



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

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)188/Ahd-South/2018-19

11528 to 11532

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-33-2019-20

दिनांक Date : 12-07-2019 जारी करने की तारीख Date of Issue

16/07/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr.Commissioner (Appeals)

ग Arising out of Order-in-Original No. AC/16/Div-II/2018-19 दिनांक: 08.01.2019 issued by Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

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

Parth Equipments Ltd.  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

### Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परबुक 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 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 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।





(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 ह।

(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 अलावा 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

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

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

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

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

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

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

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

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

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





ORDER IN APPEAL

This appeal has been filed by M/s. Parth Equipments Ltd., Plot No.4208, GIDC, Phase-IV, Vatva, Ahmedabad-382445 [for short – ‘appellant’] against OIO No. AC/16/Div-II/2018-19 dated 08.01.2019, passed by the Assistant Commissioner of Central Goods & Service Tax, Division-II, Ahmedabad-South Comm’rate, Ahmedabad [for short – ‘adjudicating authority’].

2. Briefly stated that a show cause notice dated 18.04.2016 was issued by the Assistant Commissioner of Circle-V, Audit-I Comm’rate, Central Excise & Service Tax, Ahmedabad inter alia, proposing to demand total service tax amount of Rs.2,80,733/- (including cess) under Section 73(1) for the period 2011-12 to 2015-16 (upto September-2015) along with interest under Section 75 and further proposing penalty under Section 78 of the Finance Act, 1994. The said notice was adjudicated vide OIO No. SD-05/7-DKJ/DC/2016-17 dated 31.01.2017 and the demand was confirmed alongwith interest and imposition of penalty. Being aggrieved with the OIO, the appellant filed an appeal before this authority which was decided by this authority vide OIA No.Ahm-Excus-001-APP-232-17-18 dated 29.12.2017 by remanding it back to the adjudicating authority for issuance of a speaking order. The adjudicating authority passed the OIO No.AC/16/Div-II/2018-19 dated 08.01.2019 afresh, and confirmed the demand along with interest and penalty.

3. Feeling aggrieved the appellant has filed this appeal on the grounds :

- that they have done manufacturing on job-work basis following central excise procedure as per Notification No.214/86;
- that since the activity amounts to manufacture, it is outside the purview of service tax liability;
- that since the department has issued notice considering the activity to be a taxable service, the burden was on the department to show that the same is taxable;
- that their activity is specifically exempted under Notification No.214/86;
- that rectification / repairing can also be a part of manufacturing and used items can also be the raw material;
- that prior to July-2012, the classification of service must be shown and the notice nowhere shows the classification for the earlier period and therefore the demand of service tax without showing classification is incorrect;
- that the Asstt. Commissioner has found the activity to be repairing and once such finding is reached, the classification and demand has to be under repairing service category and demand under BAS is not maintainable;
- that Notification No.8/2005-ST dated 01.03.2005 (as amended by Notification No.19/2005 dated 07.06.2005) is applicable to them and no tax is payable;
- that notice is issued in April-2016 and covers the period from 2011-12. Notice issued after more than two years is barred by limitation;
- that the activity has to be a service first in order to attract levy and subsequent exemption if any. Therefore the exemption notification can not be so read that the activity becomes taxable in the absence of exemption;
- that since the demand is not maintainable on merit as well as on limitation, the question of interest and penalty does not arise;

4. Personal hearing in the case was held on 04.07.2019 wherein Shri S.J.Vyas, Advocate appeared on behalf of the appellant. He reiterated the grounds of appeal already submitted by them.





5. I have gone through the facts of the case, the grounds raised in the appeal, and the oral submissions made during the course of personal hearing. I find that the issue to be decided is whether the appellant is liable to pay service tax on the activity done by the appellant as has been held by the adjudicating authority and whether penalty can be imposed upon them.

6. The facts of the case coming out of the records revealed that the audit team of the department carried out the audit of the records of the appellant which resulted into Final Audit Report No.898/2015-16-Central Excise and Final Audit Report No.925/2015-16-Service Tax both dated 29.03.2016 according to which the appellant did not pay service tax on repairing, re-profiling of used machinery rolls activity for which service charges were recovered by the appellant. It was found that the appellant was receiving machine rolls for the purpose of rectification viz. re-profiling work of used straightening machine rolls under job-work challan and was receiving the amount/charges against such rectification/repairing work. According to the appellant the activity carried out by them amounts to manufacture which is out of purview of the levy of service tax and according to the department the activity carried out by the appellant is nothing but the service.

7. The Notification No.214/86 as referred by the appellant states as under :  
 “Specified goods manufactured in a factory as a job work and used in the manufacture of final products

*In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods specified in column (2) of the Table hereto annexed (hereinafter referred to as the said goods) manufactured in a factory as a job work and used in or in relation to the manufacture of final products (on which duty of excise is leviable whether in whole or in part) specified in column (3) of the said Table, from the whole of the duty of excise leviable thereon, which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).*

*Explanation.—For the purposes of this notification, the expression “job work” means processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.*

2. The exemption contained in this notification shall be applicable only to the said goods in respect of which,

- (i) the supplier of the raw materials or semi-finished goods avails of the credit of duty paid on inputs under rule 57A of the said Rules, and gives an undertaking to the Assistant Collector of Central Excise having jurisdiction over the factory of the job worker that the said goods will be used in or in relation to the manufacture of the final products;
- (ii) the said supplier produces evidence that the said goods have been so used; and
- (iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the finished products.

THE TABLE

Sl. No.	Description of the said goods	Description of final products
(1)	(2)	(3)
1.	Goods classifiable under any headings of Chapters 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 48, 70, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 or 96 (other than those falling under Heading Nos. 36.03 or 37.05) of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).	Goods classifiable under any headings of Chapters 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 70, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 or 96 (other than those falling under Heading Nos. 36.03 or 37.05) of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).”





8. Section 2(f) of the Central Excise Act, 1944, states as under :

- (f) "manufacture" includes any process, -
- (i) incidental or ancillary to the completion of a manufactured product;
  - (ii) which is specified in relation to any goods in the Section or Chapter notes of [the First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]
  - (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.]

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

9.1. Section 65(19) of the Finance Act, 1994 at the relevant time reads as under :

[(19) "business auxiliary service" means any service in relation to, —

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or

**Explanation.**— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, 5[but does not include any activity that amounts to "manufacture" of excisable goods.

**Explanation.** — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —

(i) deals with goods or services or documents of title to such goods or services; or

(ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services; or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

(b) "excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944(1 of 1944);

(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944(1 of 1944)

9.2. Section 65(105)(zzb) reads as under :

(105) "taxable service" means any service provided or to be provided, -  
(zzb) to a client, by any person in relation to business auxiliary service;

10. The adjudicating authority has referred to the clause 30 of the exemption notification No.25/2012-ST dated 20.06.2012 in its impugned order at page 3 (Para 3.4) which reads as under :

"30. Carrying out an intermediate production process as job work in relation to -

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year."





11.1. Now the conjoint reading of the provisions, Sections/Rules and relevant contents of notifications as stated in para-7 to para-10 here-in-above, concludes that there can be an activity/process which can fall either under manufacture or under service. If the process is manufacture it will attract excise duty and if the process is service it will attract service tax. In short, there would be either excise duty or service tax on any activity. If the activity/process done by a person is treated as manufacture, the person has to pay the excise duty on clearance of the same. However, the person is exempted from paying excise duty, if that person is doing some activity/process on any goods sent by some other person/principal manufacturer, who is going to use the said goods (which was processed by the person), in its finished product on which that other person/principal manufacturer will ultimately pay the excise duty.

11.2. If the activity of the person is treated as service, the activity would attract service tax subject to the exemption as contained under clause 30(c) of the notification no.25/2012-ST dated 20.06.2012 which says that exemption from payment of service tax would be available only if the appropriate duty is payable by the principal manufacturer.

12. The definition or test commonly used for ascertaining whether manufacture has taken place or not for the purpose of attracting Central Excise levy has been evolved by the Hon'ble Supreme Court in the DCM [1977(1) ELT (J199), Parle Products [1994(74) ELT 492] and Ujagar Prints [1988(38) ELT 535(SC)]. The Hon'ble Supreme Court in these cases held that for the process to amount to manufacture, a new commercial product, different from the one with which the process started should emerge. It should be an article with different name, character and use. Thus, a process which simply changes the form or size of the same article or substance would not ordinarily amount to manufacture and no excise duty would be payable unless in a particular case by section note or chapter note of the Tariff or by wording of the relevant heading or sub-heading, the said process has been specified as amounting to manufacture. The photocopies of the invoices issued by the appellant and submitted alongwith the appeal, shows that the invoices are containing following details :

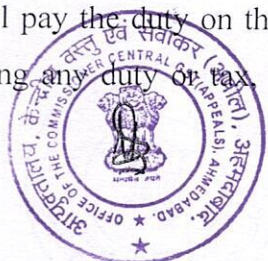
Srl. No.	Invoice		Showing at top of the Invoice as	Showing "Description of Goods" as
	No.	Date		
1	JW002/2011-12	16.05.2011	Labour Charge- Invoice	Repairing Charges Only ... Welding Stand repairing
2	JW005/2011-12	11.07.2011	Labour Charge Invoice Only	Only Labour Charge ... Reprofiling of your straightening machine rolls
3	JW006/2011-12	28.07.2011	Labour Charge Bill	Only Labour Charge ... Repairing charge of your AC drive
4	JW009/2011-12	27.08.2011	Labour Charge Invoice	Only Labour Charge ... Reprofiling of your old straightening machine rolls
5	JW019/2011-12	25.01.2012	Labour Charge Invoice Only	Only Labour Charge ... Reprofiling of your old used straightening machine rolls
6	JW002/2012-13	03.05.2012	Repairing Charge Only	Repairing Charges Only ... Repainting & Repairing of your bead rolling system panel board
7	JW006/2012-13	26.07.2012	Labour Charge Bill	Only Labour Charge ... Reprofiling of your roller root
8	JW008/2012-13	02.09.2012	Labour Charge Invoice	Only Labour Charge ... Reprofiling of your used straightening machine rolls
9	JW-015/2012-13	21.01.2013	Labour Charge Bill Only	Only Labour Charge ... Reprofiling of roller root



10	JW-020/2012-13	11.2.2013	Labour Work Bill Only	Only Labour Charge ... Reprofiling of used straightening machine roll
11	JW01/2013-14	02.04.2013	Only Labour Invoice	Only Labour Charge ... Reprofiling of used straightening machine
12	JW-06/2013-14	08.06.2013	Labour Work Invoice	Labour Work Only ... Repairing & Revamping of your old straightening machine
13	JW-09/2013-14	19.06.2013	Only Labour Invoice	Labour Work Only ... Reprofiling & polishing of your tube mill roll
14	JW-11/2013-14	09.07.2013	Only Labour Work	Only Labour Charge ... Reprofiling of your straightening machine rolls
15	JW-20/2013-14	28.10.2013	Only Labour Work	Only Labour Charge ... Reprofiling of your straightening rolls
16	JW-28/2013-14	08.03.2014	Only Labour Invoice	Only Labour Charge ... For your straightening machine rolls repairing work
17	JW-02/2014-15	21.04.2014	Labour Invoice	Only Labour Charge ... Reprofiling of your straightening machine rolls
18	JW-03/2014-15	05.05.2014	Labour Invoice	Only Labour Charge ... Reprofiling work on your straightening machine roller
19	JW-009/2014-15	31.08.2014	Only Labour Work	Only Labour Charge ... Reprofiling of your st. machine roll
20	JW-010/2014-15	20.09.2014	Only Labour Work	Only Labour Charge ... Reprofiling work on your straightening machine
21	JW-013/2014-15	11.10.2014	Only Labour Work	Only Labour Charge ... Reprofiling work on your straightening machine roll
22	JW-021/2014-15	05.03.2015	Only Job-Work	Only Labour Charge ... Repairing work of 50 HP AC Drive
23	JW-04/2015-16	03.06.2015	Only Job-Work	Only Labour Charge ... Reprofiling on straightening machine roll
24	JW-08/2015-16	14.07.2015	Only Labour Work	Only Labour Charge ... Reprofiling roll on straightening machine rolls
25	JW-15/2015-16	08.10.2015	Only Labour Work	Only Labour Charge ... Reprofiling work on your straightening machine roller

13. When I look at the invoices issued by the appellant as detailed in para-12 above, I don't find it supporting the contention of the appellant that the process done by them is manufacture. Thus, I am not convinced with the contention of the appellant that the process/activity done by them is manufacture. Since, the process is not considered as manufacture, the applicability of notification no. 214/86 does not arise.

14. The activity/process done by the appellant can be clearly accepted as service in view of the photocopies of the invoices issued by the appellant and submitted alongwith the appeal and as detailed in para-12 above and in view of the conclusion that the process done by them does not amount to manufacture. Thus, it is clear that the activity of the appellant is service which is chargeable to service tax. Clause 30(c) of the notification no.25/2012-ST exempts the payment of service tax on such service, only if appropriate duty is payable by the principal manufacturer. The appellant failed to produce anything in support of their claim for availment of such exemption. The contention of the appellant that they have received the goods under challan for processing, can not be accepted since mere receiving the goods under challan can not make them eligible for availment of the said exemption. There is nothing on record which goes on to show that the goods received by the appellant is going to be used in the finished product of the principal manufacturer and the finished product will suffer duty. In other words there is nothing on record which shows that the principal manufacturer will use the goods (which has been processed by the appellant) in its finished product and will pay the duty on the clearance of the finished product. Whenever any assessee is not paying any duty or tax, the onus is on the assessee itself to justify its





stand and keep proper documents/records & produce all the relied upon documents/records in support of their stand. The appellant fails to justify their contention on this aspect also.

15. In view of the discussion here-in-above, the demand of the service tax stands justified. However, regarding the appellant's contention that prior to July-2012, the classification of service must be shown and the notice nowhere shows the classification for the earlier period, I find that in para-3.2 of the notice, it was proposed to be classified the service under 'Business Auxiliary Service', hence such argument of the appellant is not tenable. The service rendered by the appellant is found to be correctly falling under Business Auxiliary Service as contended by the adjudicating authority. However, classification of service was required prior to July-2012 only since after June-2012 with the introduction of negative list, the classification of service was no longer required. If any service found to be not falling under the negative list, then it was chargeable to service tax. Therefore neither the Show Cause Notice nor the Order-in-Original lacks on this aspect.

16. The appellant is in the excise and service tax regime since long, and therefore is well aware with the relevant laws. The facts of the case reveal that there was Non-payment of service tax on account of the amount received towards the service provided by them and which was not shown by them in their ST-3 returns. This is also not a case where excise duty was paid by the appellant on such process/activity carried out by them. The things came to the knowledge of the Department only when the audit of the financial records of the appellant was carried out. Had the appellant been genuine, he could have approached the department or their professional consultant regarding their liability towards duty or tax on such process/activity carried out by them. However, the appellant remain silent till the audit took place. The service tax liability has been arised only after audit of the records and thus, it is clear that the amount had not been reflected by the appellant in the ST-3 returns. Over and above, the resulted non-payment continued for a long period of time as even after a period of more than 4 years, the service tax payment was not made. It clearly shows that concealment of facts exist in this case. When there is any concealment / mis-statement / wilfull suppression / fraud, there is provision in the law which makes the Department eligible to invoke extended period and cover the period upto 5 years. Therefore the appellant's stand, that the period covered under Show Cause Notice from 01.04.2011 is time barred as the Show Cause Notice has been issued on 18.04.2016, is not correct as the SCN has been issued on 18.04.2016 by invoking extended period of 5 years which is well within the time-limit.

17. The issue regarding the service tax liability of the appellant is confirmed in view of the discussion here-in-above. Since the demand is upheld, the recovery of interest is also upheld in view of the Section 75 of the Finance Act, 1994.





18. Now regarding the second issue of penalty under Section 78, I find that penalty under Section 78 can be imposed on account of fraud / mis-statement / suppression of facts / concealment etc. Since the demand is upheld under extended period, the adjudicating authority has rightly imposed the penalty under Section 78 of the Finance Act, 1994.

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

*उमा शंकर*

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Attested

*Dave*  
16/07/19

(Jitendra Dave)  
Superintendent (Appeals),  
CGST, Ahmedabad.



By R.P.A.D. To :

M/s. Parth Equipments Ltd.,  
Plot No.4208, GIDC, Phase-IV,  
Vatva, Ahmedabad-382445

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad South Comm'rate, Ahmedabad.
3. The Dy./Asstt. Commissioner, CGST, Division-II, Ahmedabad South Comm'rate, Ahmedabad.
4. The Assistant Commissioner(Systems), CGST, Ahmedabad.
- ✓ 5. Guard File.
6. P.A. File