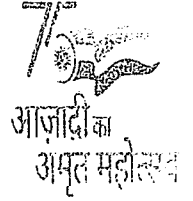




सत्यमेव जयते

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:- 20230964SW000000900B

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1147/2022-APPEAL / 8926-81
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-093/2023-24 and 15.09.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	18.09.2023
(ङ)	Arising out of Order-In-Original No. 29/ADJ/GNR/PMT/2021-22 dated 21.03.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Space Communication Technology (I) Ltd., B-33, GIDC, Electronics Estate, Sector-25, Gandhinagar, Gujarat-382044.

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:-

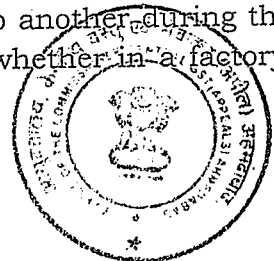
Revision application to Government of India:

(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 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 मामलों 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 इए-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.

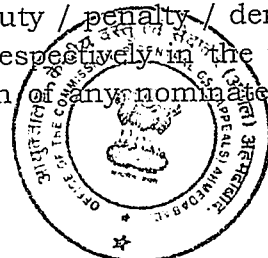
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is 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

This order arises out of the present appeal which has been restored vide Hon'ble CESTAT, Ahmedabad Order No. FO/ST/A/11100/2023-CU[DB] dated 17.04.2023 arising out of Service Tax Appeal No. 10212 of 2023 filed by M/s. Space Communication Technology (I) Ltd., B-33, GIDC, Electronics Estate, Sector-25, Gandhinagar - 382044, (hereinafter referred to as the "*appellant*") against Order-In-Appeal No.OIA-AHM-EXCUS-002-APP-121-2022-23 dated 17.02.2023 [hereinafter referred to as the "*OIA*"] passed by the Commissioner (Appeals), CGST, Ahmedabad. The said Order-In-Appeal No.OIA-AHM-EXCUS-002-APP-121-2022-23 dated 17.02.2023 was passed in the case of appeal filed by the appellant against Order-in-Original No. 29/ADJ/GNR/PMT/2021-22 dated 21.03.2022 (hereinafter referred to as the "*impugned order*") passed by the Deputy Commissioner, CGST, Division: Gandhinagar, Commissionerate: Gandhinagar [hereinafter referred to as the "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAECs0878BST001 for providing taxable services viz. Coaching Class and Computer Training Services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in Income Tax Returns/26AS when compared with Service Tax Returns of the appellant for the period F.Y. 2015-16 & 2016-17. In order to verify the said discrepancies as well as to ascertain the fact whether the appellant had discharged their Service Tax liabilities during the period F.Y. 2015-16 & 2016-17, letters dated 07.05.2020 and 23.05.2020 were issued to them by the department. The appellant failed to file any reply to the query. It was also observed by the Service Tax authorities that the appellant had not declared actual taxable value in their Service Tax Returns for the relevant period. 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. The Service Tax liability of the appellant for the F.Y. 2015-16 & 2016-17 was determined on the basis of value of difference between 'Sales of Services under Sales/Gross Receipts from Services (Value from ITR)' as provided by the Income Tax department and the 'Taxable Value' shown in the Service Tax Returns for the relevant period as per details below:

TABLE

(Amount in Rs.)

Period	Total Income as per ITR-5	Income on which S.Tax paid	Differential of Value as per Income Tax Data	Rate of S.Tax [Including Cess]	S.Tax Demanded
2015-16	1,20,28,760	1,79,800	1,18,90,381	14.5 %	17,24,105
2016-17	91,17,311	13,01,310	77,63,821	15 %	11,64,573
Total	2,11,45,071	14,81,110	1,96,54,202		28,88,678

4. The appellant was issued a Show Cause Notice vide F.No. V/04-13/O&A/SCN/SPACE/20-21, dated 16.06.2020, wherein it was proposed to:

- Demand and recover service tax amounting to Rs.28,88,678/- under 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 77(2), 77(3)(c) and 78 of the Finance Act, 1994;

5. The said Show Cause Notice was adjudicated ex-parte vide the impugned order wherein:

- Demand for Rs.28,88,678/- was confirmed under Section 73 of the Finance Act, 1994.
- Interest was imposed to be recovered under section 75 of the Finance Act, 1994.
- Penalty amounting to Rs.28,88,678/- was imposed under Section 78 of the Finance Act, 1994;
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty of Rs.10,000/- was imposed under Section 77(3)(c) of the Finance Act, 1994.

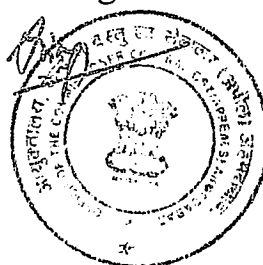


6. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant had preferred an appeal before the Commissioner (Appeals), CGST, Ahmedabad which was decided vide Order-in-Appeal (OIA) No. AHM-EXCUS-003-APP-121-2022-23 dated 21.02.2023, vide which the appeal was dismissed for non-compliance of the provisions of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax vide Sub-section (5) of Section 85 of the Finance Act, 1994.

6.1 Against the said OIA, the appellant preferred an appeal before the Hon'ble CESTAT, Ahmedabad. The Hon'ble CESTAT vide Order No. FO/ST/A/11100/2023-CU (DB) dated 17.04.2023 ordered that "Now, since the appellant have made the pre-deposit of 10% the matter is remanded to the Commissioner (Appeals) for deciding the appeal on merit." Accordingly, as per the request of appellant vide application dated 23.05.2023, the appeal filed by the appellant before the Commissioner (Appeals), CGST, Ahmedabad was restored.

6.2 The appellants have filed their application for restoration of appeal on following grounds :

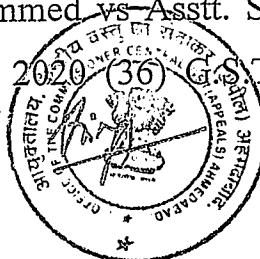
- The appellant was a Limited company engaged in the business of providing Commercial Coaching, Industrial Training and job work for others. The appellant had declared their taxable services and paid service tax on the services mentioned.
- In the service tax return filed on 07-10-2015 for the period from 01-04-2015 to 30-09-2015 the appellant has declared taxable services provided of Rs. 1,79,800/- and in the service tax return filed on 21-04-2016 for the period 01-10-2015 to 31-03-2016 declared taxable services provided of NIL.
- In the service tax return filed on 07-10-2016 for the period from 01-04-2016 to 30-09-2016 the appellant has declared taxable services provided of Rs. 66,330/- and in the service tax return filed on 04-04-2017 for the period 01-10-2016 to 31-03-2017 declared taxable services provided of Rs. 12,34,980/-.
- Show cause notice dated 16-06-2020 issued to the appellant was received on 20-10-2020, the notice was duly replied by mail along with all details as on 20-01-2021 & 25.01.2021.



- The adjudicating authority has erred in mentioning in the order that letter dated 07.05.2020 and 23.05.2020 have not been replied. In fact said letters have not been received by them due to nationwide lockdown due to COVID-19.
- They submitted all the required details vide emails dated 20.01.2021 and 25.01.2021 but the same has not been considered by the adjudicating authority while passing the order.
- No virtual link was received by them for virtual hearing scheduled on dated 23.02.2022 and accepted by them. The adjudicating authority has not followed the principles of natural justice.
- Demand issued without proper justification and without considering the submissions. Interest levied & penalties imposed by the adjudicating authority are not legal and required to be deleted.

6.3 The appellants submitted an additional written submission on 12.07.2023, vide which they submitted that :

- The SCN was issued indiscreetly and was based only on the difference of Income declared in their ITR and ST-3. As claimed by the adjudicating authority vide the impugned order that letters dated 23.02.2022, 09.03.2022, 16.03.2022 were issued for personal hearing. However, they had not received any such communication and therefore they could not remain present during the scheduled date of hearing. Thereafter, adjudicating authority proceeded to adjudicate the show cause notice on *ex-parte* basis. Thus all the proceedings i.e. issuance of show cause notice, adjudication and dismissal of appeal are in gross violation of principal of natural justice.
- The appellant have not received any communication are referred in the impugned order as per the provisions of Section 37C of the Central Excise Act, 1944 made applicable for service tax matter vide Section 83 of the Finance Act, 1994.
- The impugned order has not followed the provisions of Section 33A of the Central Excise Act, 1944 borrowed vide Section 83 of the Finance Act, 1994 for service tax matters. They relied on the decision of the Hon'ble Keral High Court in the case of Ahnas Mohammed vs Asstt. State Tax Officer, SGST, Department, Kollam reported at 2020 (36) C.S.T.L. 181 (Ker.) ;

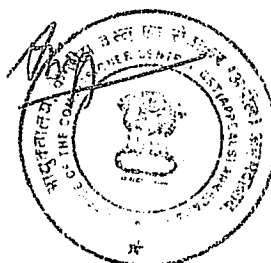


Decision of the Hon'ble Tribunal in the case of Ashesh Goradia Vs Commissioner of Central Excise, Mumbai-III reported at 2013 (295) E.L.T. 547 (Tri. - Mumbai); Decision of the Hon'ble Tribunal in the case of V.K.Thampi vs Collector of Customs and Central Excise, Cochin reported at 1988 (33) E.L.T. 424 (Tribunal).

- the show cause notice was issued on the basis of difference of Income declared in their ITR for FY 2015-16 and 2016-17 and that declared in their ST-3 returns, without any inquiry with the appellant to explain the reason for difference on which no service tax was paid. It was in violation of the CBIC circular dtd. 26.10.2021 issued in this regard.
- The taxable value considered in the SCN was actually towards the activities of assembling of Set top box on Job work basis on the goods received from MCBS and return back to them who in turn after further processing, have cleared on payment of Excise duty. M/s MCBs has deducted TDS on the Invoice and deposited in to the PAN account of the appellant as is evident from the 26AS for FY 2015-16.
- The job-work activity of the appellant amount to manufacture of goods on job work basis and is exempted in terms of Notification No.214/2016-CE in the hands of the appellant.

The consideration received towards job work so carried out is not liable to service tax on the following grounds. They cited the decision in the case of Ujagar Prints and Others vs Union of India by the Hon'ble Supreme Court of India.

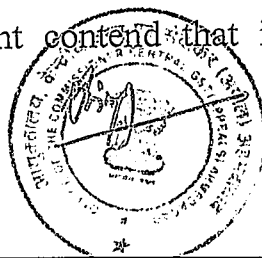
- In this regard also the appellant invite attention to clause (f) of Section 66D of the Finance Act, 1994 comprising of Negative list is as under. *66D (f) any process amounting to manufacture or production of goods*; The above clauses was made effective from 01.06.2015 vide notification No.14/2015-ST.
- Further the above job- work activities of the appellant are also exempted vide Sr.No. 30 of Notification No.25/2012-ST.



- They summed up that up to 31.03.2017 the activity of the appellant was covered in the Negative List, vide clause (f) of Section 66D of the Finance Act, 1994. The period of demand of Service tax is 2016-17, and hence this being the case the activity of the noticee was not taxable within the meaning of Section 66B of the Finance Act, 1994. For the period 2017-18 (up to June), their activity was covered in Sr. No. 30(i) of Notification No.25/2012-ST. Accordingly, the demand of service tax of Rs. 28,88,678/- was not sustainable on merits itself.
- In support of their claim for job-work done by them they submitted the Copies of Delivery challan received from MCBS for carrying out Job work; Copies of Delivery challan for return of goods issued by the appellant ; Summary details of Delivery challan of MCBS under which the appellant have received the goods and delivery challan of the Appellant under which the goods were returned back after job work to MCBS and Balance, and Invoices issued for Job work; Job work Register-Inward and outward; Job work charges Invoices ;P & L accounts ; Form 26AS ; ST-3 returns.
- Exempted Income related to Job-work, Income as per 26AS and amount covered in Show cause notice are tabulated as under.

FY	Income As per P&L	Declared in ST-3	Exempted Income	Income as per 26AS	Amount covered in SCN
2015-16	12028760	179800	11848960	12070181	11848960
2015-16	9117311	1301310	7816001	9065131	7816001
	21146071	1481110	19664961	21135312	19664961

- The appellant humbly submit that while filing an appeal against the impugned order, the appellant have followed Circular No. 42/16/2018-GST, dated 13-4-2018 ; Further, while filing an appeal before the Hon'ble Tribunal, Ahmedabad against OIA No.AHM-EXCUS-002-APP-121-2022-23 dated 17.02.2023 the appellant have again paid Rs.2,88,870/-vide Challan No.2303527903 dated 07.03.2023 in terms of Instruction No. CBIC-240137/14-2022-Service Tax Section-CBEC, dated 28-10-2022. This has resulted in double payment of pre-deposit for appeal against the same Order In Original. Accordingly, the appellant contend that it that the earlier



payment of Rs.2,61,651/- made by the appellant vide DRC-03 No. DC2405220252055 dated 24.05.2022 needs to be refunded to the appellant and accordingly the same may ordered to be refunded.

- As the demand of Service Tax is not correct and not payable, hence, no interest or Penalty is payable by them.

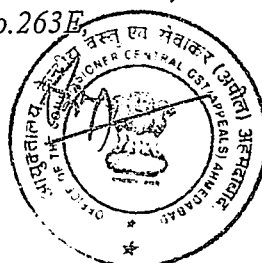
7. Personal Hearing in the case was held on 04.08.2023. Shri.V.N. Thakker, Consultant appeared for personal hearing on behalf of the appellant. He handed over additional submissions dated 12.07.2023 alongwith copy of excise invoices of the principal manufacturers for whom, they are doing job work. He submitted that the appellant is providing job work services for the clients, who are registered with Central Excise and are discharging their liability and his services are exempt under mega exemption notification 25/2012 Sr.No.30. He requested to set aside the impugned order which was passed ex-parte, merely on the basis of ITR data without doing any further verification.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, additional written submission submitted, oral submission made during personal additional, written submission submitted during the personal hearing, and materials available on records. The issue before me for decision is whether the demand of Service Tax amounting to Rs. 28,88,678/- confirmed alongwith interest and penalty vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

8.1. It is observed that the appellant are a Registered Private Limited Company holding valid Service Tax registration for 'Commercial training or coaching services'. These facts are undisputed. However, the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant.

8.2 I find it relevant here, to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

*Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)
CX & ST Wing Room No.263E*



North Block, New Delhi,

Dated- 21st October, 2021

To,
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.
Director General DGGI

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.

Madam/ Sir,

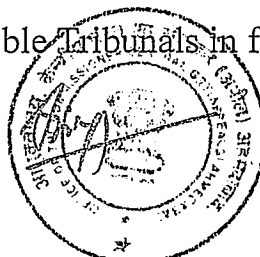
...
3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee
...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and mechanically and is vague, issued in clear violation of the instructions of the CBIC discussed above.

9. It is further observed that during the period F.Y. 2015-16 and F.Y. 2016-17 the appellants have filed their ST-3 Returns which implies that they have made disclosures before the department and the department was aware about the activities being carried out by the appellant and these were never disputed. However, SCN dated 16.06.2020 was issued to the appellant and the demand of Service Tax amounting to Rs. 28,88,678/- was confirmed vide the impugned order under Section 73(1) of the Finance Act, 1994 invoking the extended period of limitation. In this regard it is relevant to refer the decision of the Hon'ble Supreme Court of India in the case of *Commissioner v. Scott Wilson Kirkpatrick (I) Pvt. Ltd. - 2017 (47) S.T.R. J214 (S.C.)*], wherein the Hon'ble Court held that "...ST-3 Returns filed by the appellant wherein they Under these circumstances, longer period of limitation was not invocable".

9.1 The Hon'ble High Court of Gujarat in the case of *Commissioner v. Meghmani Dyes & Intermediates Ltd. reported as 2013 (288) ELT 514 (Guj.)* ruled that "if, prescribed returns are filed by an appellant giving correct information then extended period cannot be invoked".

- I also rely upon the decision of various Hon'ble Tribunals in following cases :

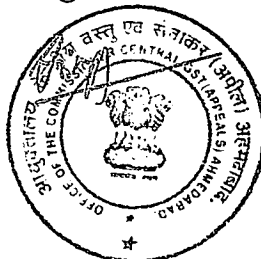


- (a) *Aneja Construction (India) Limited v. Commissioner of Service Tax, Vadodara* [2013 (32) S.T.R. 458 (Tri.-Ahmd.)]
- (b) *Bhansali Engg. Polymers Limited. v. CCE, Bhopal* [2008 (232) E.L.T. 561 (Tri.-Del.)]
- (c) *Johnson Matthey Chemical India P. Limited v. CCE, Kanpur* [2014 (34) S.T.R. 458 (Tri.-Del.)]

9.2. Examining the above settled principle and comparing them with the facts and circumstances of the case, I find that the impugned order have been issued indiscriminately, in clear violation of the settled principles of law and in clear violations of the specific instructions of the CBIC. Further it is also observed that the impugned order was passed ex-parte, hence, violation of principles of natural justice is apparent. Considering the above, I find that the impugned order is legally incorrect, unsustainable and liable to be set aside on these grounds alone.

10. The appellant have contended that during the period F.Y. 2015-16 and F.Y. 2016-17 they were engaged in carrying out Job-Work for their Principle manufacturer — M/s Modern Communication and Broadcasting Systems Pvt. Ltd (MCBS). The documents submitted by them in this regard also reveal that M/s MCBS were registered under erstwhile Central Excise Act, 1944 with ECC No. AABCM0372R-XM-001. It is further observed that the nature of Job-Work carried out by the appellant involved receiving of various parts of 'Adaptor' and 'Set top Box' under delivery challan, assembling them at their premises and sending the end product/finished goods in the form of 'Adaptor' and/or 'Set top Box' back to the principal manufacturer under delivery challan. The appellants are issuing Invoices to the principal manufacturer for Job-Work Charges. As per the reconciliation sheet submitted by the appellant I find that during the period F.Y. 2015-16 they have received 149362 parts of adaptor as well as parts of Set top Box from M/s MCBS and returned the same quantity after job-work. The total amount of Job-Charges levied by them amounts to Rs. 1,18,48,960/-. The differential taxable value considered in the impugned order for the said period is shown as Rs. 1,18,90,381/-.

11. From the documents submitted by the appellant it is further observed that the finished goods received back by M/s MCBS was cleared under Central Excise Invoice on payment of Central Excise Duty @ 12.5%. It is contended by the appellant that the process of job-work involved and undertaken by the appellant amounts to manufacture. In this regard upon referring the issue to the Harmonised



System of Nomenclature (HSN), I find that 'Set Top Box' merits classification under the Central Excise Tariff Heading (CETH) – 8528 which is explained as below :

85.28 - Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

Whereas, the parts of Set Top Box merit classification under CETH – 8529 which is explained as below :

85.29 - Parts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28.

Therefore, from the above, it is evident that the job-work process undertaken by the appellant involves a process where the CETH of the inputs changes after manufacture of the final product. Hence, in terms of the general explanation – the process of Job-Work undertaken by the appellant 'amounts to manufacture'.

11.1 The appellants have also submitted that the income earned by the appellant during the relevant period pertaining towards the activities of assembling of Set top box on Job work basis on the goods received from MCBS and returning them back after further processing, were cleared on payment of Excise duty. Also M/s MCBS has deducted TDS from the amount of Job-Charges paid to the appellant. Upon referring to an Invoice issued by the appellant for job charges and the corresponding entry in the Form 26AS, I find force in the argument of the appellant as the amount of the Invoices are reflected in the Form 26AS submitted by the appellant as TDS was deducted from them.

11.2 In order to confirm the claim of the appellant that activities that amount to manufacture are exempt from Service Tax, I find it appropriate to refer to Clause (f) of Negative list of services as section 66d of the Finance Act, 1994 as amended vide Notification No.14/2015-ST dated 19.05.2015, relevant portion is reproduced below:

SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

Section 109. Amendment of section 66D. — In section 66D of the 1994 Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, —

(2) for clause (f), the following clause shall be substituted, namely :—

"(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption;"



From the above it is evident that the activity carried out by the appellant during the period F.Y. 2015-16 and F.Y. 2016-17 amounts to manufacture and are therefore exempted from the levy of Service Tax.

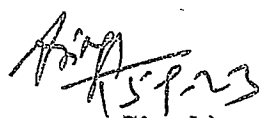
12. Upon comparing the differential taxable value considered in the impugned order for confirming the demand of Service Tax, I find that during the period F.Y. 2015-16 it is considered as Rs. 1,18,90,381/- and for the period F.Y. 2016-17 it is considered as Rs. 77,63,821/-. Referring back to the amount of Job-work charges billed and collected by the appellant from M/s MCBS, I find that during the period F.Y. 2015-16 the total amount of Job-Work Charges work out to Rs. 1,18,48,960/- and during the period F.Y. 2016-17 the amount was Rs. 78,16,000/-. Hence, it is also confirmed that the amount of taxable value as per the SCN and the impugned order is equivalent to the amount of Job-Work charges raised by the appellant and the same are exempt from the levy of Service Tax.

13. In view of the above, I am of the considered view that the demand of service tax amounting to Rs. 28,88,678/- confirmed vide the impugned order is not sustainable legally as well as on merits and is liable to be set aside. As the demand of Service Tax fails to survive, the question of interest and penalty does not arise.

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

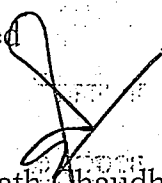
15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

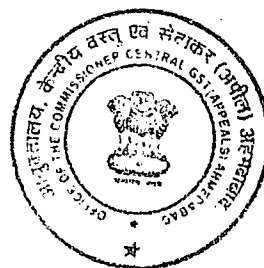
The appeal filed by the *appellant* stands disposed of in above terms.


(Shiv Paratap Singh)
Commissioner (Appeals)

Dt. 15 September, 2023

Attested


(Somnath Chaudhary)
Superintendent (Appeals)
Central Tax, Ahmedabad.



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To,
M/s. Space Communication Technology (I) Ltd.,
B-33, GIDC, Electronics Estate,
Sector-25, Gandhinagar - 382044

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



