



सत्यमेव जयते

आयुक्त का कार्यालय), अपीलस()
Office of the Commissioner,
 केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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स्पीड पोस्ट

- क फाइल संख्या : File No : V2(CEX)02/EA-02/North/Appeal/2020-21 / 1009 70101K
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-60 to 62/2020-21**
 दिनांक Date : **23.03.2021** जारी करने की तारीख Date of Issue : **12.04.2021**
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **14-16/ADC/2019-20/MS** dated **17.01.2020**, passed by
 Additional Commissioner, Central GST & Central Excise, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- - Deputy Commissioner, Central GST & Central Excise, Div.-IV Ahmedabad-North.

Respondent- M/s Transformers & Rectifiers (I) 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।

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।

(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 प्रक्रिया 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 मामलों 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 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।

(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 दिनोंक 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 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. 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 Appellate 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 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), 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।

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

The Department, through the Deputy Commissioner, Central GST, Division-IV, Ahmedabad North, has filed this appeal, as per Review Order No. 51/2019-20 dated 09.03.2020 passed against Order-in-Original No.14-16/ADC/2019-20/MSD dated 17.01.2020 [hereinafter referred to as "impugned order"] passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North [hereinafter referred to as "adjudicating authority"] in the case of M/s. Transformers & Rectifiers (I) Ltd, Survey No. 344-350, Opp. PWD Stores, Sarkhej-Bavla Highway, Changodar, District Ahmedabad-382213 [hereinafter referred to as "Respondent"]. The respondents are engaged in the manufacture of Electrical Transformers falling under Chapter 85 of the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No. AAAFT9000BXM001.

2. Briefly stated, the facts of the case are that during the course of verification of statement of account of Debtor's and Commercial invoices, it was noticed that the Respondent had recovered Testing charges amounting to Rs. 83,01,380/-, which was nothing but the additional consideration over and above the sale price, therefore the Central Excise duty amounting to Rs. 13,53,377/- for the period August-2003 to March-2006 under Rule 6 of the Central Excise Rules, 2002, was required to be recovered from them. Accordingly, a Show Cause Notice dated 31.01.2007 was issued to the Respondent for recovery of Central Excise duty amounting to Rs. 13,53,377/- along with Interest and Penalty. Thereafter, Show Cause Notice dated 08.02.2007 for subsequent period amounting to Rs. 23,575/- (for the period May -06 to Nov-06) and Show Cause Notice dated 19.12.2007 amounting to Rs. 6,12,948/- (Dec -2006 to July-2007) was also issued to the said Respondent. After according the respondent opportunities for personal hearing, the Additional Commissioner, erstwhile Central Excise, Ahmedabad-II, vide Order-in-Original No. 44 to 46/ADC/2008/SK dated 31.03.2008/03.04.2008 confirmed the demand of Central Excise duty amounting of Rs 19,89,900/- alongwith interest. He also imposed penalty of Rs. 19,89,900/- on the respondents under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules,2002.

3. Being aggrieved with the said OIO No. 44 to 46/ADC/2008/SK dated 31.03.2008/03.04.2008, the Respondent filed an appeal before the Commissioner (Appeals-IV), Ahmedabad who vide OIA No. 78/2008 (Ahd-II)/CE/SBS/Commr(A)/ Ahd dated 31.07.2008/04.08.2008 remanded the matter back to the adjudicating authority.

Subsequently, the Respondent also filed an appeal before the Hon'ble CESTAT,



Ahmedabad against the OIA No. 78/2008 (Ahd-II)/CE/SBS/Commr(A)/Ahd dated 31.07.2008/04.08.2008.

4. As per the direction of the Commissioner (Appeals), the Additional Commissioner, Central Excise, Ahmedabad-II, vide OIO No. 3-5/ADC/2009/PRC dated 19.02.2009 again confirmed the demand of Rs. 19,89,900/- under Section 11A(1) alongwith interest. He also imposed equal penalty in terms of section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central excise Rules,2002.

5. Being aggrieved with the OIO No. 3-5/ADC/2009/PRC dated 19.02.2009 and also OIO No. 21/D/2009 dated 27.02.2009 passed by the jurisdictional Assistant Commissioner, the Respondent filed an appeal before the Commissioner (Appeals) who vide OIA No. 333-334(Ahd-II)CE/CMC/Commr(A)/Ahd/S/55 to 56 (A-II)/09 dated 24.09.09/30.09.2009 upheld the OIO and rejected the appeal. Being aggrieved with the said OIA No. 333-334(Ahd-II)CE/CMC/Commr(A)/Ahd/S/55 to 56 (A-II)/09 dated 24.09.09/30.09.2009, the respondent filed an appeal before the Hon'ble CESTAT, Ahmedabad who vide its Order No. S/977-98/WZB/AHD/2010 dated 23.08.2010 waived pre-deposit and stayed the recovery proceedings.

6.1 The Hon'ble CESTAT, Ahmedabad vide Order No. A/10505/2016 dated 08.06.2016 decided the Respondent's appeal filed against OIA No.78/2008 (Ahd-II)/CE/SBS/Commr(A)/Ahd dated 31.07.2008/04.08.2008, wherein the case was remanded back to the adjudicating authority to examine the facts and evidences on record and decide the issue afresh.

6.2. Further, the Hon'ble CESTAT, Ahmedabad vide Order No. A/10286-10288/2019 dated 05.02.2019 decided Respondent's appeal filed against OIA No.333-334(Ahd-II)CE/CMC/Commr(A)/Ahd/S/55 to 56 (A-II)/09 dated 24.09.09/30.09.2009. The Hon'ble Tribunal remanded the matter back to the adjudicating authority for assigning a fresh order by taking observation of the order of the CESTAT's Order no. A/10505/2016 dated 08.06.2016.

7. The adjudicating authority, vide impugned order, has accepted the Respondent's contention that the third party inspection charges incurred by them and subsequently reimbursed were not includable in the assessable value of goods and as such no Central Excise duty was chargeable on the same. He accordingly dropped the demand raised vide



SCN No. V.85/15-69/Dem/06 dated 31.1.2007; V.85/3-7/D/07 dated 8.2.2007 and V.85/15-89/Dem/07 dated 19.12.2007.

8. Being aggrieved with the impugned order, the Department has filed the instant appeal on the grounds that:

- Rule 6 of Central Excise Valuation (determination of price of excisable goods) Rules, 2000 clarifies that the third party inspection amount so collected by the assessee from its buyer is an additional consideration and would fall within the purview of Rule 6 of the Valuation Rules, 2000
- That the Transformers manufactured by the Respondent are subjected to quality control for regular testing. Further, on customer's requirement the Respondent conducted Special Testing at a notified Government Laboratory for which the amounts incurred by the Respondent are reimbursed by the buyer. "Transaction value" in the instant case would differ from the buyer who purchase the goods on the basis of tests conducted by the manufacturers, as in the instant case the buyer has set out another set of specifications for the goods will not be sold. For conducting these tests and to certify that the goods conform to the standard set out by the buyer, it will form part of the 'Transaction Value' as per Section 4(3)(d) of the Central Excise Act, 1944;
- That the goods manufactured by the Respondent attained the state of marketability with regard to a specific customer/buyer only when the said third party inspection was conducted to the satisfaction of that specific customer/buyer and hence provision of Rule 6 of Central Excise Valuation (determination of price of excisable goods) Rules, 2000 is applicable in the present case;
- That the judgement of Hon'ble High Court of Gujarat's judgement in the case of Lubi Industries LLP Vs Union of India reported at 2017(52)STR 95 (Guj) relied upon by the Adjudicating Authority in his impugned order, was accepted by the department on low monetary ground and not on merits;
- That the judgement of Hon'ble Tribunal, in the case of Goyal M.G. Gases Pvt. Ltd. Vs. Commissioner of C.Ex. , Ghaziabad relied upon by the adjudicating authority is not applicable in the instant case;
- Department replied upon the judgement of Hon'ble Supreme Court in the case of Commissioner of C.Ex., Tamil Nadu vs. Southern Structural's Ltd. [2008(229) E.L.T. 487(S.C.)] at para 19 held that on the point of inclusion of inspection charges in the assessable value, all the three members have given a common finding that the said charges are to be includible in the assessable value and hence the impugned order.



9. The respondent in their cross-objection dated 09.09.2020 in appeal, has submitted that;

- The original adjudicating authority, in the third round of litigation, passed speaking order in favour of the respondent based on a plethora of the judgement of Hon'ble High Court and Hon'ble Supreme Court of India;
- That the judgement in case of Lubi Industries LLP Vs Union of India 2017 (52) STR 95 (Guj), Collector Vs Cimmco Ltd 1996 (84) ELT A-167 (SC) and Commissionr Vs Goyal M.G. Gases Pvt. Ltd 2016 (342) ELT A-223 (SC) relied upon by original adjudicating authority while allowing the contention of the respondent, as true, legal and correct and have been mis-read by department in impugned appeal;
- That the judgement of Hon'ble Supreme Court in the case of Commissioner of C.Ex, Tamil Nadu Vs Southern Structurals Ltd (2008 (229) ELT 487 (SC) relied upon in the appeal wherein facts and circumstances of the case were different than the facts and circumstances in current case;
- That in the present appeal, the question is whether or not, special testing charges or inspection charges etc carried out on the request of the customer are includible in the assessable value of the excisable goods under Section 4 of CEA whereas the case relied upon in the present appeal does not refer to special testing;
- That they have carried out special test on specific request of the customer which is not normal testing charges connected with finished excisable goods and hence the same are not includable in the assessable value.

10. Opportunity for personal hearing in the matter were granted on 10.11.2020, 24.11.2020, 17.12.2020, 21.01.2021 and 19.02.2021. However, nobody appeared on the given date for personal hearing. Since sufficient opportunities for hearing has been given, I proceed to decide the case based on materials available on record.

11. I have carefully gone through the facts of the case, ground of appeal in the Appeal Memorandum and submissions made in cross-objection made by the respondent. The issue to be decided in the instant case is whether the special third party inspection/testing charges incurred by respondent at the request of the buyers and which was subsequently reimbursed to them by the buyers would form part of assessable value, for computing Central Excise duty or otherwise.



12. It is observed from the case records that the Commissioner (Appeals-IV), Ahmedabad in the OIA No. 78/2008 (Ahd-II)/CE/SBS/Commr(A)/Ahd dated 31.07.2008/04.08.2008 while deciding the appeal has observed in para 4.5 that the cost of additional tests/inspection carried out by third party at the behest of the buyer and paid for by the buyer **would not be included in the assessable value** if the respondent is covered by four parameters i.e(i) the tests/inspections should be in addition to the normal tests and should be carried out at the instance of the buyer,(ii) the tests/inspections should be carried out by third party, (iii) the cost for the same should be borne/paid by the buyer and (iv) the entire amount thus recovered should be paid to the third party and no part of it should have been retained by the manufacturer. Based on these observations, the Commissioner (Appeals-IV), Ahmedabad and remanded back the case to the Additional Commissioner with a direction **to examine the each case of recovery of additional test charges carried out by third party in light of the above observations.**

13. It is observed that in the present case, the adjudicating authority i.e Additional Commissioner while deciding the case examined the issue as per the direction given by the Commissioner (Appeals-IV), Ahmedabad and has come to conclusion that the third party inspection charges incurred by respondent and subsequently reimbursed are not included in the assessable value of goods and has dropped the case proceeding. The finding of relevant paras of the impugned order of the adjudicating authority is reproduced hereinbelow:

22. *On going through the Purchase Order dated 16.12.2006 entered between Tamilnadu Electricity Board and M/s Transformer & Rectifiers India Ltd., Sarkehj Bavla Highway, Vill. Changodar, Tal: Sanand, Ahmedabad, I find that at page No. 2 of the document, there is a specific clause wherein the type of tests to be conducted has been mentioned. It also state that "Routine tests as per clause- 37.2 of Section B shall be conducted on all the transformers free of cost". It further states that "One unit of 100 MVA, 230/110/11 KV Auto Transformer selected at the discretion of Tamil Nadu Electricity Board shall be tested for measuring of No-load and Load losses at Central Power Research Institute, Bangalore or any other government recognized testing laboratory, as decided by the Tamil Nadu Electricity Board. The arrangements connected towards testing such as transport, transit insurance remittance of testing charges etc. shall be made by the supplier. The expenses towards the testing shall be borne by Tamil Nadu Electricity Board at actual based on documents".*



23. Similarly, in the case of Power Grid Corporation of India Ltd also, purchase order dated 30.03.2005 at page no. 7, states that "Type test charges indicated in Annexure-III shall be paid on successful completion of the tests actually conducted as per Powergrid's instructions and on approval of the test results by Powergrid".

24. From the above, it is seen that the testing requirement of the Transformer has been made by the buyer for which the amount incurred by the assessee for testing are reimbursed by the buyer to the assessee.

26. I find that these case laws have been followed in a number of judgements. Further, in the case of Lubi Industries LLP Vs Union of India reported at 2017(52) STR 95 (Guj), the Hon'ble High Court of Gujarat held that the pre-delivery inspection charges by third party agency do not form part of assessable value. Further, in the following* cases, the Hon'ble Supreme Court has also held that inspection charges incurred by customers are not includible.

*1) 1996(84)ELT A 167(SC)-Collector Vs CIMMCO Ltd

2) 2016 (342) ELT A223(SC) Commissioner Vs Goyal M.G.Gases Pv. Ltd.

14. From the above, it is observed that acting on the directions of Hon'ble Tribunal, Ahmedabad wherein it was specifically directed that the observation made by learned Commissioner(Appeals) has to be taken into consideration and to order a fresh, the adjudicating authority has complied with the directions and examined the case in details. It is revealed from the impugned order that all the parameters as directed has been followed by the adjudicating authority, who arrived at the conclusion that the third party inspection charges incurred by respondent and subsequently reimbursed are not included in the assessable value of goods. I also find that the observation made in OIA dated 31.07.2008/04.08.2008 passed by the Commissioner (Appeals-IV), Ahmedabad on the basis of which the impugned order has been passed by the adjudicating authority has not been contested.

14.1. It is observed from the departmental appeal that their main contention in grounds of appeal has been that the judgement of Hon'ble High Court of Gujarat in Lubi Industries LLP 2017 (52) STR 95 (Guj) was accepted on low monetary ground and not on merits. In this regard, I find that there is no stay on the orders of Hon'ble High Court of Gujarat in Lubi Industries LLP and there is also no change in legal position brought on record. Hence, the order of Hon'ble High Court of Gujarat has binding precedence on lower



adjudicators. In view of principles of judicial discipline, I am bound to follow the decision of Hon'ble High Court of Gujarat.

15. In view of the facts discussed above, I do not find any reason to interfere with the impugned order passed by the adjudicating authority. Therefore, I reject the appeals filed by the department and uphold the impugned order.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellants stands disposed of in above terms.

Akhil Kumar
23rd March, 2021.
(Akhil Kumar)
Commissioner (Appeals)
Ahmedabad
/03/2021



Attested

Atul B Amin

(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

To

1. M/s. Transformers & Rectifiers (I) Ltd,
Survey No. 344-350, Opp. PWD Stores,
Sarkhej-Bavla Highway, Changodar,
District Ahmedabad-382213
2. The Deputy Commissioner,
Central GST, Division-IV, Ahmedabad North
2nd Floor, Gokuldham Arcade, Sarkhej-Sanand Road,
Ahmedabad- 382 210.

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Additional Commissioner, CGST & C.Ex, Ahmedabad North.
4. The Assistant Commissioner, System-CGST, Ahmedabad North.
- ✓ 5. Guard File.
6. P.A. File.