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
☎ 26305065-079 : टेलेफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20211264SW0000111C73

स्पीड पोस्ट 5190 TO 5194

क फाइल संख्या : File No : GAPPL/COM/CEXD/02/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad.

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-45/2021-22**
दिनाँक Date : **30.11.2021** जारी करने की तारीख Date of Issue : **17.12.2021**

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

ग Arising out of Order-in-Original No. **23/ADC/2020-21/MSC dated 22.10.2020**, passed by the Additional Commissioner, Central GST & C. Ex., Ahmedabad North.

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Sheelpe Enterprises Pvt. Ltd., S. No. 316, CSD Depot Road, Off: Airport Road, Hansol, Ahmedabad-382475.

Respondent- Additional Commissioner, Central GST & Central Excise, Ahmedabad North.

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 revis on 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 n 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 केया 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 हैं।

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 s in dispute."

ORDER-IN-APPEAL

The Assistant Commissioner, CGST & Central Excise, Division-I, Commissionerate-Ahmedabad North (hereinafter referred to as the '**Department**'), in pursuance of the Review Order No.46/2020-21 dated 09.12.2020 issued by the Commissioner, CGST & Central Excise, Ahmedabad-North, has filed this appeal against the Order-in-Original No. 23/ADC/2020-21/MSC dated 22.10.2020/26.10.2020 (hereinafter referred to as the "**impugned order**") passed by the Additional Commissioner, CGST & Central Excise, Commissionerate-Ahmedabad North (hereinafter referred to as the "**adjudicating authority**") in the matter of M/s. Sheelpe Enterprise Pvt. Ltd., Survey No. 316, CSD Depot Road, Off Airport Road, Hansol, Ahmedabad-382475 (hereinafter referred to as the "**respondent**").

2. Facts of the case, in brief, are that the respondent is engaged in the manufacture of "AAVA" brand "Mineral Water" falling under CETH No. 22011010 of the first schedule to the Central Excise Tariff Act, 1985 and holding Central Excise Registration No. AAMCS3376CEM001. During the audit of the records of the appellant by the officers of Central Excise, Audit Section, erstwhile Ahmedabad-II Commissionerate, it was observed that the appellant had cleared their finished goods after paying duty from their factory at Ahmedabad to their Mumbai Branch, by way of branch transfer, and further sale was effected from the branch of the appellant at Mumbai. Subsequently, a Show Cause Notice F. No. V.22/15-43/OA/2015 dated 28.04.2015 was issued to the appellant by the Additional Commissioner, erstwhile Central Excise, Ahmedabad-II vide which (i) it was proposed for rejection of the assessable value of finished goods declared by the respondent in their invoices for clearance of finished goods from their factory premises at Ahmedabad to Mumbai Branch and to determine the assessable value under the provisions of Section 4(1)(b) of the Central Excise Act, 1944 read with provisions of Rule 7 of the Valuation Rules, 2000; (ii) demand was raised for Central Excise duty amounting to Rs. 30,08,516/- under Section 11A(5) (erstwhile proviso to Section 11A(1)) of the Central Excise Act, 1944) alongwith Interest under Section 11AA (erstwhile Section 11AB) of the Central Excise Act, 1944; (iii) Confiscation of the goods was proposed under Rule 25 of the Central Excise Rules, for clearing the goods by not paying proper amount of Central Excise duty by resorting to undervaluation and Penalty was also

proposed under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

2.1 Thereafter, the said Show Cause Notice dated 28.04.2015 issued to the respondent was adjudicated by the Joint Commissioner, erstwhile Central Excise, Ahmedabad-II (hereinafter referred to as the "**original adjudicating authority**") vide OIO No. 22/JC/2016/GCJ dated 14.10.2016 (issued on 10.11.2016) vide F.No. V.22/15-43/OA/2015 dated 14.10.2016 (herein after referred to as the "**original adjudication order**"), as briefly reproduced below:

(i) He rejected the assessable value of finished goods declared by the respondent in their invoices for clearance of finished goods from their factory premises at Ahmedabad to Mumbai Branch and the assessable value thereof was determined under the provisions of Section 4(1)(b) of the Central Excise Act, 1944 read with provisions of Rule 7 of the Valuation Rules, 2000.

(ii) He confirmed the demand of Central Excise duty amounting to Rs. 30,08,516/- under Section 11A(5) (erstwhile proviso to Section 11A(1)) of the Central Excise Act, 1944 alongwith Interest under Section 11AA (erstwhile Section 11AB) of the Central Excise Act, 1944.

(iii) He imposed penalty of Rs. 2,58,794/-pertaining to period prior to 08.04.2011 and also of Rs. 13,74,861/- for the period after 08.04.2011 on the respondent under erstwhile Section 11AC of the Central Excise Act, 1944 and erstwhile Section 11AC(1)(b) of Central Excise Act, 1944 respectively.

2.2 Being aggrieved with the said original adjudication order, an appeal was filed by the respondent with the Commissioner (Appeals). The said appeal was disposed off by the then Commissioner (Appeals), Central Tax, Ahmedabad (hereinafter referred to as "the **original appellate authority**") by issuing OIA No. AHM-EXCUS-002-APP-173-17-18 dated 21.11.2017/28.11.2017 (hereinafter referred to as "the **original appellate order**") and wherein it was ordered that:

"Therefore, the appeal is allowed by way of remand to enable the appellant to furnish all the required facts and figures to the department as requisitioned and to provide all the evidences it wishes to rely on in order to enable proper appreciation of its claim and contentions."

2.3 Thereafter, the matter remanded back to the adjudicating authority was taken up for denovo consideration by the adjudicating authority in

terms of the directions of the original appellate authority and decided vide issuance of impugned order. The adjudicating authority vide the impugned order dropped the proceedings initiated vide Show Cause Notice F. No. V.22/15-43/OA/2015 dated 28.04.2015 related to the original adjudication order issued against the respondent.

3. Being aggrieved with the impugned order, the Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order:

3.1 The directions given by the original appellate authority as per the original appellate order have not been complied by the adjudicating authority, in as much as no findings with regard to cost components of the assessable value are discussed in the impugned order. The adjudicating authority should have examined the invoices issued by the respondent both from their factory at Ahmedabad and Mumbai Branch to decide the assessable value. Orders arisen on account of denovo proceedings without compliance to the directions of higher forum cannot serve the purpose of the proceedings.

3.2 The adjudicating authority has agreed to the respondent's contention that the Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 can be made applicable in the present case. However, he has erred in accepting the respondent's contention that the value at which their product was cleared from their factory at Hansol, Ahmedabad and cleared from their Mumbai Branch were the same, especially when the price variation was quite significant. The contention of the respondent can be agreed upon only after verification of substantial evidence provided by them. However, in the present case, the only invoice/bill no. 668 is perused and relied upon by the adjudicating authority. The demand has been dropped by merely relying on the oral/written submissions made by the respondent without actually verifying the cost components and ensuring that no cost component that is to be legally includible for payment of duty has escaped the assessable value. Accordingly, the impugned order passed by the adjudicating authority is incomplete and a non-speaking one as the same fails to stand the test of legality, fairness and reason.

3.3 The respondent has failed to comply with the directions of the original appellate authority. Despite repeated requests, the respondent failed to produce relevant documents for thorough verification at the Range/Division Office level, to enable the

department to arrive at the correct valuation. The clearance from the Mumbai Branch of the respondent came to the notice of the department only during the course of audit and the respondent has also failed to adduce any evidence to accept their contention that the entire differential value pertained only to Octroi, local transportation, Hamali charges, Union charges etc., which were all incurred towards delivery of the goods to the premise of buyers after clearance from their Mumbai Branch. The respondent at every point of time has been found reluctant to produce supporting documents to substantiate their claim, thereby indulging in a well-planned delaying tactic to misguide the department.

4. Personal Hearing in the case was held on 26.10.2021 through video conferencing. Shri Behram Mehta, Director, and Shri R. Subramanya, Advocate, appeared on behalf of the respondent. They re-iterated submissions made in written reply dated 25.10.2021 filed as cross-objection to appeal. The respondent has submitted their cross objection dated 25.10.2021 as below:

(i) Their sale was only from factory and not from their Mumbai Branch but only the delivery was done from the Mumbai Godown. In short, large truck load was broken up into small tempo loads for making piecemeal small delivery. The sale and contract happened only at factory gate, not at Mumbai.

(ii) The storage done at the Mumbai makeshift transit godown, is only temporary, and only to ensure swift and timely small deliveries and supply of their water bottles, to their customers at Mumbai. All contracts are already signed and contracted well in advance from Ahmedabad and then finally small delivery happened.

(iii) The rate on which duty was paid, was fixed in the beginning of the contract with the customer and the same remains till the same was revised. The duty was paid on the value at the factory gate, the cost of transportation and other miscellaneous expenses incurred, was not includible in the assessable value. Even though they were supplying the goods to their customers, at their place, the rate agreed upon with them was only at the factory gate on which duty was paid. It was only their own arrangement, to temporarily transit it at the makeshift godown at Mumbai, to ensure quicker delivery to their customers.

(iv) After the goods were cleared from their factory to the buyers premises the only expense that was incurred by them for making arrangements to ensure that the goods cleared from their factory to the customer's premises was local transportation from make shift office to client's destination, floor unloading charges at client doorstep, octroi, union charges, hamali charges and VAT. All the above charges keep fluctuating throughout the year and the price at which the goods were to be supplied to their various clients were fixed for a certain rate. Thus, the amount considered by the department to ascertain the differential amount of duty was nothing but the transport hamali and miscellaneous cost that is incurred by them from their makeshift transfer office to make the goods available to their clients.

(v) The department has nowhere pointed out that they have charged as price, any amount from our buyers towards advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter and the only amount that was charged by them is towards either transportation, hamali or octroi charges, which has been well intentionally not mentioned in the definition of transaction value as defined under Section 4(1)(a) of the Central Excise Act, 1944. Therefore, the allegation of rejecting their assessable value in the Show Cause Notice was illogical, baseless and beyond the purview of law and as such the same was required to be set aside.

(vi) It was explained to the auditors that the price at which the goods were cleared from the factory and the price at which the goods cleared from the makeshift office was one and the same and the only differential figure that was apparent on verification of invoices cleared from their makeshift office pertains to unloading into smaller vehicles, Octroi and local transportation charges, hamali, union charges, floor loading etc. from the makeshift office to the buyer's premises. The department could also have derived the figures related to such expenses from their books of accounts and by reducing the said from the total invoice, it could have been known that the expenses would be equivalent to the cost of expenses which have been alleged to be additionally recovered by them from their buyers. The allegation made by the audit officers was therefore required to be discarded

in interest of justice as per settled law of Hon'ble Supreme Court vide landmark Ispat Judgement.

(vii) In respect of makeshift godown at Mumbai, the registration was obtained with Sales Tax department at Mumbai, as a NON-RESIDENT DEALER, and the principal place of business was shown as that of the factory address located in Hansol, Gujarat. Therefore, in other words, the sale having taken place at Gujarat.

(viii) They have sold the goods at factory gate only on the basis of the purchase orders based on contracted fixed price for quantity with specifications. Once the purchase order is finalized at already agreed contracted rate, then only the goods are dispatched from the factory at Gujarat. The assessable value on which duty is paid is inclusive of all the expenses upto the Mumbai makeshift godown. They also submitted detailed calculation year wise, duly certified by the Chartered Accountant who is their statutory auditor.

(ix) It can be seen from Section 4(1)(a) of the Central Excise Act, 1944 that the assessable value is the transaction value, in a case where the goods are sold for delivery at the time and place of removal and the buyer and the assessee are not related. The dispute in the present case is confined to the issue as to whether a transit location (NRE Branch in Mumbai) where the goods are merely stored prior to their delivery can be considered as the place of removal.

(x) Since all the sales in question have been made only at the factory and there is no sale which is made or solicited from the transit location. In this background, the transit location cannot be considered as depot/premises of a consignment agent/any other premises, from where the excisable goods are to be sold after their clearance from the factory and accordingly, transit location is not covered under the definition of 'Place of removal" in terms of Sr. No. (iii) of Section 4(3)(C) of the Act.

(xi) They relied upon the following judgements, wherein it is held that the post clearance expenses are not includible in the assessable value.

- CCE Vs. Ispat Industries Ltd. [2015 (318) ELT 613 (SC)]
- DCM Hyundai Ltd. Vs. CCE [2017 (358) ELT 785 (Tri. Chennai)]

- CRI Pumps Pvt. Ltd. Vs. CCE [2017 (351) ELT 297 (Tri. Chennai)]
- Stove Industries Ltd. Vs. CCE [2016 (344) ELT 1035 (Tri. Ahmd)]
- Flaktwoods ACS (India) Pvt. Ltd. Vs. CCE [2016 (341) ELT 404 (Tri. All)

(x) Any cost/incurred post the principal place of business, i.e. Hansol, Gujarat, cannot be added to the assessable value. Therefore, the entire demand is not at all sustainable and is liable to be set aside. The Ld Adjudicating Authority has correctly set aside the demand and we pray that the appeals filed by the department may be set aside.

5. I have carefully gone through the facts of the case, grounds of appeal, submission given by the respondent as cross objection to appeal and the oral submissions made at the time of personal hearing. It is observed that the issue to be decided in the present case are as under:

(i) Whether the impugned order issued by the adjudicating authority, as per the directions contained in OIA No. AHM-EXCUS-002-APP-173-17-18 dated 28.11.2017 for denovo consideration, dropping the proceedings initiated vide Show Cause Notice F. No. V.22/15-43/OA/2015 dated 28.04.2015 against the respondent is legally proper or otherwise?

The demand pertains to period April, 2010 to December, 2014.

6. In the present appeal, the first contention of the department is that the directions given by the original appellate authority as per the original appellate order have not been complied by the adjudicating authority, in as much as no findings with regard to cost components of the assessable value are discussed in the impugned order. It has been further contended that the adjudicating authority should have examined the invoices issued by the respondent both from their factory at Ahmedabad and Mumbai Branch to decide the assessable value. Orders arisen on account of denovo proceedings without compliance to the directions of higher forum cannot serve the purpose of the proceedings.

6.1 The department has also contended that "the adjudicating authority has erred in accepting the respondent's contention, that the value at

which their product was cleared from their factory at Hansol, Ahmedabad and cleared from their Mumbai Branch were the same, especially when the price variation was quite significant. The contention of the respondent can be agreed upon only after verification of substantial evidence provided by them. The demand has been dropped by merely relying on the oral/written submissions made by the respondent without actually verifying the cost components and ensuring that no cost component that is to be legally included for payment of duty has escaped the assessable value".

6.2 As regards the said contention of the department, to examine the issue in the proper perspective, it would be imperative to first go through original appellate order issued by the original appellate authority. Accordingly, I have gone through the original appellate order and find that:

- The appellant (respondent of the present case) had given detailed arguments in the appeal memorandum filed before the original appellate authority, claiming that the expenses with regards to clearance of the goods ex-Mumbai Branch is not includible in the assessable value for payment of duty. As regards the said contention, it was observed by the original appellate authority that the original adjudicating authority has rejected the claim of the appellant holding that there was no basis to accept the contention that the entire differential value pertained only to the expenses of various kind incurred towards delivery of the goods to the buyer's premises after clearance of the same from the Mumbai Branch of the appellant. Further, he also taken note of the facts mentioned in paragraph 2.2 of the SCN that the requisitioned documents/details in support of their oral submissions had not been furnished by the appellant. Accordingly, the original appellate authority expressed his findings that " It is pertinent to note that a decision regarding valuation can be arrived at only on the basis of factual figures showing details of the various components of costing in order to decide what is to be included in the assessable value. In the case of Depot/Warehouse sale, it is settled law that the cost of transportation of the goods from the factory to the Depot is includable in the assessable value. The appellant claims that the same is included in the assessable value but no details have been provided with regards to the cost of components of the assessable value to prove their case. Even with regards to the value at which the appellant delivers the goods from its Mumbai Branch, the cost

components are to be verified and ensured that no cost component that is to be legally included for payment of duty has escaped the assessable value. The appellant is required to provide the entire details as requisitioned for thorough verification at the Range/Division office level to enable the department to arrive at the correct valuation and if required, re-work the demand for duty, interest and penalty within the four corners of the SCN".

- The original appellate authority further mentioned in the original appellate order that "The dispute arises on the basis of facts as to what has been included or not included in the assessable value. In paragraph 36.6 of the impugned order, the adjudicating authority has rejected the contention of the appellant that "the cost upto the Mumbai Branch office was included in the assessable value and that the excess charge in the invoices issued by the Mumbai Branch Office was towards transportation, handling etc." holding that these invoices does not show the bifurcation as to what is the amount charged towards the price of the goods, the excise duty element, the cost of transportation, handling etc. because only the lumpsum amount was shown as charged in these invoices. Thus, it is on record that the requisite information was not available at the time of scrutiny/adjudication indicating that the relevant factual details have escaped examination at the inquiry/adjudication level.

- The original appellate authority also mentioned that "the appellant has pointed towards an earlier investigation by the Department to claim that the department was aware of the valuation pattern and hence the demand was barred by limitation. Even this aspect requires examination".

- After having discussion as mentioned in the foregoing paras, the original appellate authority finally ordered vide the original appellate order that "the appeal is allowed by way of remand to enable the appellant to furnish all the required facts and figures to the department as requisitioned and to provide all the evidences it wishes to rely on in order to enable proper appreciation of its claim and contentions. The adjudicating authority may issue a reasoned order after providing the appellant sufficient opportunity to present its case, as provided in law."

7. Now, I have gone through the impugned order passed by the adjudicating authority. It is observed as per the facts recorded in the impugned order, the respondent has submitted certain year wise summarized details of the clearances and expenses during the period from 2010-11 to 2013-14. However, it is nowhere mentioned in the impugned order that any supporting documents like invoices, lorry receipts, vouchers, bills for misc. expenses etc. authenticating the abovementioned summarized details have been produced by the respondent before the adjudicating authority. Accordingly, I find that in absence of the supporting documents, the amount/details of the various components of costing submitted by the respondent as such cannot be accepted and no conclusion can be arrived at as to what is to be included in the assessable value only on the basis of the factual figures of the various components of costing.

7.1 Further, it is also observed that the original appellate authority has also mentioned in the original appellate authority that even with regard to the value at which the appellant delivers the goods from its Mumbai Branch, the cost components are to be verified and ensured that no cost component that is to be legally included for payment of duty has escaped the assessable value. I find that the adjudicating authority has neither mentioned anywhere in the impugned order that the nature and the cost of various components have been verified with the relevant documents nor produced any findings on this aspect.

7.2 Further, it is observed that the adjudicating authority at para-26 of the impugned shown details of the sample data in respect of Bill No. 668 dated 21.08.2010, as produced by the respondent. However, I find that there is nowhere mentioned that the respondent has produced the relevant documents in respect of the various cost component, which have been claimed to be deductible from assessable value and also, there is no such findings in the impugned order that the details of the cost components mentioned therein have been verified with the relevant documentary evidences. Further, the respondent has contended before the original adjudicating authority as well as before the original appellate authority that the cost upto the Mumbai Branch office was included in the assessable value and that the excess charge in the invoice issued by the appellant' Mumbai Branch office are towards Excise duty, VAT and other post clearance expenses viz. local transportation and such other charges.

Now, on going through the sample data in respect of Bill No. 668 dated 21.08.2020 submitted by the respondent, it is observed that the Assessable Value is shown as Rs. 182/- (which is as per the contention of the respondent, includes basic sale price and all expenses upto Mumbai Office which naturally included the transportation cost from factory at Ahmedabad to Mumbai) whereas the Transport charges (shown as post clearance expenses i.e. local transportation within Mumbai) is shown at Rs. 175/-. Accordingly, it is observed that the sample details submitted by the respondent, as mentioned in the impugned order are not justifiable and does not support the contention of the respondent.

Accordingly, I find that the adjudicating authority has mentioned his findings at para-27 of the impugned order that "*I find that most of the post clearances expenses from Mumbai Depot are related to Excise duty, VAT, Transport, Unloading Charges, Union Charges and misc. charges, which, in normal case, are not included in assessable value. Therefore, I agree with the submission of the noticee that these expenses are not includable in the assessable value*" are made without any verification with the documentary evidences and merely accepting the details, as such, submitted by the respondent which is neither justifiable nor proper. Hence, I am in agreement with the contention of the department that the adjudicating authority has erred in accepting the respondent's contention that the value at which their product was cleared from their factory at Hansol, Ahmedabad and cleared from their Mumbai Branch were the same.

7.3 Further, it is observed as per the details mentioned at Para-19 of the impugned order that the respondent has submitted a copy of Certificate date 04.10.2017 issued by the Chartered Accountant M/s. Amal Datt & Associates showing value of clearances from factory, duty paid and expenses incurred post clearances during the period from 2010-11 to 2013-14 and copy of the same has also been produced by the respondent alongwith their submission in cross-objection to the present appeal filed by the department. However, I find that the respondent has not produced any relevant documents, particularly in respect of amounts shown as 'Post clearance expenses' either before the adjudicating authority or during the present appeal proceedings. Further, I find that the adjudicating authority has neither produced any details in the impugned order about reconciliation of the said details conducted with the

figures shown in the Show Cause Notice nor any findings about the difference apparently being reflected between them. Hence, the conclusion arrived by the adjudicating authority are without any factual basis.

7.4 Further, it is also observed that as regards the contention of the respondent that "the demand in the present case is not sustainable as their case was investigated by the Preventive Wing and the Department was aware of their billing methods", the adjudicating authority at Para-31 of the impugned order mentioned his findings that "The department had not denied in the previous OIO that there was a scrutiny of their activity by the Preventive Wing. There are many case laws under which it was held that once the issue came to the notice of the department, extended period can not be invoked. Therefore, I hold that there is some truth in the contention of the notice that extended period can not be invoked in the present case".

As regards the said contention of the respondent, I find that the respondent has nowhere produced any documentary evidences, either at the time of adjudication or during appeal proceedings which shows that the scrutiny or investigation conducted by the Preventive Wing was related to the present issue or even withdrawn any such document which made them aware of the billing methods of the respondent. It is pertinent to note that any scrutiny or investigation may be done by the Preventive Wing on a specific task or verification on any specific aspect. Further, it is observed that the respondent has nowhere produced any supporting documentary evidences showing that the facts regarding the difference of the amounts viz. the assessable value declared at the time of clearance from factory at Ahmedabad and the amount for which the Invoice issued to the respective buyer from their branch at Mumbai, were known to the Preventive Wing of the department. Accordingly, I find that the adjudicating authority has not examined this aspect in its totality, while holding that the extended period can not be invoked in the present case. Hence, as regards the issue of invocation of extended period of limitation, I find it proper to remand back the same to the adjudicating authority to decide it afresh, after due scrutiny of the relevant documentary evidences.

8. Further, it is also observed that the respondent has also made contention that the sale of the goods has been taken place at the time of clearance from factory gate, at Hansol, Ahmedabad which is principal place of business and not from the Makeshift/Branch at Mumbai.

To examine the said aspect, I have gone through the copy of the documents submitted by the appellant and find as under:

- It is nowhere disputed by the respondent that the Invoices at the time of clearance from factory gate to Mumbai Branch, have been issued in the name of their own branch at Mumbai.
- The Invoices in the name of purchaser/consignee were issued from the Branch Office at Mumbai, at the time of delivery from the Mumbai Branch to such purchaser/consignee which contained the details of the consignor as Corporate Regd. office at Ahmedabad and Branch Address at Mumbai.
- The term 'Sale' is defined under Section 2(h) of the Central Excise Act, 1944 as, *""sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;".*
- The respondent is registered with Sales Tax/VAT department at Maharashtra under the provisions of Maharashtra Value Added Tax Act, 2002 as well as under the provisions of The Central Sales Tax (Registration & Turnover) Rules, 1957.
- The respondent was filing the 'Form of declaration in FORM 'F' under the provisions of The Central Sales Tax (Registration and Turnover) Rules, 1957, in respect of the goods transferred from their factory at Ahmedabad to Mumbai Branch Office. It is observed that filing of declaration in 'F' form itself evidencing that they have declared the goods as stock transfer from their principal place of business at Ahmedabad, Gujarat to their branch at Mumbai, Maharashtra and not by reason of sale. The relevant provisions of Section 6A (1) of the CST Act, 1956 and Rule 12(5) of the CST (Registration and Turnover) Rules, 1957 are reproduced as under:

  *"[**6A Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale***

  (1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and

signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods 2 [and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.]".

*"**Rule 12(5)**: The declaration referred to in sub-section (1) of section 6A shall be in Form F."*

In view of the above, I find that the contention made by the respondent that they have sold the goods at the factory at Ahmedabad at the time of clearance from there, is contrary to the facts and documentary evidences on record. Further, I also find that the respondent has produced copy of certain contracts/agreements done with respective buyers and also find that the said copies were also produced before the adjudicating authority during adjudication process, as mentioned at para-19 of the impugned order. I also find that the terms and conditions of any such agreement/contract needs to be considered so as to decide the terms i.e. 'point of sale' or 'place of removal', in respect of the relevant transaction and accordingly, to arrive at the correct assessable value. However, in the present case, it is observed that the adjudicating authority has neither mentioned anywhere in the impugned order that the conditions mutually agreed between the respondent and the buyers, as per the said agreements/contracts have been examined nor recorded any findings thereon.

Accordingly, in the present case, I find that the relevant documents and the agreements/contracts produced by the respondent, as discussed above, have not been examined by the adjudicating authority, while allowing the deduction of various components from the Invoice value and arriving at the conclusion that the Central Excise duty has been paid by the respondent on a correct assessable value.

9. Further, it is observed that the respondent has relied upon various judgements as mentioned in Para-4 (xi) above, wherein it is held that the post clearance expenses are not includible in the assessable value. In the present case, I find that the respondent has not produced the relevant documentary evidences substantiating their contention that the assessable value on which duty is paid is inclusive of all the expenses

upto the Mumbai makeshift godown and the differential figure that was apparent on verification of invoices cleared from their makeshift office are pertains to the post clearance expenses from the makeshift office to the buyer's premises. Accordingly, in the present case, I find that the facts and figures produced by the respondent are still not confirmed and needs to be verified with the relevant documents. Hence, I find that the said judgements relied upon by the respondent are of no relevance with the present case, at this juncture.

10. In view of the discussion made in the foregoing paras, I have come to a conclusion that the adjudicating authority has not recorded any findings with regard to the cost components of the assessable value in the impugned order or about any verification done of the facts submitted by the respondent with the relevant documentary evidences to examine whether any particular cost component is includable in the assessable value or not. Further, I find that the submission of the respondent that the assessable value, on which duty is paid, is inclusive of all the expenses upto the Mumbai makeshift godown, and the differential figure that was apparent on verification of invoices cleared from their makeshift office and on the basis of which the demand raised in the present case pertains to the post clearance expenses from the makeshift office to the buyer's premises has been accepted, as such, by the adjudicating authority in absence of any substantial documentary evidences and without conducting any verification thereof. Further, it is also observed that the copies of the agreements/contracts submitted by the respondent have also not been examined by the adjudicating authority, as regards the claims and contentions of the respondent for deduction of various components from the gross value for which Invoice raised by them to the buyers. Accordingly, I find that the relevant facts and figures have grossly escaped a proper examination at the level of adjudicating authority with the relevant documentary evidences while passing the impugned order.

11. Accordingly, I find that the impugned order passed by the adjudicating authority is not fair and legally sustainable. Further, I find that it would be appropriate to remand back the present case to the adjudicating authority to decide it afresh, after carrying out due verification of the facts and figures with the documentary evidences and examine all the relevant aspects, and to arrive at the correct valuation and

if required, re-work the demand of duty, interest and penalty within four corners of the SCN, following the principles of natural justice.

11.1 The respondent is also directed to furnish the relevant facts and figures to the adjudicating authority alongwith relevant documentary evidences to the satisfaction of the adjudicating authority, so as to enable him for proper verification and appreciation of the claims and contention made by the respondent.

12. In view of the above, I pass the following order:

(i) I set aside the impugned order passed by the adjudicating authority and remand back the matter to the adjudicating authority to decide it afresh, following the principles of natural justice. Accordingly, the appeal filed by the department is allowed.

13. The appeal filed by the department stands disposed off in above terms.

30 November, 2021.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: /November/ 2021

Attested

(M.P.Sisodiya)
Superintendent (Appeals)
CGST & CE, Ahmedabad

By Regd. Post A. D

1. The Assistant Commissioner — APPELLANT
   CGST & C.Excise, Div-I,
   Commissionerate-Ahmedabad North

2. M/s. Sheelpe Enterprise Pvt. Ltd., — RESPONDENT
   Survey No. 316, CSD Depot Road,
   Off Airport Road, Hansol,
   Ahmedabad-382475

Ccpy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST, Commissionerate-Ahmedabad North.
3. TheDeputy/Asstt. Commissioner, CGST, Division-I, Commissionerate-Ahmedabad North.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Commissionerate-Ahmedabad North.
5. Guard file
6. PA File