



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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स्पीड पोस्ट

CHSS-95

- क फाइल संख्या : File No : GAPPL/COM/CEX/114 to 116/2021 -Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-68 to 70/2021-22
दिनांक Date : 25.02.2022 जारी करने की तारीख Date of Issue : 28.02.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. 27/ADC/2020-21/MSC dated 11.12.2020, passed by the Additional Commissioner, Central GST & C. Ex., Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- 01. M/s. Hindustan Roofers Company, Plot No. 1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad.

02. Shri Yogesh K. Patel (Partner), Plot No. 1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad.

03. Nayan Kantibhai Patel (Authorized Signatory), Plot No. 1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad

Respondent-The 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 :

(i) 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।

(ii) 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 :

यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या 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।

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 दिनांक 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 -330004

(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 यथारिथति 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथारिथति 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 गगत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'बंभित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

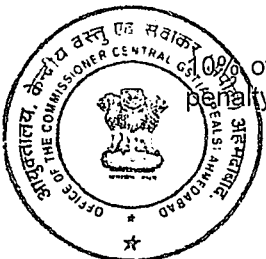
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

Following appeals have been filed against the OIO No.27/ADC/2020-21/MSC dated 11.12.2020 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (in short '*the adjudicating authority*'):

Sr.No.	Appeal No.	Appellants
01	GAPPL/COM/CEXP/114/2021	M/s. Hindustan Roofers Company, Plot No.1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad. (hereinafter referred as ' Appellant-1 ')
02	GAPPL/COM/CEXP/115/2021	Shri Yogesh K.Patel, Partner M/s. Hindustan Roofers Company, Plot No.1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad. (hereinafter referred as ' Appellant-2 ')
03	GAPPL/COM/CEXP/116/2021	Shri Nayan Kantibhai Patel, Authorized Signatory M/s. Hindustan Roofers Company, Plot No.1/8, Survey No. 398 & 399, New Ahmedabad Industrial Estate, Moraiya, Ahmedabad. (hereinafter referred as ' Appellant-3 ')

2. The facts of the case, in brief, are that during preventive search conducted at the premises of Appellant-1 on 02.12.2015, by the Preventive officers of erstwhile Central Excise Ahmedabad-II, it was noticed that Appellant-1, engaged in the manufacture of M.S. Profile Sheets from Galvanized Sheets / Coils by process of corrugation, cutting & bending, were evading central excise duty by misusing the Job Work Notification No.83/94-CE and Notification No.214/86-CE, as amended. For carrying out the above activity, they purchased and installed a profile and crimping/bending machine in the year 2014-15. They received materials i.e. Galvanized sheets, Galvanized Coil, PPGI Coil, Roofing Sheet Coil, mainly from M/s. Roshan Steel Corporation, M/s. Jay Hind Steel Syndicates and other local customers, who had not filed any declaration to Central Excise department to avail the benefit of Job Work Notification No.83/94-CE and Notification No.214/86-CE, as amended.

2.1 Further, investigation revealed that the suppliers use to send the raw material directly to Appellant-1 for corrugation and profiling. After corrugation, the finished goods i.e. M.S. Profile Sheets were returned to the respective customers/suppliers for which Appellant-1 raised job charges and the suppliers subsequently sold the product as such, without carrying out any further process. It was noticed that neither Appellant-1 nor the suppliers paid central excise duty on such finished goods. The finished goods were, therefore, seized under Supratnama dated 02.12.2015 and relevant documents / records were withdrawn under Panchnama dated 02.12.2015.



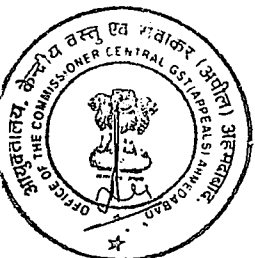
2.2 Statement of Shri Nayan Kantibhai Patel, Authorized Signatory and Shri Yogesh K.Patel, Partner, was recorded on 02.12.2015, under Section 14 of CEA, 1944. Follow up search at the premises of the main suppliers i.e. M/s. Roshan Steel Corporation & M/s. Jay Hind Steel Syndicates, Ahmedabad was also carried out. Statement of Shri Kantibhai V.Patel, (Partners & Authorized Signatory of M/s. Roshan Steel Corporation) and statement of Shri Jagjivan T.Patel, (Partner & Authorized Signatory of M/s. Jay Hind Steel Syndicates), were also recorded on 28.11.2017 & 17.10.2017, respectively.

2.3 It appeared that the entire manufacturing process involving profiling/corrugation was carried out at the factory of Appellant-1. Though the goods were sent back to the suppliers, no separate process, either prior or post corrugation was carried out by the suppliers, as they did not have any manufacturing facility. After receiving the goods from Appellant-1, the goods were subsequently cleared as such to their customers, without carrying out any further processing and without payment of duty. As the entire manufacturing process was carried out by Appellant-1 and since no declaration was filed before the jurisdictional Assistant Commissioner either by the supplier or by Appellant-1, the central excise duty was therefore proposed to be recovered from Appellant-1, on the value of the finished goods cleared by them.

2.4 A Show Cause Notice (SCN) No.V.73/15-66/OA/2018 dated 10.12.2018, was, therefore, issued proposing demand of central excise duty of Rs.98,56,592/- on the finished goods valued at Rs.7,90,26,325/- cleared for the period from 08.09.2014 to 02.12.2015 under Section 11A of the CEA, 1944. The demand of interest u/s 11AA, imposition of penalty u/s 11AC on Appellant-1 and imposition of personal penalty u/r 26 of the CER, 2002, on Appellant-2 (Shri Yogesh K.Patel, Partner) and Appellant-3 (Shri Nayan Kantibhai Patel, Authorized Signatory) was also proposed. The adjudicating authority, vide the impugned order, confirmed the demand of Rs.98,56,592/- alongwith interest. He imposed penalty of Rs.98,56,592/- u/s 11AC (1)(e) on Appellant-1 and also imposed personal penalty of Rs.5,00,000/- & Rs.1,00,000/- on Appellant-2 & Appellant-3 respectively.

2.5 Aggrieved by the impugned order, Appellant-1, Appellant-2 & Appellant-3 have filed the above appeals, contesting the OIO on the common grounds that;

- The OIA No. AHM-EXCUS-002-APP-229-230-17-18 dated 21.12.2017, relied by the adjudicating authority pertains to the same investigation covering the same issue but, by not following the said decision, the adjudicating authority has violated the principles of judicial discipline.
- The activity of corrugation or profiling activity requires galvanized sheets which were never received in their premises. Instead they have received color coated sheets, on which they carried out cutting and bending, which is not a manufacturing activity. They claim that there is vast difference in profile cutting and roll forming. In support of their argument they produced copies of invoices showing receipt of material and photographs of their finished goods. They claim that the machines available with them are not capable of conducting processes such as profile cutting or corrugation.
- The judgment of Hon'ble High Court of Punjab & Haryana in the case of M/s. Hansa Metallics Ltd. was not confirmed by the Apex Court (2008(224) ELT 342



(SC)), as the issue whether the activity of corrugation amounts of manufacture or not, was kept open, hence cannot be relied upon as the matter was not free from doubt.

- The extended period cannot be invoked as they were under bonafide belief that their activity does not amount to manufacture. They placed reliance on Hon'ble Tribunal's decision passed in the case of M/s. Sunil Metal Corporation reported at 2009 (16) STR 469.
- Job Work Notification No.83/94-CE and Notification No.214/86-CE, as amended shall not apply to their case as they were under bonafide belief that they were covered under Business Auxiliary Service (BAS), hence got registered for the said service and raised service tax invoices. They argued that for doing job work under service tax, no intimation is required to be filed.
- Service Tax was not paid and nil ST-3 returns were filed, as they were availing exemption upto Rs. 10 lakhs and after crossing this limit, they have charged Service Tax. Also the Service Tax registration was taken prior to date of starting such activity.
- Further, even if it is assumed that the said activity is excisable, they are eligible for CENVAT credit of the duty paid on raw material and had to discharge differential excise duty only on labour charges, on which rate of duty is @12%, whereas they have been raising service tax invoice and charging service tax @15% on labour component. Thus, they have been discharging more tax to the ex-chequer.
- Appellant-1 were under bonafide belief that the above activity was covered under Service tax and had been discharging service tax liability, therefore suppression cannot be alleged. They placed reliance on following case laws;
 - K.R.Packaging – 2017(51)STR 438
 - Osnar Chemicals Pvt. Ltd.-2009(240) ELT 115
- The raw material i.e. the color coated sheets itself are finished goods meant for roofing materials and were received in coil form & are cut in length as per the requirement of individual customer at the premises of Appellant-1. Sometimes, it is also bended at the end as per requirement but they never undergo any change in the characteristics of the product.
- All coils received by them are duty paid and even if the activity is considered as manufacturing, then they are eligible for CENVAT credit of duty paid on M.S.Sheets. Since they have paid service tax on cutting activity Appellant-1 are eligible for the adjustment of service tax paid as well as Cenvat on raw material used and also the benefit of SSI exemption should be granted to them, but this argument was ignored in the impugned order.

3. Personal hearing in the matter was held on 17.01.2021. Shri Nirav P. Shah, Advocate, appeared on behalf of the appellants. He reiterated the submissions made in the appeal memorandum. He also argued that extended period cannot be invoked as the issue was not free from doubt and that there was no intent to evade duty as they were already discharging service tax liability on the said activity.

Subsequently, the Advocate vide letter dated 22.01.2022, made additional submission wherein it was submitted that the color coated sheets received, were



manufactured by TATA Steel, Jindal Iron & Steel, SAIL, ESSAR etc and the activity of cutting, bending & grooving activity of these sheets does not amount to manufacture. He also submitted copy of purchase invoice of machine to show that the same was purchased on 24.08.2014 and prior to this Service Tax Registration was taken on 11.07.2014 under BAS, as they were under bonafide belief regarding chargeability of service tax on said activity. This fact, he claims, was even held by Commissioner (A) in the first round of litigation but ignored by the adjudicating authority which was in gross violation of judicial discipline. He also placed reliance on Hon'ble Apex Court's judgment in the case of M/s. Kamalakshi Finance Corporation - 1991(55) ELT 433 (SC).

4. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing and the additional submissions made vide letter dated 22.01.2022. The issue to be decided under the present appeal is whether process of corrugation/profiling, cutting & bending carried out by Appellant-1 amounts to manufacture and whether the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise?

5. It is observed that the adjudicating authority, by placing reliance on the judgment of Hon'ble High Court of Punjab & Haryana in the case of M/s. Hansa Metallica Ltd. (2001 (133) ELT 543 (P&H)), held that the process of profiling/corrugation carried out by Appellant-1 amounts to manufacture in terms of the definition contained in Section 2(f) of the CEA, 1944. He further held that the complete manufacturing process was carried out by Appellant-1 as their suppliers were not equipped with any manufacturing facility to carry out any process either prior to or after corrugation/profiling done by Appellant-1. He held that as the supplier/principal manufacturer of Appellant-1 has not filed any declaration to get the job work exemption, therefore, the exemption is not available to Appellant-1 and in the event the liability to pay central excise duty shall be on Appellant-1 who carried out the above manufacturing process. Appellant-1, on the other hand, is contending that the activity of corrugation or profiling requires galvanized sheets which were never received in their premises. They claim that they instead received color coated sheets, on which they carried out cutting and bending, which is not a manufacturing activity even otherwise the machines available with them are not capable of conducting processes such as profile cutting or corrugation. They also claimed that the prior to purchase of the machine, they took service tax registration, which explain their bonafide intentions to pay service tax.

5.1 I find that both the demand notice and the impugned order have placed strong reliance on the decision of Hon'ble High Court of Punjab & Haryana in the case of Hansa Metallica Ltd reported at 2001(133) ELT 543 (P&H), wherein hon'ble High Court dismissed the writ petition and held that the process of corrugation of metallic sheets undertaken by the petitioner brings into existence a new product having different commercial identity, marketability and use. This judgment was appealed before Apex Court and was admitted as reported at [Hansa Metallica Ltd. v.



Union of India – [2003 (156) E.L.T. A328 (S.C.)]. Further, I find that in the case of Vardhman Industries Ltd. Vs CCE, Chandigarh reported at 2008 (224) ELT 342 (SC), also on similar issue, the above judgment of Hon'ble High Court of Punjab & Haryana was challenged and the hon'ble Apex court directed the adjudicating authority to *de novo* decide the matter in accordance with law uninfluenced by the judgment of the Punjab and Haryana High Court in *Hansa Metallics Ltd.* Thus, the issue whether the process of corrugation of metallic sheets amounts to manufacture, defined under Section 2(f) of the CEA, 1944, is still under consideration by the Apex Court.

5.2 Further, I have also gone through the OIA No. AHM-EXCUS-002-APP-229-230-17-18 dated 21.12.2017, covering the issue under dispute of the same appellants. I find that the then appellate authority remanded the case to the adjudicating authority to ascertain whether the activity carried out by Appellant-1 amounts to manufacture and whether leviable to central excise duty. He however, made certain observations while remanding the case, which is reproduced below;

"6. I find that, the adjudicating authority has observed that the appellants are doing job work only and they are paying service tax on job charges. However, neither the supplier of coils nor the appellants have filed declarations/intimations of job work with the Excise Authority. In this regard, it is submitted that in cases where the process does not amount to manufacture, there is no need to file declaration or to intimate Excise Authority. Hence, observation made in Para-18 of the OIO is uncalled for and devoid of merits. Further, in Para-19, the adjudicating authority has relied upon Sec.2(c) and Sec. 2(f) of the Central Excise Act. Further, with reference to 2(f), that the Authority has at all not discussed the applicability of Sec. 2(f) with the activities undertaken at the end of present appellants. Hence, the lower authority has failed to appreciate the factual aspects of the case. Therefore, the order is not sustainable and requires to be quashing and set aside.

7. Further, I find that All raw material for the processes is received from large scale manufacturers and hence, the raw material is excise duty paid. In such facts, even assuming the departmental view to be true, if the appellants would have taken registration with excise authority, they would have availed CENVAT on raw material and would have paid differential excise duty on conversion cost. Hence, as a matter of fact, they would have ended paying lesser duty to the exchequer than service tax which is actually paid. Hence, it was a bonafide belief on the part of appellants.

8. I find that, the appellant receives Color-coated coils which are used as roofs. These coils are meant to be used as roofs as per their IS Specification and are manufactured by large scale manufacturers such as Jindal, TISCO, SAIL, etc. The appellants procure these coils and do de-coiling, bending and cutting of the coils. The coils are meant to be used as roofing material and the appellant do the cutting into length of coils as per the requirement of the customer. The width of the coil remains unchanged. For the purpose, the appellant have one machine installed in their premises. Sometimes, they also do bending of these cut-length sheets. However, the fact remains that besides cutting and bending none other operations are done at the appellants' premises. I find that, the aforesaid facts are undisputed and have been noted in the SCN.

9. I find that, the department is of the view that as perforation is being applied, the article changes its identity and characteristics and by way of perforation, a new commodity comes into existence. It is submitted that the material can be used as Roof without any further process. Cutting is applied only to suit customer's requirement of length, width etc. I find that, the appellants have taken registration with Service Tax Authority under Business Auxillary Service, a month prior to starting their operation. The appellant entertained a firm bonafide belief that the activity does not amount to manufacture and leviable to service tax. In the aforesaid



facts, I find that there was no intention to evade duty by way of clandestinely removing roofing sheets. The entire goods seized are received by the customers on valid duty paying invoices and the appellants have also issued cutting labour bills for all prior clearances, hence all goods have been accounted in the books of the customers and it was to be removed on valid service tax payable invoices. I find that when goods cannot be confiscated under Rule-25 when the same were accounted in the books of the Appellant, penalty and personal penalty on partner could not be imposed.

10. I find that, since in this case it is to be ascertained whether the said activity carried out by the appellant amounts to manufacture and whether leviable to Central Excise Duty, Therefore, I remand the case back to the original authority to examine it fresh and pass a speaking order after affording opportunity of personal hearing to the appellant, they will provide entire documents they wishes to rely upon within 30 days of receiving of this order"

On going through the above OIA, I find that there is no dispute that Appellant-1 was doing job-work however, whether the job-work activity carried out by appellant was a manufacturing activity or not was required to be ascertained. It is also not disputed that Appellant-1 was registered under Business Auxiliary service and were filing ST-3 Returns. The goods seized are received by their suppliers/customers on valid duty paying invoices and the appellants have also issued cutting labour bills for all prior clearances hence, all goods have been accounted in the books of the customers and it was to be removed on valid service tax payable invoices. They raised invoices charging service tax after crossing the threshold limits. Since, the taxable value declared in their statutory returns were never challenged by the department, so taking a plea that Appellant-1 was not required to pay service tax and instead should have discharged the central excise duty, appears to be flawed.

5.3 From the depositions made by suppliers Shri Kantibhai V.Patel (Partners & Authorized Signatory of M/s. Roshan Steel Corporation) & Shri Jagjivan T.Patel, (Partner & Authorized Signatory of M/s. Jay Hind Steel Syndicates), I find that Appellant-1 were receiving pre-painted Mild Steel Sheets, galvanized sheets, galvanized Coil, PPGI Coil, Roofing Sheet Coil under delivery challan from their suppliers, on which they did cutting, bending and corrugation/profiling as per required size. If the process undertaken by them amounts to manufacture then they would be liable to pay duty of excise on the goods so manufactured, unless the principal manufacturer who has supplied the goods to them for job work, furnishes a declaration under Notification No. 214/86 dated 25.03.1986, which exempts goods manufactured by a job worker, from duty of excise provided, the said goods after job work are returned to the principal or cleared for export or cleared for home consumption on payment of duty of excise. Where the goods are returned to the principal, the principal should either clear it on payment of duty or use it in his manufacturing process which should result in a dutiable product being manufactured. In the instant case, I find that the Mild Steel Sheets, galvanized sheets, galvanized Coil, PPGI Coil, Roofing Sheet Coil were supplied by their suppliers, who obtained these goods on payment of duty from large scale manufacturers such as Jindal, TISCO, SAIL, JSW etc. These goods, after being processed by Appellant-1, were sent back to their suppliers, who subsequently cleared them to their customers. Therefore, the allegation that Appellant-1 cleared the goods appears without any basis while the goods were actually sent back to the supplier. Further, I also find that Appellant-1 was collecting service tax on the said activity under the bonafide belief that the process



carried out by them was not a manufacturing activity. Where the process does not amounts to manufacture then service tax was levied under 'Business Auxiliary Service' on such activity of production or processing of goods for, or on behalf of the client. The liability in terms of job work arises where the processing is done for the client. In the instant case the activity of profiling /corrugation was carried out as per the requirement of their suppliers and goods were returned to them. The fact that Appellant-1 was raising labour charges and collected service tax after crossing threshold limit was not examined by the adjudicating authority. Thus, I find that the facts pointed out by the then Commissioner (A) was not examined while deciding the issue. Therefore, I remand the case back to the original adjudicating authority to re-examine the issues considering the aspects discussed above, and pass a speaking order after ascertaining correct factual position in the case and merits in the contentions of the appellant.

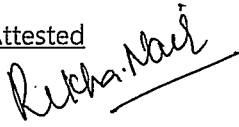
6. The appellant is directed to submit all the relevant documents and details to the adjudicating authority including those submitted in the appeal proceedings, in support of their contentions. The adjudicating authority may decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.

7. In view of the above discussions and findings, the appeal filed by Appellant-1, Appellant-2 and Appellant-3, stand disposed off, in above terms.


Ardhillesh Kumar
Commissioner (Appeals) 25th February 2022

Date: 2.2022

Attested


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



By RPAD/SPEED POST

To,

1) **M/s. Hindustan Roofers Company,** -
Plot No.1/8, Survey No. 398 & 399,
New Ahmedabad Industrial Estate,
Moraiya, Ahmedabad.

Appellant-1

2) **Shri Yogesh K.Patel, Partner** -
M/s. Hindustan Roofers Company,
Plot No.1/8, Survey No. 398 & 399,
New Ahmedabad Industrial Estate,
Moraiya, Ahmedabad.

Appellant-2

- 3) **Shri Nayan Kantibhai Patel,** - **Appellant-3**
Authorized Signatory
M/s. Hindustan Roofers Company,
Plot No.1/8, Survey No. 398 & 399,
New Ahmedabad Industrial Estate,
Moraiya, Ahmedabad.
- 4) The Additional Commissioner - **Respondent**
CGST, Ahmedabad North
Ahmedabad

Copy to:

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

