



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/09/Ahd-II/2017-18  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-349-2017-18  
दिनांक Date : 26-02-2018 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AHM-SVTAX-000-ADC-31-32-33-16-17 दिनांक: 27/01/2017  
issued by Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Avadat Trading Pvt Ltd.  
Ahmedabad

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 as 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, 4<sup>th</sup> 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 :

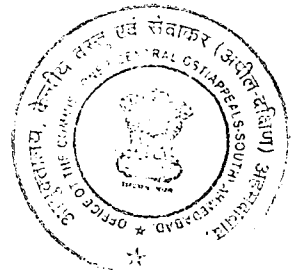
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल लें जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...



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

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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.

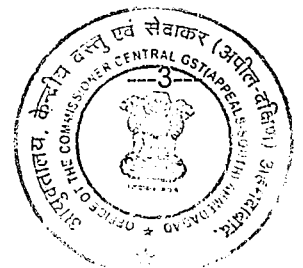
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अलवा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैनटल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 हैं।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

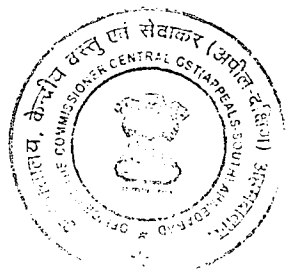
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



## ORDER-IN-APPEAL

This appeal has been filed by M/s. Avadat Trading Pvt Ltd., 804, Swagat, C.G. Road, Ahmedabad-380006 (hereinafter referred to as "the appellant") against the OIO No. AHM-SVTAX-000-ADC-31-32-33-2016-17 dated 27.01.2017 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Service Tax Commissionerate, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2. Briefly the facts of the case are that during the review of Business Auxiliary Services by CERA, it was found:

(i) that though the appellant was providing Business Auxiliary Services to their clients from April 2005, they were not registered with the Service Tax department and had not filed any ST-3 returns;

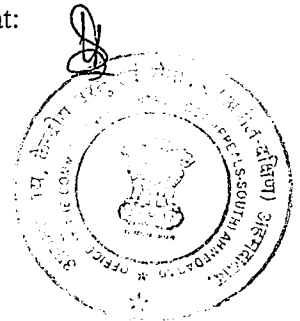
(ii) scrutiny of their income tax returns, balance sheet and profit and loss account for the financial year 2005-06, revealed that the appellant had rendered the taxable service and received Rs. 8,85,31,522/- during financial years 2005-06 to 2009-10, Rs. 1,91,54,059/- during financial year 2010-11 and Rs. 2,46,12,790/- during financial year 2011-12 as job work income;

(iii) that the appellant suppressed the value of taxable service/job work income received by rendering Business Auxiliary Services to the extent of Rs.13,22,98,371/- for the period from 2005-06 to 2011-12.

3. The appellant was engaged in the job work which included special kind of washing of jeans pants so as to change the colour of jeans pants as per the requirement of the clients, buttoning and giving finishing touch to the jeans; that all these activities fell under the category of textile processing; that such service falls under the category of Business Auxiliary Service, as defined under Section 65(19)(v) of the Finance Act, 1994 and defined as taxable under Section 65(105)(zzb) of the Finance Act, 1994; that the appellant had not paid service tax on the job work income received during the period from 2005-06 to 2011-12.

4. Consequently, a show cause notice dated 22.10.2010 was issued *inter alia*, alleging that the appellant has suppressed the value of taxable service/ job work income for the period 2005-06 to 2009-10 with an intention to evade payment of service tax; that they did not take registration within stipulated time and did not file ST-3 returns; that the department would never have known about the activity of the appellant, but for the review conducted by CERA. The said show cause notice therefore, proposed recovery of the service tax not paid under proviso to Section 73(1) of the Finance Act, 1994 along with interest and further proposed penalties under sections 76, 77 and 78 of the Finance Act, 1994. For the FY-2010-11, an SCN dated 07.10.2011 was issued for recovery of service tax not paid on the suppressed taxable value of Rs. 1,91,54,059/- along with interest and penalties under sections 76 and 77 *ibid* and for the FY 2011-12, a further notice dated 12.09.2012 was issued in terms of Section 73(1A) of the Finance Act, 1994. These three show cause notices were adjudicated by the adjudicating authority vide the aforementioned impugned order, wherein he confirmed the demand along with interest and further imposed penalties under sections 76,77 and 78 of the Finance Act, 1994.

5. Being aggrieved, the appellant has filed the present appeal on the grounds that:



(i) they are engaged in providing job work of textile products belonging to various clients and their job work includes special kind of washing of jeans pants so that colour of jeans pants change as per the requirement of the clients, buttoning and giving finishing touch to the jeans; that all such activities fall under the category of *textile processing and job work of textile products* and is exempted as per the notification No. 14/2004-ST dated 10.09.2004 as amended by notification No. 19/2005-ST dated 07.06.2005.

(ii) that they wish to rely on the case of K.G. Denim Ltd. [2015(37) S.T.R. 140(Tri.-Chennai)]

(iii) when no service tax is required to be paid by the appellant in terms of the notification No. 14/2004-ST dated 10.09.2004, as amended, the question of interest and penalty does not arise.

The appellant further requested to drop the demand of service tax, interest and penalties imposed.

6. A personal hearing in the matter was held on 14.11.2017 and Ms. Bhagyashree Bhatt and Shri Dhvani Patwari, both Chartered Accountants, appeared on behalf of the appellant and reiterated the grounds raised in the appeal.

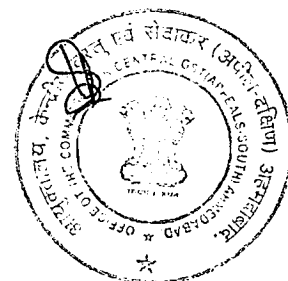
7. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing.

7.1 I find that the appellant vide their letter dated 20.12.2016 in defence reply to all the three SCNs had stated that they were engaged in providing job work of textile products belonging to various clients and their activity of job work included special kind of washing of jeans pants so that the colour of jeans pants changes as per the requirement of the clients, buttoning and giving finishing touch to the jeans. The appellant's claim is that these activities fell under the category of *textile processing* and thus are rightly eligible for exemption under notification No. 14/2004-ST dated 10.09.2004 as amended by notification No. 19/2005-ST dated 07.06.2005.

7.2 The adjudicating authority opined that *Textile Processing* as commonly understood covers processes like singeing, bleaching, dyeing etc. on yarn, woven fabrics and thus any process carried out on textile is *textile processing* and similarly processes such as washing, bleaching, dyeing carried out on textile articles/garments such as jeans pants, trousers, shirts made of textiles is *textile articles processing* and herein the appellant was engaged in washing of textile articles i.e jeans pants and the same falls under the category of *textile articles processing* and on this rejected the claim of the appellant to avail the benefit of notification No. 14/2004-ST dated 10.09.2004.

8. Thus the issue before me is to decide whether the activity/ job work (washing of jeans pants) undertaken by the appellant falls under the category of *textile processing* or under *textile article processing* and accordingly to decide the applicability of notification No. 14/2004-ST dated 10.09.2004 as amended by notification No. 19/2005-ST dated 07.06.2005 in the present case.

9. I begin with the definition of the word *textile*:



The word "Textile" is not defined either in Finance Act or in Central Excise Act. As per various dictionaries "Textile" means a cloth specially one manufactured by weaving or knitting; a fabric or fibre or yarn for weaving or knitting into cloth. Sec. XI of Central Excise Tariff Act, 1985 has been given a heading namely "Textiles & Textile Articles" meaning thereby excise law identifies Textile and Textile Articles separately.

As per the source <http://hathaibaj-sureshjain.blogspot.in/2012/07/service-tax-on-textile-processing-wef.html>, the word textile is well defined under Textile Committee Act 1963 under Sub-Sec. g of Sec. 2 as under :

*"Textile" means any fabric or cloth or yarn or garment or any other article made wholly or in part :-*

*i) Cotton; ii) Wool; iii) Silk; iv) Artificial Silk and includes fibre.*

*If the word is not defined in the concerned Act the definition of technical organisation or the meaning which is generally known in the trade is to be considered and therefore the definition given in Textile Committee Act becomes relevant and has to be taken into consideration.*

Hence as per the definition any processing undertaken right from fibre to the garment is textile processing. In the instant case, the process of washing of jeans pant undertaken by the appellant falls under the category of Textile Processing, more so because without washing and buttoning of the jeans pants, the same is not marketable. I find that the appellant is therefore eligible to avail the benefit of the notification No. 14/2004-ST dated 10.09.2004 as amended by notification No. 19/2005-ST dated 07.06.2005.

10. My aforesaid view is also supported by the judgement in the case of K.G. Denim Ltd., [2015(37) S.T.R.140 (Tri.-Chennai)], the relevant extract of which follows:

*" on perusal of the adjudication order, we find that on scrutiny of the records of the appellants, it was noticed that the appellant had paid the amount towards "processing of textile materials for chemical wash" charges to M/s. Testex, Swiss, Glancario and Reni Hendriks, Holand. So, there is no dispute of the fact that the appellant paid the charges for textile processing. Hence, they are eligible for exemption benefit under Notification No. 14/2004-ST dated 10.09.2004, as amended. In the present case there is no dispute of the facts and therefore, in the facts and circumstances of the case, we find that the appellants are eligible for the exemption benefit".*

I find that the appellant is not required to pay service tax on the job work undertaken by them as they are eligible to avail the exemption under notification No. 14/2004-ST dated 10.09.2004 as amended from time to time.

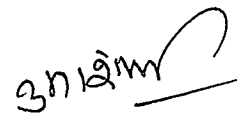
11. The appellant was imposed penalties under Sections 76, 77 & 78 of the Finance Act, 1994. In view of the above discussion and findings, I find that the appellant is not required to pay service tax under notification No. 14/2004-ST dated 10.09.2004, as amended from time to time. When there is no demand of service tax, the question of penalties under Sections 76 and 78



*ibid*, does not arise. Penalty under section 77 *ibid*, has been imposed on account of failure of the appellant to obtain registration from the department. However, I find that Section 69 of the Finance Act, 1994, states that "Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise". In the instant case as the appellant is engaged in providing exempted service and since there is no service tax liability on the appellant, the question of the appellant obtaining registration from the department does not arise. Therefore, the penalty imposed under Section 77 of the Finance Act, 1994 is set aside being not tenable.

12. In view of the foregoing discussion and relying on the decision of Principal Bench of the Hon'ble CESTAT in case of K.G. Denim Ltd.[2015(37) S.T.R.140 (Tri.-Chennai)], I allow the appeal of the appellant.

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



(उमा शंकर)  
आयुक्त (अपील्स)

Attested



(Vinod Lukose)  
Superintendent,  
Central Tax(Appeals),  
Ahmedabad.

By RPAD

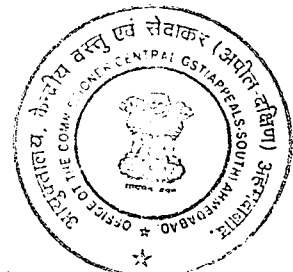
To,

M/s. Avadat Trading Pvt Ltd.,  
804, Swagat, C.G. Road,  
Ahmedabad-380006

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad South.
3. The Addl./Joint Commissioner, (Systems), Central Tax, Ahmedabad South.
4. Guard file.
5. P.A. to Commissioner (Appeals).

6. AC/DC, Dn VI, Central Tax, Ahd South



12

