आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलेफैक्स07926305136

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)2/EA-2/North/Appeals/2019-20/13969 TO 13973

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-114-2019-20**
दिनाँक Date : **21-01-2020** जारी करने की तारीख Date of Issue 18/02/2020

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

ग Arising out of Order-in-Original No. **08/DC/D/2018/AKJ** दिनाँक: **15.01.2019** , issued by Deputy Commissioner, Div-IV, Central Tax, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Parikh Packaging Pvt Ltd
Ahmedabad

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

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के 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 रूपये या उससे कम हो तो रूपये 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 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where 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 not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–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 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), के प्रति अपीलो 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।

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

ORDER-IN-APPEAL

This order arises out of an appeal filed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad North Commissionerate (in short '*appellant*') in terms of Review Order No.01/2019-20 passed under Section 84(1) of the Finance Act, 1994 (in short '*the Act*') by the Review Authority against Order-in-Original No.08/DC/D/2018/AKJ dated 15.01.2019 (in short '*impugned order*') passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad North Commissionerate (in short '*the adjudicating authority*') in the case of M/s Parikh Packaging Pvt. Ltd., Opp. Rotomac Pens, Sarkhej-Bavla Highway, Village Moraiya, Taluka-Sanand, District Ahmedabad (in short '*respondent*').

2. The facts of the case, in brief, are that the respondent was engaged in the manufacture of printed laminated rolls/pouches, paper Aluminium foils and was getting the engraved cylinders used by them for printing, re-engraved through a job worker. The cylinders were sent to the job worker, who, after the process of re-engraving, sent the same back to the respondent for use in the manufacturing activity at their factory. While clearing the re-engraved cylinders back to the respondent, the job worker was paying service tax on the job charges collected by them from the respondent as the process of re-engraving being not amounting to manufacture, was qualified as service under the provisions of the Finance Act, 1994 (in short '*the Act*') and the respondent was availing cenvat credit of the service tax so paid under the provisions of Cenvat Credit Rules, 2004 (in short '*CCR*'). During the course of audit of the records of the respondent by the department, it was observed that since re-engraved cylinders received back by the respondent were used for manufacturing of excisable goods which were cleared on payment of central excise duty by the respondent, the process of re-engraving carried out by the job worker was exempted from payment of service tax in terms of Notification No.25/2012-ST dated 20.06.2012 and the job worker was not liable to make any payment of service tax on the said service. It was further observed that as the service of re-engraving done by the job worker was exempted, the job worker had no option to pay service tax on his own and the payment made by him as a tax can only be considered as a deposit and it does not qualify as a valid payment of service tax. Consequently, when the amount paid by the job worker was not in the nature of service tax, the respondent was not eligible to avail credit of such a payment under the provisions of CCR and therefore, the cenvat credit of service tax paid on the service of re-engraving cylinders availed by the respondents was held to be not admissible and wrongly availed.

2.1 Accordingly, a Show Cause Notice (in short '*SCN*') was issued to the respondent proposing for recovery of wrongly availed cenvat credit of service tax amounting to Rs.30,04,957/- paid on the service of re-engraving of cylinders during the period from December, 2015 to June, 2017. The said SCN was adjudicated vide the impugned order wherein the adjudicating authority has dropped the demand by following the decision of

Hon'ble CESTAT, West Zone, Ahmedabad vide their Order No.A/10409/2018 dated 26.02.2018 on the ground of judicial discipline wherein the Hon'ble Tribunal has set aside the demand on the same issue against the respondent for the previous period from June, 2005 to November 2005.

3. Aggrieved with the impugned order, the appellant Department has filed the present appeal mainly on the following grounds:

(i) When the adjudicating authority was aware that the CESTAT Order, which he has followed, was accepted by the department on monetary grounds and the SCN being decided by him is a periodical SCN on the same issue, he has to decide the case on merit instead of relying upon the CESTAT Order;

(ii) According to Sr.No.30 of Notification No.25/2012-ST dated 20.06.2012, the job work in relation of any goods on which appropriate duty is payable by the principal manufacturer, is exempted. In the instant case, the goods manufactured by the assessee out of the re-engraved goods are subjected to payment of central excise duty. Therefore, the job worker would be entitled to exemption from service tax under Notification No.25/2012-ST. Accordingly, no duty is required to be paid by the job worker.

(iii) Once the provision provided exemption, the assessee should not pay any duty and whatsoever payment of duty should be considered as a deposit. It is settled law that, in a taxing statute or in an exemption notification, there is no room for any intendment and regard must be had to the clear meaning of the words used therein. Case laws in the case of M/s Parle Biscuits (P) Ltd. Vs. State of Bihar [2005 (192) ELT 23 (SC)] and M/s Eagle Flask Industries Vs. Commissioner [2004 (171) ELT 296 (SC)] relied in support of the contention.

(iv) Rule 3 of the CCR provides for allowing credit of duty of excise, additional duty of excise, additional duty of customs or service tax leviable under the respective Acts. In the instant case, since the service tax paid by the job worker is not duty or tax, then the said payment of duty paid should be treated as "deposit" to the government and the principal manufacturer is not eligible for taking cenvat credit of "deposit"; and

(v) The case law relied upon by the earlier adjudicating authority in the earlier OIO No.98/DC/D/2016/RK dated 07.02.2017 on the same issue viz. M/s Variety Metals Pvt. Ltd. Vs. CCE, Pune [2004(174) ELT 16 (SC)] of the Hon'ble Supreme Court is squarely applicable in the instant case since the observation made by the apex court is similar to the present case.

4. The respondent vide their letter dated 10.06.2019 has submitted a Memorandum of Cross-Objections on the appeal filed by the department, the main contentions/objections of which are as under:

(a) The allegation of the activity of re-engraving of printing of cylinders on job work basis is exempt from the payment of service tax in terms of the Notification No.25/2012-ST dated 20.06.2012 is totally incorrect and is made without understanding the wordings of the notification and the exact nature of activity undertaken by the job worker.

(b) The Notification No.25/2012-ST dated 20.06.2012 is not applicable in their case as the activity of re-engraving done by the job worker for them is reconditioning of printing cylinders (which in itself are finished goods) by re-engraving which is a repairing/maintenance job and the said activity does not amount to any production process either in relation to printing processing or in relation to any goods on which appropriate duty payable by the respondent;

(c) In the present case, process of re-engraving as job work is done in relation to used printing cylinder and such printing cylinders are never cleared by the respondent and therefore no duty is payable on such printing cylinders. Therefore, the condition of the payment of appropriate duty is not fulfilled and consequent to that the exemption under the said notification is not eligible to the job worker.

(d) The Notification No.25/2012-ST dated 20.06.2012 does not grant unconditional exemption in light of the words "on which appropriate duty is payable by the principal manufacturers". Therefore, it was the choice of the job worker either to avail the exemption after ensuring the condition specified under the said notification or otherwise. Unconditional notification can not be thrust on the provider of service of job work. The job worker chose not to avail the benefit of the said exemption notification and preferred to pay the appropriate service tax. The respondent relied upon the decision of Tribunal in the case of M/s Federal Mogul Goetz India Ltd. Vs. Commissioner of Central Excise, Bangalore-II [2015 (318) ELT 340 (Tri.-Bang.) which was affirmed by the High Court 2016 (334) ELT 476 (Kar.);

(e) When the job worker has rightly and correctly paid the service tax, the respondent can not be labeled to have availed the credit of the said amount of service tax wrongly and incorrectly. In catena of decisions, it has been held that the situation is revenue neutral and the principal manufacturer is entitled to take the Cenvat credit of service tax paid by the job worker even when the job worker was not required to pay service tax by virtue of the exemption notification. The respondent has relied upon six case laws in support of their above contention. In light of the said decisions relied upon, the respondent was entitled to avail the

cenvat credit of the service tax paid by the job worker in the present case and has availed the same correctly;

(f) It is well settled position of law that if no dispute has been raised at the end of tax payer for the payment of service tax, no dispute can be raised at the end of receiver who avails credit of such tax. In the case, it is not made clear and known about any actions initiated at the end of the service tax payers for irregularity, if any, in payment of service tax by them. Accordingly, when the service tax paid by the job worker has not been disputed, availment of the Cenvat credit of the same by the respondent can not be denied. Five case laws have been relied in support of the contention; and

(g) A conjoint reading of the clause (c) of Sr.No.30 of Notification No.25/2012-ST dated 20.06.2012 and the definition of "principal manufacturer" given under clause (z) of Para 2 of the said Notification, in the context of undisputed fact that re-engraving is not manufacture or carrying out of any production process, disentitles the job worker to the benefit of the said Notification.

5. Personal hearing in the matter was held on 18.12.2019. Shri K.J. Kinariwala, Consultant appeared on behalf of the respondent and reiterated the submissions made during previous hearing held. No one appeared from the appellant's side.

6. I have carefully gone through the facts of the case, submissions made in the appeal memorandum, cross-objections filed by the respondent and submissions made by the respondent at the time of personal hearing and evidences available on records. I find that the limited issue to be decided is as to whether in the facts and circumstances of the case, the respondent was entitled to avail Cenvat credit of service tax paid by the job worker on the process of re-engraving carried out on printing cylinders or not. It is the case of the department that since the re-engraved cylinders received back from the job worker were used by the respondent in or in relation to manufacture of excisable goods which were ultimately cleared on payment of excise duty, the job work activity of re-engraving carried out by the job worker was exempted from payment of service tax in terms of Sr.No.30 of Notification No.25/2012-ST dated 20.06.2012 and for that reason the job worker was not required to pay any service tax on the said activity and any payment of tax contrary to the said exemption can not be considered as a valid payment of service so as to claim credit under the provisions of CCR.

7. At the outset, before going into the merits of the issue appealed against, it is to observe that as per facts available on records, there was already a demand on the same issue against the appellant for the period prior to the period covered under the present demand which stand settled in favour of the respondent by way of CESTAT Order No.A/10409/2018 dated 26.02.2018. The said CESTAT Order was accepted by the department on monetary grounds. Thus, the said CESTAT Order still stands

unchallenged and that being so, the same would be binding on the departmental authorities. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. This view has been consistently emphasized by the various judicial forums including the apex court in catena of decisions. The CBEC has also issued an Instruction F.No.201/01/2014-CX.6 dated 26.06.2014 in this regard directing the all adjudicating authorities to follow judicial discipline scrupulously. In an identical situation that of the present case, the Hon'ble High Court of Gujarat in their decision in the case of M/s Lubi Industries LLP Vs. Union of India [2016 (337) ELT 179 (Guj.)] has held that:

> *"6. In our opinion, the Assistant Commissioner committed a serious error in ignoring the binding judgment of superior Court that too in case of the same assessee. The principle of precedence and judicial comity are well established in our legal system, which would bind an authority or the Court by the decisions of the Coordinate Benches or of superior Courts. Time and again, this Court has held that the departmental authorities would be bound by the judicial pronouncements of the statutory Tribunals. Even if the decision of the Tribunal in the present case was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision. It only means that the Department does not consciously agree to the view point expressed by the Tribunal and in a given case, may even carry the matter further. However, as long as a judgment of the Tribunal stands, it would bind every Bench of the Tribunal of equal strength and the departmental authorities taking up such an issue. An order that the adjudicating authority may pass is made appealable, even at the hands of the Department, if the order happens to aggrieve the Department. This is clearly provided under Section 35 read with Section 35E of the Central Excise Act. Therefore, even after the adjudicating authority passes an order in favour of the assessee on the basis of the judgment of the Tribunal, it is always open to the Department to file appeal against such judgment of the adjudicating authority."*

As can be observed from the above, the Hon'ble High Court of Gujarat has made the legal position unambiguously clear that even if the decision of the Tribunal in a case was not carried further in appeal by the department on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision and as long as a judgment of the Tribunal stands, it would bind departmental authorities taking up such an issue. For that settled view of the matter, I do not find any legal infirmity in the impugned order passed by the adjudicating authority by following the principles of judicial principles. It is more so when there was no material change on the facts of the case for both the period of dispute . The present demand in the case is in fact the periodical demand on the very same issue on very same grounds for the subsequent period of the first demand. In view thereof, the departmental contention in this regard that the adjudicating authority should have decided the matter on merits instead of relying upon the CESTAT Order is not maintainable against the above discussed settled legal position.

8. Now coming to the contentions on the merit of the issue raised in the appeal, I find that the basic premise on which the department intends to disallow cenvat credit to the respondent is that the job worker was not liable to pay any service tax on the re-engraving activity as the said activity of job work was exempted from payment of service tax in terms of Notification No.25/2012-ST dated 20.06.2012 and hence the service tax paid by them cannot be considered as service tax leviable under the Finance Act, 1994 so as to become eligible as cenvat credit under the CCR. However, it is noticed that while raising the said contention, the department could not bring anything on record which suggest that the assessment and payment of service tax in the case of impugned job work service provided by the job worker in the instant case has been disputed or challenged by the department at the job worker's end. It is a settled law that without challenging/disputing the assessment and payment of tax at the service provider's end, it is not open for the department to question the amount of duty/tax paid by the service provider in the hands of the service receiver so as to decide the eligibility of credit. The decisions of the Hon'ble Supreme Court of India in the case of Commissioner of Central Excise & Customs Vs. MDS Switchgear Ltd. [2008 (229) ELT 485 (S.C.)] and of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise, Ahmedabad-III Vs. Nahar Granites Ltd. [2014 (305) ELT 9 (Guj.)] and the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Goa Vs. Nestle India Ltd. laid down the position of law clearly in this regard. The Hon'ble Tribunal in the case of M/s U.P. State Corporation Ltd. 2013 (291) ELT 402, relying upon the decision of Commissioner Vs. MDS Switchgear Ltd. — 2008 (229) E.L.T. 485 (S.C.) and Owens Bilt Ltd. Vs. Commissioner — 1998 (101) E.L.T. 642 (Tribunal), has held that without revising the assessment at the end of manufacture of some inputs, the Cenvat credit cannot be denied at the end of the receiver of those inputs. Similar view was expressed by the Tribunal in the case of M/s GTL Infrastructure Ltd. Vs. Commissioner of Central Excise, Mumbai [2016 (45) STR 389 (Tri.-Mumbai)]. The ratio of the above referred decisions of various judicial forums are squarely applicable in the present case also and being so, it is clear that the department can not question the payment of service tax by the job worker at the service recipient's (viz. respondent's) hands and thereby deny the credit of such tax paid to the respondent. So long as the payment of service tax by the job worker has not been disputed at job worker's end by the department, the payment made by them as service tax would remain qualified as a legally valid payment of service tax and the same would rightly be admissible as cenvat credit to the respondent and hence availment of the Cenvat credit of the same by the respondent can not be denied.

8.1 I also do not find any merit in the contention of the department that the job worker was not liable to pay service tax for their job work activity being exempted by virtue of Notification No.25/2012-ST dated 20.06.2012. The relevant entry of the said

Notification at Sr.No.30 at the material time which has been relied by the department reads as under:

> *30. Carrying out an intermediate production process as job work in relation to -*
>
> *(a) agriculture, printing or textile processing;*
>
> *(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);*
>
> ***(c) any goods excluding alcoholic liquors for human consumption, on which appropriate duty is payable by the principal manufacturer; or***
>
> *(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;*

The department's contention in the matter is solely based on clause (c) of above referred entry. A plain reading of the said clause very clearly reveals that the exemption intended therein is applicable subject to the condition that duty is payable by the principal manufacturer on goods subjected to job work. This clearly indicates that the subject exemption relied by the department in the instant case is a conditional one. Here also, it is settled legal position that in case of conditional exemption, it becomes optional in nature and it is for the assessee to decide whether he wants to avail the exemption or to ignore it. It is not legally permissible to thrust such conditional exemption compulsorily on to an assessee. In view of the above, it is observed that the job worker has the option to pay service tax in the case.

8.2 Even otherwise, the subject exemption does not seem to be applicable to the job worker in the instant case for different reasons. Firstly, the exemption provided under the above entry is for carrying out an intermediate production process as job work. In the instant case, the nature of job work done is re-engraving of printed cylinders, which are in fact capital goods for the respondent. The said activity is nothing but reconditioning of the old cylinders. It does not involve any production process. Therefore, the said activity, by any stretch of imagination, can not be said to be qualifying as an intermediate production process. Secondly, in the instant case, no duty was payable by the respondent on the re-engraved cylinders received back from the job worker as the said goods were never cleared, as such or after doing any process, by the respondent. In fact, the said goods were being used as capital goods for the purpose of printing of excisable goods which were cleared on payment of duty. The language used in subject exemption provides for exemption only when the goods subjected to job work are cleared on payment of duty. It does not in any way indicate that exemption is available even in

cases where such goods are used in or in relation to manufacture of excisable goods also. It is a settled law that a notification has to be interpreted on its wording and no words, not used in the notification can be added. The Supreme Court decision in the case of M/s Parle Biscuits (P) Ltd. Vs. State of Bihar [2005 (192) ELT 23 (S.C.)] relied upon by the department in the present appeals holds similar view wherein it was ruled that *a statutory notification should not be extended so as to meet a casus omissus, while relying upon the decision in the case of Privy Council in Crawford v. Spooner reported in 1846 6 Moo PC 1, wherein it was held that "we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there".*

8.3 Further, it is to be noted that the exemptions under service tax law are not absolute in nature as are in the case of central excise law. Vis-à-vis the specific provision for compulsorily availing unconditional exemption issued under Section 5A(1A) of the Central Excise Act, there is no corresponding provision in the Finance Act, 1994 relating to service tax. It has also not been shown that the said provision under Central Excise Act has been made applicable to the service tax. The Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise, Bangalore-II Vs. M/s Federal Mogul TPR India Ltd. [2016 (334) ELT 476 (Kar.)] has observed that:

> *"11. Section 5A(1A) of the Central Excise Act provides for power to grant exemption from duty of excise. Section 5A(1A) of the Central Excise Act specifically provides that "for the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods".*
>
> *12. The words "shall not pay" enumerated in the said provision specifically denotes that it is the mandatory requirement on the manufacturer of such excisable goods not to pay the duty of excise on such goods in respect of which an exemption under Section 5A(1A) has been granted absolutely. Such a mandatory requirement of "not to pay" the duty of excise on goods exempted under sub-section (1) of Section 5(A) is not found in Section 93 of the Service Tax Act. Section 83 of the Service Tax Act provides for application of certain provisions of Central Excise Act, 1944 in relation to service tax under Finance Act, 1994. Absence of Section 5A of Central Excise Act, in Section 83 of the Finance Act, 1994, indicates that the provisions of Section 5A of Central Excise Act, is not applicable to the Finance Act, 1994."*

Thus, unlike in Central Excise Act under Section 5A, there is no restriction for payment of service tax on exempted service and therefore if the service provider chooses to pay service tax, the same shall be available as Cenvat credit to the recipient of the service, as has been held by the Tribunal in the case of M/s Raymond UCO Denim Pvt. Ltd. Vs. Commissioner of Central Excise, Nagpur [2017 (7) GSTL 346 (Tri.-Mum)]. For the

same reason, the case law in the case of M/s Variety Metals Pvt. Ltd. Vs. CCE, Pune [2004 (174) ELT 16 (S.C.)] cited by the department stand distinguished.

8.4 In view of the above discussions, it is to be held that the contentions raised by the department on the merit of the issue are not sustainable in law on facts and merits and hence deserves to be rejected.

9. Notwithstanding my above views on merit of the issue, the principles of judicial discipline also demands me to follow the Tribunal decision vide Order No.A/10409/2018 dated 26.02.2018 in the case of the respondent for the past period on the same issue.

10. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority and therefore, I upheld the impugned order and reject the appeal filed by the appellant being devoid of merits.

11. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

(**Akhilesh Kumar**)
Commissioner (Appeals)

Date: 21.01.2020.

Attested:

12/02/2020

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

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2. The Commissioner, CGST, Ahmedabad North (RRA Section).
3. The Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad North.
4. The Asstt. Commissioner (System), CGST , Ahmedabad North. (for uploading OIA on website)
5. Guard file
6. P.A. file.