



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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DIN-20211164SW000081869E

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/38/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad / 4259 70 21263
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-28/2021-22**
दिनांक Date : **25.10.2021** जारी करने की तारीख Date of Issue : **01.11.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original Nos. **05/AC/DEM/2020-21** dated **27.10.2020**, passed by the Assistant Commissioner, Central GST & Central Excise, Div-V, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Appellant- M/s. Bhagwati Autocast Pvt. Ltd., Survey No. 816, Village: Rajoda, Near Bavla,
Dist: Ahmedabad.

Respondent- Assistant Commissioner, Central GST & Central Excise, Div-V, Ahmedabad-North.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि 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 प्रकिया के दौरान हुई हो।

(iii) 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 क 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.

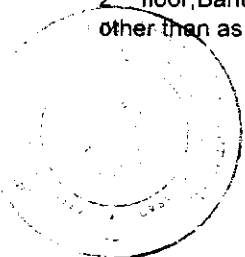
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 मामलों 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 appeal has been filed by M/s. Bhagwati Autocast Ltd. , Survey, No-816, Village Rajoda, Near Bavla, Ahmedabad (in short '*appellant*') against the OIO No: 05/AC/Dem/2020-21/BK dated 27.10.2020 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that during the course of audit of M/s. Bhagwati Spherocast Pvt. Ltd., 132/1, Odhav, Ahmedabad, conducted by the officers of Central GST Audit, Ahmedabad, it was observed that the appellant sends inputs/raw materials to their sister concern M/s. Bhagwati Spherocast Pvt. Ltd., (hereinafter referred to as '*the job worker*') for job work. From 'Notes to Accounts' & 'Disclosure of related persons transaction' of the audited Balance Sheet for the F.Y. 2013-14, it was observed that;

- a) The job worker had earned an income of Rs.13,96,644/- & Rs.1,39,77,239/- during the F.Y 2012-13 & F.Y. 2013-14 respectively, towards machining of un-machined castings supplied by their principal manufacturer (i.e. the appellant).
- b) The appellant had sent un-machined cast articles for machining process on job work under the provisions of Notification No. 214/86-CE dated 25.03.1986.
- c) The job worker after carrying out the machining process returned the goods back to the appellant, who in turn removed the same on payment of appropriate central excise duty.
- d) The job worker charged service tax on the job work charges and the appellant in turn availed the CENVAT credit of service tax paid on such job work charges.
- e) The activity undertaken by the job worker is machining of the cast articles which is subsequently used for manufacture of dutiable final products by the appellant. The said activity does not attract service tax as it is exempted by virtue of Notification. No. 08/2005-ST dated 01.03.2005 (upto 30.06.2012) & Notification. No. 25/2012-ST dated 13.03.2012 for the period from 01.07.2012 onwards, therefore CENVAT credit of service tax paid on such job work charges appeared to be inadmissible to the appellant.

Audit observed that the activity of machining of the cast articles does not attract service tax as the same is unconditionally exempted by virtue of Notification No. 08/2005-ST dated 01.03.2005 (upto 30.06.2012) & Notification No. 25/2012-ST dated 13.03.2012 with effect from 01.07.2012. Consequently, the amount charged and collected by the job worker cannot be considered as service tax / duty under Section 73 A of the Finance Act (F.A), 1944 and hence the CENVAT credit of tax paid on job work charges under Business Auxiliary Service was inadmissible to the appellant.

3. Based on audit observation, a Show Cause Notice (SCN for brevity) SCN No. III/DSCN/Bhagwati Autocast/99/2016-17 dated 14.07.2017 was issued to the appellant invoking extended period of limitation and proposing; recovery of CENVAT credit amount of **Rs.24,53,125/-** under Section 11A(4) of the Central Excise Act (CEA),



1944 read with the provisions of Rule 14 of the CCR, 2004; recovery of interest on aforesaid demand under Section 11AA of the CEA read with Rules 14 of the CCR, 2004. Imposition of penalty under Section 11A (1)(c) of the CEA, 1944 read with Rules 15 (2) of the CCR was also proposed. The said SCN was adjudicated by the adjudicating authority vide the impugned order, wherein he confirmed the demand of CENVAT credit amount of Rs.24,53,125/- alongwith interest and imposed equivalent penalty of Rs.24,53,125/- under the relevant provisions.

4. Aggrieved with the impugned order, the appellant preferred the present appeal, mainly on following grounds:-

- a. Notification No. 08/2005-ST dated 01.03.2005 is a conditional notification as it provides option to the job worker to either avail exemption or to pay service tax on job work activities. The job worker in the instant case has opted to pay the service tax and the credit of the same was passed to the appellant on prescribed documents, hence the credit cannot be denied on the ground that job work activities are exempted. When the payment of service tax is not disputed, the credit availed on cenvatable documents prescribed u/r 4 & 9 of the CENVAT Credit Rules (CCR), 2004, cannot be denied. Reliance has been placed on 2017 (47) STR 79 (Tri-Del), 2015(40) STR 499 (Tri-Del).
- b. Though the facts were in the knowledge of the department, SCN for the period 01.12.2012 to 30.06.2014 was issued on 14.07.2017, hence the demand is time barred.
- c. The issue involves interpretation of exemption notification, hence penalty u/s 11AC not invocable. Reliance placed on 2007(210) ELT 84 (Tri-Ahd); 2007(207) ELT 241 (Tri-Bom); 2005(187) ELT 119, 2015 (322) ELT 198.

5. Personal hearing in the matter was held on 17.09.2021 through virtual mode. Shri Vipul Khandar, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and those made in the additional submissions made during hearing.

6. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as at the time of personal hearing and evidences available on records. The issue to be decided under the present appeal is whether the credit of service tax paid on job work charges is admissible to the appellant.

7. It is observed that the credit of service tax paid by the appellant on job work activity covered under Business Auxiliary Service was disallowed by the department on the grounds that the appellant was not liable to pay service tax as the said activity were exempted under Notification No.08/2005-ST and Notification No.25/2012-ST, which granted absolute exemption. The appellant on the other hand have contended that both the said notifications provide for conditional exemption, therefore, when

the job worker has opted to pay the service tax, the credit of such tax paid and passed to the appellant on prescribed documents, cannot be denied.

8. After going through the facts on records, I find that the appellant were sending goods to their sister concern M/s. Bhagwati Spherocast Pvt. Ltd, for job work activity of machining the cast articles. The job worker after carrying out the required process returned the goods to the appellant (principal manufacturer) who in turn used these processed goods in the manufacture of their finished product and these finished goods were subsequently cleared on payment of excise duty. There is no ambiguity that the job worker is working upon raw materials to complete the processing of goods for the appellant and such activity is covered under the scope of 'Business Auxiliary Service' defined sub-clause (v) of clause (19) of erstwhile Section 65 of the Finance Act, 1994. These are undisputed facts.

8.1 Now, to examine whether the job worker was required to pay service tax on said activity and whether the credit of such tax paid was admissible to the appellant or not, relevant extract of Notification No. 8 of 2005, dated 1-3-2005 and Notification No. 25/2012-ST dated 20.06.2012 are reproduced below;

Notification No. 8 of 2005, dated 1-3-2005;

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act

Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.

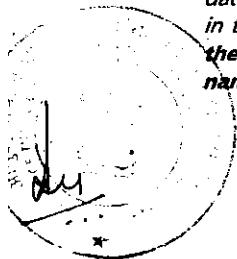
Explanation - For the purpose of this notification, -

(i) the expression "production of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt."

Notification No. 25/2012-ST dated 20.06.2012;

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-



1. *Services provided to the United Nations or a specified international organization;*
2. *Health care services by a clinical establishment, an authorised medical practitioner or para-medics;*

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; ormetals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);*
- (c) ***any goods on which appropriate duty is payable by the principal manufacturer; or***
- (d) *processes of electroplating, zinc plating, during the preceding financial year;*

On plain reading of above notifications, I find that in terms of Notification No. 08/2005-ST dated 01.03.2005, the job work which does not amount to manufacture was exempted from payment of service tax, provided the job worked goods are further used in the manufacture of final products on which appropriate duty of excise is discharged by the principal manufacturer. Subsequently, vide Notification No. 25/2012-ST dated 20.06.2012, with effect from 01.07.2012, as per S.no.30(c), carrying out any intermediate production process as job-work in relation to any goods on which appropriate duty is payable by the principal manufacturer was exempted from the whole of service tax leviable under Section 66B.

8.2 Both these notification have been issued under Section 93(1) of the Finance Act, 1994 and exempt the taxable services of processing/production of goods on behalf of the principal manufacturer from the whole of service tax leviable under Section 66 of the Finance Act. In terms of proviso to Notification no.08/2005-ST, exemption to taxable service of production of goods on behalf of the client shall apply only in cases;

"where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable."

Similarly, mega exemption notification grants exemption, provided appropriate duty is payable by the principal manufacturer. Thus, the exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client (principal manufacturer) and goods so produced are returned back to the said client for use in or in relation to the manufacture of other goods on which appropriate duty of excise is payable. Therefore, the exemption granted under the said notification is conditional as the applicability of this notification shall be subject to the condition stipulated therein. Any job worker, who undertakes services of processing, is not free to avail the benefit of the said notification unless the recipient of the services pays appropriate duty of excise on the goods returned back by the job worker. The payment of appropriate duty of excise, by the recipient i.e., the principal manufacturer, is a pre-requisite for availing the benefit of the notification by the job worker. Therefore, the condition stipulated in the notification establishes that

it is a conditional notification. If the job worker is not sure whether the principal manufacturer will discharge his duty liability, he is free to opt not to avail the exemption and pay appropriate service tax. In the instant appeal, the job worker exercised his option not to avail the benefit of said Notification, instead discharged his service tax liability and passed on the credit, which I find he was free to do so.

8.3 Further, the adjudicating authority while denying the credit has also relied on Board's Circular No. 940/01/2011-CX., dated 14-1-2011 wherein board in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, clarified that the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the Cenvat credit of the duty paid on inputs. I find that both Notification No. 08/2005-ST and No. 25/2012-ST, were issued under Section 93(1) of the Finance Act, 1994 and not issued under Section 5A (1A) of the CEA, 1944, therefore, the clarification of the said circular cannot be applied to the present case. The Hon'ble High Court of Karnataka in the case of *CCE, Bangalore-II vs M/s. Federal Mogul TRP India Ltd. [2016 (334) ELT 476 (Kar.)]* also held that Section 5A(1A) of Central Excise Act, 1944, cannot be made applicable to service tax as there is no specific provision akin to Section 5A(1A) in Finance Act, 1994. The relevant portion of the order is reproduced below:-

" 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."

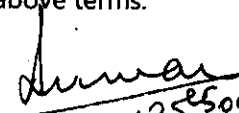
9. The appellant have also placed reliance on the decision of CESTAT Principal Bench, New Delhi passed in the case of SKS Ispat and Power Ltd reported at **2017(47)STR 79**, wherein hon'ble Tribunal held that Notification No.8/2005-S.T., dated 1-3-2005, provides option to the job worker either to avail the exemption or to pay the service tax on the job work activities. When job worker paid Service Tax and issued valid cenvatable documents to the respondent prescribed under Cenvat credit scheme, credit cannot be denied on the ground that the job work activities were exempted from payment of service tax in terms of the above notification.

10. In view of the discussions held supra, I find that both, Notification No. 08/2005-ST and Notification No. 25/2012-ST, are conditional notifications hence the provisions of Section 5A (1A) of the Central Excise Act cannot be made applicable to the facts of the present case, in view of the above judicial pronouncements. When

there is no compulsion on the job worker to avail the exemption notification unlike the notifications issued under Section 5A (1A) of the Central Excise Act, department cannot force the job worker to opt for an exemption notification thereby denying the credit to the appellant unless it is mandatory to be availed as in Section 5A (1A) of the Central Excise Act. In the absence of such mandatory requirement to avail the benefit of exemption notification, the job worker is free to opt and charge service tax on job work activities. In the present case, the job worker has opted to pay the service tax and upon payment of service tax, the credit was passed on to the appellant through valid documents prescribed under Cenvat credit scheme. Since the appellant has taken the Cenvat credit, on the basis of the proper documents, the same cannot be denied. I therefore, find that there is no contravention of the provisions of Rule 3 and Rule 9(6) of the CCR, 2004, as the credit was taken on the basis of the proper documents. Consequently, I find that the demand confirmed on the above grounds is not sustainable on merits. When the demand is not legally sustainable, question of interest and penalty does not arise.

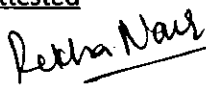
11. In view of the above, I set-aside the impugned order and allow the appeal filed by the appellant.

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


(Akhilesh Kumar)
Commissioner (Appeals)

Date: .10.2021

Attested


(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Bhagwati Autocast Pvt. Ltd.,
Survey No. 816
Village Rajoda Near Bavla
Ahmedabad

(Appellant)

The Assistant Commissioner,
CGST, Ahmedabad North
Ahmedabad-380009

(Respondent)

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File

