that mere mention of suppression is not sufficient to invoke the extended period of limitation. Appellant had obtained legal opinion that appellant was not liable to tax. Therefore there was not only inaction but well informed legal opinion as to non liability to tax. Thus there was no question of suppression or concealment.

- When the tax liability would not be sustained, the question of interest or penalty would not arise. The quantification made in the order is ex-facie incorrect. It is submitted that during 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 15-3-2005 no tax can be demanded.

- Penalty under Section 76, would apply only in a case where there is an assessment or filing of returns, where amount were ascertained and there is non-payment of such amount. When the demand is under Section 73, there cannot be penalty under Section 76, as the penalty then would be governed by Section 78.

- Simultaneous penalty under section 76 and 78 cannot be imposed. Appellant relied upon Gujarat high Court decision in the case of Raval Trading. Section 78 cannot be invoked since there is no allegation of any suppression or misstatement etc with the intent to evade tax, in the notices. Therefore, the demand is barred by limitation. The demand upto Sept 05 is barred by limitation. Since the basis for penalty is the same as invocation of extended period, the penalty would also not survive when the allegation of suppression would not survive.

4. Personal Hearing in the case was held on 08.09.2023. Shri S. J. Vyas, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He also submitted that the appellant provided export of service from India to a place outside India and received the payment in foreign convertible currency. He had claimed exemption under Notification No. 21/2003-ST dated 20.11.2003. The notification while providing exemption, has proviso that if the foreign currency received is repatriated or sent outside India, the exemption will not apply. The adjudicating authority at the time of passing the impugned order has denied the exemption stating that the appellant has not produced any positive evidence of not having repatriated the amount outside India. At the time of appeal, the appellant has

submitted copies of invoices, ledger, affidavit and CA certificate. He referred to the judgement of the Tribunal in the case of Superintendence Company of India Private Limited, wherein under similar circumstances, it was held that a CA certificate is a good evidence for no repatriation of the foreign currency. In view of the above, he requested to set aside the impugned order.

4.1 Due to change in appellate authority again a personal hearing was scheduled on 13.10.2023. Shri S. J. Vyas, Advocate, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written & oral submission and requested to allow their appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum, earlier order and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the service tax demand of **Rs.7,73,090/-** along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period September, 2004 to February, 2006.

5.1 The demand of Rs.7,73,090/- was remanded by Hon'ble Ahmedabad Tribunal on the sole grounds that the appellant shall produce records to establish that the foreign exchange received by them was not repatriated outside India. This was in light of the Notification No. 21/2003-ST dated 20.11.2003, which exempted the taxable services specified in sub-section (105) of section 65 of the said Act, provided to any person in respect of which payment is received in India in convertible foreign exchange, from the whole of the service tax leviable thereon under section 66 of the said Act, provided that the payment received in India in convertible foreign exchange for taxable services rendered is not repatriated from, or sent outside, India. The adjudicating authority in the remand proceedings observed that the appellant submitted four debit notes. However they could not produce the specific bank account/remittance realization receipts for the amount realized for the debit note. She also observed that the Schedule-12 of Balance Sheet reflected transactions with various group of companies like M/s. Hitachi Home & Life Science Inc., M/s. Hitachi Asia Ltd, M/s. Hitachi Home Electronics Asia(S) Pvt Ltd. including M/s. Hitachi (Asia) Homes & Life Solutions Ltd, Singapore. Hence, it is not possible to categorically conclude that the amount received was not repatriated outside India. Further, she also observed that the appellant could not produce any documentary evidence to prove that the payment was received in convertible foreign exchange was not repatriated and that an affidavit without the backing of the financial records may not suffice. The service tax demand was therefore confirmed.

5.2 It is observed that the entire dispute revolves around the fact that the appellant has not produced documentary evidence to prove that the payment received in convertible foreign exchange was not repatriated outside India. The appellant have submitted a copy of affidavit of Shri Amit Shah, General Manager Finance & Management of the appellant wherein he states that the foreign currency amounts received from time to time towards services rendered to M/s. Hitachi Asia Ltd., Singapore for marketing their products in India are not repatriated from India by the appellant. They also submitted an original certificate from Chartered Accountant M/s.

NPKU & Associates wherein they certified that the business transaction during the F.Y. 2004-05 to 2006-07 has been received in foreign currency towards the services rendered to M/s. Hitachi Asia Ltd., Singapore for marketing their products in India. And that the amounts so received in foreign currency are not repatriated from India in any manner by the appellant Company.

5.3 In para-11 of the impugned order, it is mentioned that the appellant submitted General Ledgers of SBI for the period Sept, 2004 to March, 2007 towards Commission received from M/s. Hitachi Asia Ltd., Singapore, General Ledgers of Standard Chartered Grindl Bank, Statement of Account of M/s. Hitachi Asia Ltd., Singapore for the period from September, 2004 to March, 2007, supporting Bank advice of SBI for Commission received, debit notes, Affidavit & C.A's certificate. However, the adjudicating authority at para-13 of the impugned order recorded that the appellant has not submitted the documentary evidence to establish that the amount received in convertible foreign exchange was not repatriated outside India. I find that the appellant is availing the benefit of exemption notification and has produced the documents to substantiate the same. If the onus of proof is on the appellant to prove that the services rendered were exported, then the burden of proof would be shifted from the appellant to the Department to controvert otherwise, which I find was not done by the department.

5.4 The matter was remanded by Hon'ble Tribunal with the direction that the appellant shall produce evidence to establish that the amount received in convertible foreign exchange was not repatriated outside India, which I find was produced before the adjudicating authority. I find that C.A. certificate has been issued after verifying the above documents submitted by the appellant. The certificate issued by NPKU & Associates certifies that "*....based on the records and information provided by the appellant, the company in the course of its business transactions during the F.Y. 2004-05 to 2006-07 has received, in foreign currency amounts from time to time towards the services rendered to M/s. Hitachi Asia Ltd., Singapore, for marketing their products in India. And that the amounts so received, in foreign currency, are not repatriated from or sent outside, India in any manner or fashion by the company.*" There is nothing on record to doubt the accuracy or authenticity of the C.A. Certificate. Hence, I find that the service tax demand of Rs.7,73,090/- does not sustain.

6. When the demand does not sustain there is no question of demanding interest and imposing penalty.

7. In view of the above discussion, I set-aside the impugned order confirming the service tax demand of **Rs.7,73,090/-** alongwith interest and penalties and allow the appeal filed 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.

30.11.23

(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 30.11.2023

Attested

(रेखा नायर)
अधीक्षक (अपील्स)
केंद्रीय जीटी .एस ., अहमदाबाद

By RPAD/SPEED POST

To,
M/s. Johnson Controls- Hitachi Air-Conditioning India Limited,
Hitachi Complex, Karannagar, - **Appellant**
Taluka: Kadi,
District: Mehsana -382727

The Joint Commissioner - **Respondent**
CGST, Gandhinagar

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner, CGST, Division-Kadi, CGST-Gandhinagar.
4. The Assistant Commissioner (H.Q. System), CGST, Appeal, Ahmedabad. (For uploading the OIA)
5. Guard File.