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

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
दूरभाष : 079-26305065 **टेलेफैक्स** : 079 - 26305136

क फाइल संख्या : File No : **V2(84)78/North/Appeals/2019-20** / 1125 TO 1129

ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-002-APP-129 -2019-20**

दिनाँक Date :**14-02-2020** जारी करने की तारीख Date of Issue 03/03/2020

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

ग Arising out of Order-in-Original No. **02/DC/D/2019-20/AKJ** Dated **28/06/2019**
Issued by **Deputy Commissioner ,** Central GST , Div-IV , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता
Name & Address of The Appellants

M/s Bhagwati Spherocast Pvt. Ltd

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर 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.

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

(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.

ध 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।

(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 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– ण्0बी/35–इ के अंतर्गतः–

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

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 **दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात** 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 beer a court fee stamp of Rs.6.50 paisa 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो**

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) **धारा 11 डी के अंतर्गत निर्धारित रकम**

(ii) **सेनवैट जमा की ली गई गलत राशि**

(iii) **सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम**

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
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.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(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।**

(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 order arises on account of an appeal filed by M/s Bhagwati Spherocast Pvt. Ltd. (Machining Division), 217-2018-220/2-221, Village Sari, Sarkhej-Bavla Highway, District Ahmedabad (in short '*appellant*') against the Order-in-Original No.02/DC/D/2019-20-AKJ dated 28.06.2019 (in short '*impugned Order*') passed by the Deputy Commissioner, Central GST & Central Excise Division-IV, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant was engaged in the job work of machining of un-machined castings supplied by their sister unit, M/s Bhagwati Autocast Ltd. and was paying service tax on the said activity. They were availing and utilizing the cenvat credit of duty on inputs and capital goods under the Cenvat Credit Rules, 2004 (in short '*CCR*'). During the course of audit of another unit of the appellant at Odhav, Ahmedabad, it was observed by the audit that the job work activity of machining done by the appellant on un-machined castings supplied by their sister unit was amounting to manufacture as defined under Section 2(f) of the Central Excise Act, 1944 and hence was excluded from the purview of service tax and that no duty of central excise was payable by the job worker as per Notification No.214/86-CE dated 25.03.1986 as the goods viz. cast articles sent after job work by the appellant were used by their sister unit for manufacture of goods which were cleared on payment of duty. It was also observed that the said job work activity, even otherwise, was exempted from payment of service tax in terms of Notification No.25/2012-ST dated 20.06.2012 for the same reason as that in the case of Notification No.214/86-CE referred above and also for the reason that the processes amounting to manufacture was covered in the negative list of services under the Finance Act, 1994. It was there upon concluded that the appellant's said job work activity amounts to manufacture of exempted goods and provision of exempted service and since the appellant was engaged only in doing job work of their sister unit, they were not eligible for availing cenvat credit on inputs and capital goods in terms of sub-rule (1) and (4) of Rule 6 of the CCR being goods used exclusively in the manufacture of exempted goods and provision of exempted service. Based on the above audit objection, a Show Cause Notice F.No.V.84/03-21/D/2017-18 dated 11.02.2019 (in short '*SCN*') was issued to the appellant for disallowing and recovery of cenvat credit amounting to Rs.48,68,379/- wrongly availed on inputs and capital goods reflected in the ST-3 Return for the period from October-March 2013-14 to April-June 2017-18. The said SCN was adjudicated vide the impugned order by the adjudicating authority wherein he has confirmed the demand of cenvat credit wrongly availed along with interest and imposed penalty.

3. Feeling aggrieved with the above Order, the appellant has filed the present appeal mainly on the grounds that:

(i) The job work of machining done by them did not amount to manufacture; They rely on the Supreme Court judgment in the case of M/s Bharat Forge and Press Industries Pvt. Ltd.;

(ii) Mere machining job cannot be termed as manufacturing job work, so it cannot fall under the Exemption Notification No.214/86-CE dated 25.03.1986 as stated by the department. The exemption under the said notification was subject to the conditions laid down therein and they had not followed or complied with the said conditions and procedures. If any condition is breached, then the job worker has to pay duty. Tribunal decision in the case of M/s Dinesh Rolling Mills Vs. CCE, Delhi [2000 (122) ELT 481 (Tri.)] supports the said view. Therefore, it can not be said that the goods are exempted goods;

(iii) Since the job work goods further has been used in the manufacture of final products which are dutiable, the said goods cannot be treated as exempted goods and hence the department contention regarding the applicability of Rule 6(4) of the CCR is not sustainable. They rely on five case laws in support of their contention;

(iv) The entire demand is time barred as the facts were in the knowledge of the department since 2013 onwards and the SCN, which covers the period from 01.10.2013 to 30.06.2017, was issued on 11.02.2019; and

(v) When the issue involves interpretation of exemption notification, allegation of intend to evade payment of duty, invocation of extended period of limitation or penalty under Section 11AC is not justified. They rely on five case laws in support of their arguments.

4. Personal hearing in the matter was held on 08.01.2020. The appellant was represented by Shri Vipul Khandhar, Chartered Accountant. He reiterated the submissions made in the Appeal Memorandum.

5. I have carefully gone through the facts of the case, Appeal Memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the crux of the issue to be decided is as to whether in the facts and circumstances of the case, the appellant's act of availment of cenvat credit on inputs and capital goods used in the job work activity of machining of cast articles would be hit by the provisions of sub-rule (1) and (4) of Rule 6 of the CCR or not.

6. After going through the facts on records, it is found that the cenvat credit in the case was disallowed to the appellant on the ground that the job work activity of the appellant was exempted in terms of Notification No.214/86-CE dated 25.03.1986 and Notification No.25/2012-ST dated 20.06.2012 and hence the appellant was not liable to pay any duty of excise or service tax for the job work activity carried out by them. It is the case of the department that the job work activity of machining of cast articles done by the appellant amounted to manufacture and since the machined cast articles received after job work from the appellant were used by the supplier of job work materials viz. the principal manufacturer, in the instant case the sister unit of the appellant, for manufacture of goods which were cleared on payment of appropriate central excise duty, the appellant, as a job worker, was not liable to pay any central excise duty or service tax on the job work activity done by them in terms of Notification No.214/86-CE dated 25.03.1986 and Notification No.25/2012-ST dated 20.06.2012 and for that reason their job work activity would qualify as 'manufacturing of exempted goods' or 'provision of exempted service'. The appellant, on the other hand,

contends that their activity of machining does not amount to manufacture and hence they were paying service tax on the said job work. It is also their argument that the department contention that job work goods are exempted goods is not correct for the reasons that the exemption under Notification No.214/86-CE dated 25.03.1986 is subjected to conditions prescribed therein and in the event of breach of conditions therein, the job worker is liable to pay duty and that the goods after job work suffer excise duty at the hands of the principal manufacturer.

7. I find that in the instant case, the department contention on the inadmissibility of credit to the appellant lies solely on the availability of exemption to the appellant under Notification No.214/86-CE dated 25.03.1986 and Notification No.25/2012-ST dated 20.06.2012. It is a fact undisputed that the appellant had not availed any exemption under either of the Notifications. The department is holding the view that as exemption is available under the said two Notifications, the appellant can not resort to ignore the said exemption and opt to pay duty or service tax. In this regard, after going through the said Notifications, it is observed 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 while removed as such or after any further processing. In the case of Notification No.214/86-CE, a procedure is also prescribed to be followed for availing the exemption. This clearly indicates that the subject exemptions relied by the department in the instant case are a conditional one. 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 the instant case, the appellant had stated that the conditions and procedures laid down under Notification No.214/86-CE were not complied with in their case as they were of the view that their job work activity of machining does not amount to manufacture. It is also not the case of the department that the conditions and procedures prescribed under the said Notification was stand complied in full by the appellant. In such a scenario, it is not clear as to how the department want to extend the benefit of exemption under the said Notification No.214/86-CE to the appellant even when they were not claiming the same and when stated that the conditions and procedures under the Notification were not complied by them . The Hon'ble Supreme Court in their decision in the case of M/s Eagle Flask Industries Vs. Commissioner [2004 (171) ELT 296 (SC)] had held that "*the requirement of filing declarations and undertaking prescribed under a Notification is not an empty formality. It is the foundation for availing the benefits under the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the Notification. For availing benefits under an exemption Notification, the conditions have to be strictly complied with*". Thus, it becomes clear that the department's contention of availability of exemption under Notification No.214/86-CE in the instant case does not stand sustainable before law. In fact such a contention goes against the department's own conclusion that the job work goods in the case were exempted. When the

exemption intended to be extended to the appellant was not available for non-compliance of conditions laid down therein for the exemption, the goods in question become liable for payment of excise duty at the hands of the job worker, as has been held by various judicial forums in catena of decisions, and for that fact, the contention that the job work goods were exempted goods does not hold water. Notwithstanding the above facts, even in the cases where exemption was availed by the job workers under Notification No.214/86-CE, it was held by the Tribunal Larger Bench in the case of M/s Sterlite Industries (I) Ltd. [2005 (183) ELT 353 (Tri-L.B.)] that the job worker was entitled to avail cenvat credit on inputs used in the manufacture of such goods. This decision has been followed by Hon'ble High Court in cases of M/s Tata Motors Ltd. Vs. UOI [2009 (244) ELT 337 (Bom.), Commissioner of Central Excise Vs. M/s Happy Forgings Ltd. [2011 (265) ELT 197 (P&H), Commissioner of Central Excise, Chennai-IV Vs. M/s Kyungshin Industries Motherson Ltd. [2016 (332) ELT 69 (Mad.) and Commissioner of Central Excise, Chennai-II Vs. SRF Ltd, [2019 (367) ELT 252. The above decisions make the legal position amply clear that exemption availed on activity of job work under Notification No.214/86-CE does not make the job worked goods 'exempted goods' for denying credit. Though the Tribunal Larger Bench decision in the case of M/s Sterlite Industries (I) Ltd. [2005 (183) ELT 353 (Tri-L.B.)] was given in the context of erstwhile Modvat Credit regime, the same argument are equally applicable to the Cenvat Credit Rules, 2004 as has been held by the Hon'ble Tribunal in their judgment in the case of M/s MPI Paper Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai [2016 (336) ELT 86 (Tri.-Mumbai).

7.1 As far as exemption under Notification No.25/2012-ST dated 20.06.2012 is concerned, it is also a conditional exemption as stated in the last para and hence is optional in nature and it is the call of the assessee to decide as to whether he wants to avail the exemption or not. 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."

8. In view of the foregoing facts discussed, it is to held that the mere availability of exemptions under Notifications No. 214/86-CE and No.25/2012-ST would not make the job work activity of the appellant in the instant case an exempted activity under central excise or service tax law nor does the same *per se* bring in a situation as envisaged under the provisions of sub-rule (1) and (4) of Rule 6 of the CCR to create any bar on availment of cenvat credit by the appellant in the case especially when the benefit of exemption under the Notificaitons were not availed at all. That being so, the cenvat credit availed by the appellant in the instant case can not be denied for the said reason. Consequently, the demand raised and confirmed on the said contentions fails to survive before law on facts and merits and when demand fails, there can not be any question of interest or penalty.

9. Accordingly, the impugned order is set aside being not legal and proper and the appeal of the appellant is allowed.

10. 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) 14 February 2020.
Commissioner (Appeals)

Date: 14.02.2020

Attested

28/02/2020
(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s Bhagwati Spherocast Pvt. Ltd.
(Machining Division),
217-2018-220/2-221, Village Sari,
Sarkhej-Bavla Highway,
District Ahmedabad.

Copy to:-

1. The Principal Chief Commissioner, Central Tax , Ahmedabad Zone..
2. The Commissioner, CGST, Ahmedabad North.
3. The Deputy Commissioner, Central GST & C.Ex., Division-IV, Ahmedabad North.
4. The Assistant Commissioner, CGST (System), HQ, Ahmedabad North.
5. Guard file.
6. P.A. File