



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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क फाइल संख्या (File No.) : V2(76)04 /EA2/North/Appeals/ 2019-20/13675 70/13680
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-113-19-20
दिनांक (Date): 20-01-2020 जारी करने की तारीख (Date of issue): 27/01/2020
, आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VII), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No 6-7/JC/2010PSR Dated: 22/01/2010
issued by: Deputy Commissioner-Central Excise (Div-V), Ahmedabad North,

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Giriraj Corporation

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

Any person an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।



Cont....2

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

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

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

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 (सं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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

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

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

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

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

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

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

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

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

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

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

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

- (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.

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

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

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



ORDER-IN-APPEAL

This appeal has been filed by the Deputy Commissioner of Central Excise, Division-V, Ahmedabad-II [hereinafter referred to as "department"], as per Review Authorization letter dated 30.03.2010 issued by the Commissioner of Central Excise, Ahmedabad-II, against Order-In-Original No.6-7/JC/2010/PSR dated 22.01.2010 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner of Central Excise, Ahmedabad-II [hereinafter referred to as "adjudicating authority"] in respect of M/s Giriraj Corporation, Shop No.9 & 10, People's Plaza Complex, Nr. Memnagar Fire Station, Ahmedabad [hereinafter referred to as "respondent"].

2. The facts of the case, in brief, are that based on an intelligence that the appellant were indulging in manufacturing, clearing and installation of various products of Aluminium structures, frames and parts of Aluminium structures without following procedure under the Central Excise Act, 1944 (CEA), the departmental officers of jurisdictional Commissionerate has carried an investigation against the respondent company. After completion of investigation, it was noticed the activity carried out by the respondent i.e fabrication of Aluminium structures, frames, doors and windows brings into existence as movable goods and falls under the definition of "manufacture", in terms of Section 2(f) of CEA; that the goods manufactured and cleared by the appellant falls under Chapter Heading No.76.10 of the Central Excise Tariff Act, 1985 and are excisable. Accordingly, a Show Cause Notice dated 18.06.2009, covering the period from 2003-04 to 2007-08, was issued to the respondent for demanding Central Excise duty amounting to Rs.43,12,644/- along with interest. A further Show Cause Notice dated 29.07.2009, covering the period of 2008-09, for demanding Rs.42,44,903/- alongwith interest was also issued to the respondent on the same grounds on the basis of details of goods manufactured and cleared obtained from them. Both the Show Cause Notices also propose for imposition of penalty under Section 11 AC of the CEA on the respondent as well on Shri Vinodbhai B Modi, Proprietor of the respondent under Rule 26 of the Central Excise Rules, 2002 (CER). The adjudicating authority, vide impugned order, has dropped all the proceedings initiated in the said Show Cause Notices, by holding that the goods in question does not amount to "manufacture" in terms of Section 2(f) of the CEA and not excisable.

3. Being aggrieved, the department has filed the instant appeal on the grounds that:

- As per manufacturing process stated by the authorized representative of the appellant in his statement, the activity carried out by the appellant at their site to be treated as manufacture in a factory as defined in Section 2(e), 2 (f) of CEA.



- The said goods are classifiable under chapter heading 7610 of CETA and being movable and marketable, the goods are excisable.
 - They relied on Hon'ble CESTAT's decision in the case of Commissioner of CE, Chennai V/s Aluplex India Ltd [2008 (228) ELT 97 -Tri Chennai], wherein it has been held that aluminium curtain wall structural system is a manufactured product and it is excisable.
 - Issue order for recovery of demand with interest and imposition of penalty on respondent and Shri Vinodbhai Biharilal Modi, Proprietor of the respondent.
4. The respondent has submitted Cross-Objection on 22.04.2010, wherein, they, inter-alia, submitted that:
- The main grounds of the department in its appeal is that the doors and windows are manufactured at site and then fixed to the existent wall, therefore, do not come into existence as immovable property; However, these items come into existence as an immovable property after the process with other items viz partition, glazing, cladding etc and fitted to immovable structure.
 - The department has wrongly relied on Tribunal's decision in the case of Aluplex India Ltd, which was based on different facts; that the case law relied on by the adjudicating authority in the case of M/s Lokhandwala Hotels Pvt Ltd [2005 (182) ELT 188 which squarely covers the fact of the instant case.
 - The CBEC, vide Circular No.58/1/2002-CX dated 15.01.2002 , has clarified that where change of identity takes place in the course of construction of erection of a structure which is an immovable property, then there would be no manufacture of goods involved and no levy of Central Excise duty.
 - On the same issue, the Commissioner (Appeals) has passed OIA NO.431-432/2009 and 433-434/2009 both dated 16.12.2009, by holding that Aluminium Doors, Windows , Structural Glazing etc made out of Aluminium Sectins, Glass etc are not manufactured products and not liable to pay Excise duty. The said OIAs are squarely applicable to the facts of the instant case.
 - They also relied on case laws viz. HVAC Systems Pvt Ltd [2008 (27) ELT 0259 (T)]; M/s Alkarma V/s CCE Delhi-1 [2007 (216) ELT 649 (T)] in support of their submissions.
 - No penalty is imposable as they have not suppressed any facts with an intention to evade Central Excise duty; that it is their bonafide belief that they were not doing any manufacturing activity as per Central Excise Law & Procedure.
5. Personal Hearing in the matter was held on 17.12.2019. Dr.Nilesh V Suchak, Authorized Representative appeared on behalf of the respondent and reiterated the submissions made in the Cross-Objection and additional submissions submitted on 10.10.2019.



6. I have carefully gone through the facts of the case and submissions made in the department appeal as well as the submissions made by the respondent in their cross-objection, written submission and oral averments made during the course of personal hearing. The issue to be decided in the instant appeal is whether the Aluminium Doors and Windows, Frames, Shutters, Glazing Spiders manufactured at respondent's site and then fixed to the existing wall is amounting to manufacture under Section 2(f) of the Central Excise Act, 1944.

7. It is the case of the department that the respondent had indulged in manufacturing, clearing and installation of various products of Aluminium Windows, Doors etc and parts of Aluminium structures, which is falling under the Chapter Heading No.7610 and attracting Central Excise duty, without following Central Excise procedures prescribed under Central Excise Act and Rules. The process of manufacture of the said goods in question is described in the impugned order which is not in dispute. The process of goods described in respect of goods on which the demand is made is under:

Aluminium Windows/Doors : First measurement is taken, then as per client's requirement Aluminium sections are sent at site after processing i.e either they anodized or powder coated. As per actual size of doors/windows, the cut Aluminium sections are joined with the angle using screws and as such frame is prepared and the same then fixed on the base wall using screw. Shutters/Doors is prepared using glass/Pib, rubber gasket, and screw at the site as per size of the doors/windows. The shutters so prepared are then fixed it to the frame already fitted in the wall loosing screws in the frame. After fixing the shutters/doors/windows, the required handles/lock are fitted. (Raw materials used- Aluminium Section, screw, Glass, Rubber gasket, Handles, Locks).

False Ceiling: First, Aluminium angles on periphery are fixed on the room wall, Hanger on slabs is fixed to hold the pipe. All intermediate pipes are cut as per the actual size and same is fixed with periphery angle and slab bracket. Aluminium sheet is cut to required size and lifted and screwed with main frame pipe (Raw material used- Aluminium pipes, screw, Aluminium sheets).

Fix Partition: First measurement is taken, then as per client's requirement Aluminium pipe is cut as per the size. Pipe is attached with Aluminium Clit at site and added until whole gap is completed. Frame is screwed with all side walls. In filler glass/laminate is cut as per size, inserted in the frame and hold with beading. Rubber lining is inserted to avoid knocking (Raw material used- Aluminium pipes, screw, pre-laminate sheets, silicone).

Likewise, the process is also being carried out in respect of other goods viz. Aluminium Composite Panel Cladding, Fixed Glass Glazing, Spider Glazing, etc.



8. As per the said process of goods, it is observed that the appellant brought raw materials vize Aluminium Section/pipes, screws, glass etc. from open market to their site and as per measurement required by the customers, the frame is prepared and directly delivered to the construction site where the final work i.e fitting of doors, windows, glazing/cladding of glass etc on structure/ base wall take place. The Show Cause Notices were issued to the appellant by concluding that the various processes carried out by the appellant amounts to manufacture as defined under Section 2(f) of CEA as the goods in question are movable. The adjudicating authority has taken a view that at no stage, complete window or door or ACP cladding or Glass Glazing etc come into existence before embedded with structure/wall; that a complete window, door etc comes into existence only the frame/section are embedded into structure and in that circumstances, the goods in question are not movable, hence, not amounting to manufacture as per definition under Section 2(f) of CEA and not excisable. The adjudicating authority has concluded the decision by relying various Tribunal's order in similar cases and also relying the Order-in-Appeal No. 431-432/2009 and 433-434/2009 both dated 16.12.2009 passed by the Commissioner (Appeals), Ahmedabad.

8. It is observed that the department the has filed the instant appeal stating only on the grounds that the activity carried out by the respondent amounts to manufacture in terms of Section 2(f) of the CEA and the said activity at site is to be treated as manufacture in a factory as defined in Section 2(e) of CEA; that the goods in question are movable and marketable and hence excisable, in view of Hon'ble Tribunal's decision in the case of M/s Aluplex India Ltd [2018 (228) ELT-Tr. Chennai].

9. From the factual substance on record, it is observed that the goods viz. Aluminium Windows, Doors etc in question are being processed/manufactured by the respondent as per measurements and specifications provided to them, by the customers, for their sole use in their construction site. Once these goods are processed specifically for the use in particular structure/base walls, it cannot be used in any other structure/base wall. It was concluded by the department that the processes undertaken by the appellant is amounting to manufacture as it is movable and marketable for which they relied the case law of Hon'ble Tribunal in the case of M/s Aluplex India supra. However, it is not clear from the grounds of appeal as to how these goods are movable and marketable when these Aluminium Windows, Doors etc are processed/manufactured at site depending upon the requirement of structure to be installed in the customer's premises along with other civil work. The decision in the case of M/s Aluplex India relied on by the department, which is the only and main grounds of the instant appeal is distinguishable from the description of goods processed/manufactured by the appellant. The goods described in the said decision is "Aluminium curtain wall structural glazing system", however, in the instant case the description of goods is



"Aluminium Doors and Windows, False Ceiling and Partition etc ". The relevant para of the said decision is as under:

"3. After giving careful consideration to the submissions, we find that what is called "aluminium curtain wall structural glazing system" is nothing but the product emerging out of a process in which aluminium panels and glass sheets are assembled/framed, with the bought-out materials, into a distinct commodity different from the input materials. This commodity is not the same as aluminium frame, nor the same as glass sheet. It has a distinct name, character and commercial identity and is a "manufactured" product. We are surprised to observe that the lower appellate authority held it to be non-excisable on account of the fact that it later on gets fixed to brick wall and forms part of immovable property. By no stretch of imagination can it be held that the above commodity emerged as an immovable property."

10. I observe that in the respondent's case that the duty was demanded on goods viz. Aluminium Doors and Windows, False Ceiling and Partition etc. When the Aluminium structure or frame is embedded with structure or wall, a complete Window or Door or other items comes into existence and cannot come into existence before embedded with structure or base wall. When these goods permanently fixed with a specified structure or wall, it become immovable and cannot be defined as goods. While clarifying the excisability of plant and machinery assembled at site, the Board vide Circular No. 58/1/2002-CX, dated 15-1-2002 has clarified that:-

(i) For goods manufactured at site to be dutiable they should have a new identity, character and use, distinct from the inputs/ components that have gone into its production. Further, such resultant goods should be specified in the Central Excise Tariff as excisable goods besides being marketable i.e. they can be taken to the market and sold (even if they are not actually sold). The goods should not be immovable.

(ii) Where processing of inputs results in a new product with a distinct commercial name, identity and use (prior to such product being assimilated in a structure which would render them as a part of immovable property), excise duty would be chargeable on such goods immediately upon their change of identity and prior to their assimilation in the structure or other immovable property.

(iii) Where change of identity takes place in the course of construction or erection of a structure which is an immovable property, then there would be no manufacture of "goods" involved and no levy of excise duty.

As per Board's Circular dated 15-1-2002, the goods which are immovable are not liable for Central Excise duty. In the instant case, as per process of goods described above, it is very clear that a complete Window or Door or other items comes into existence when it is embedded with structure or base wall. When it is embedded with structure/base wall, these goods become immovable and cannot be defined as goods. In the circumstances, as per Board's Circular above, there would no manufacture of goods involved in the instant case and levy of Excise Duty is not applicable.

11. It is further observed that the Commissioner (Appeals), Ahmedabad, vide OIA No.431-432/2009 and 433-434/2009 both dated 16.12.2009 has decided an identical issue in favour of assessee. The Commissioner (Appeal) has held that:



"3.1- The fabrication activity of cutting and fixing the aluminium sections and fixing it with the aluminium panel with the help of silicon and thereafter fixing the glass on the aluminium pipe using silicon are done at the site and on the immovable structure. This process does not amount to manufacture because a complete window or doors come into being only after the frames are embedded into the structure. Thus, while the parts of doors and windows come into existence at site, the doors and windows themselves have been brought into being only after the frame is permanently fixed. What is permanently fixed is not goods as it becomes immovable and immovable goods are not excisable."

The Commissioner (Appeals) has relied on the decision of Hon'ble Tribunal in the case of M/s Lokhadwala Hotels Pvt Ltd [2005 (182) ELT 188 -Tri Mum] which is also squarely applicable in the respondent's case. The Hon'ble Tribunal in the said case has observed that windows are excisable if they come into existence even before they are fitted to the walls. But in a case where various parts of windows are permanently fixed to a structure it is not possible to make them exigible as windows.

12. I find that there is catena of judgments by various Benches of Tribunals on similar issue. Some of which are as under:

-M/s Mahavir Aluminium Ltd [2003 (153) ELT 65-Tri. Del], it has been held that "doors/windows coming into existence at site, made out of duty paid aluminium sections. Assembly of entire doors/windows were done at respective floors of buildings and not at the basement. Doors/windows were coming into existence after the frames having been embedded into wall, the twin attributes of mobility and marketability was not satisfied. Therefore, excise duty was not leviable on such doors/windows."

- In the case of M/s AGV Alfab Ltd [2005 (186) ELT 451-Tri. Del], the Hon'ble Tribunal held that "Windows, doors etc. come into existence only upon installation along with other members. These are constructed piecemeal. Items do not come into existence as identifiable commercial products in a factory or other manufacturing premises."

- In the case of CCE, Delhi V/s Chawla Techno Construct Ltd [2016 (343) ELT 587], the Principal Bench of Hon'ble Tribunal, New Delhi has held that "aluminium doors and windows are not goods. In the manner in which they have been fixed to the civil structural at the site they get embedded to the structure and cannot be removed without damage to the glasses. The process does not amount to manufacture and does not satisfy the test of marketability and movability."

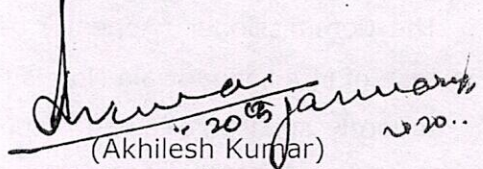
12.1 Further, I find that the jurisdictional Hon'ble Tribunal, Ahmedabad in the case of M/s Ajni Motors [2008 (230) E.L.T. 562], by following the decision of M/s AGV Alfab supra, held that "Windows, doors etc. come into existence only upon



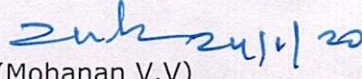
installation along with other members - These are constructed piecemeal and not come into existence as identifiable commercial products in a factory or other manufacturing premises - Since appellant is a civil contractor and not engaged in manufacture of excisable goods, demand and penalty not sustainable." The said decision of Hon'ble Tribunal has been affirmed by the Hon'ble Supreme Court [2016 (339) E.L.T. A220 (S.C.)].

13. In view of above discussion and by following judicial decisions, as discussed above, I do not find any merit in the department appeal and uphold the decision of the adjudicating authority. Therefore, I reject the appeal filed by the department.

14. The appeal stands disposed of in above terms.


(Akhilesh Kumar)
Commissisoner (Appeals)
/01/2020

ATTESTED


(Mohan V.V)
Superintendent
CGST (Appeals) Ahmedabad



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