



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)90/Ahd-South/2019-20 / 13152 To 13156

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-070-2019-20
दिनांक Date : 29-11-2019 जारी करने की तारीख Date of Issue 3/12/2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri Gopi Nath, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/DN-VI/04 to 05/DEM/SKC/Dutron/19-20 दिनांक:
30.04.2019, issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Dutron Plastics Ltd
Ahmedabad

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 पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया 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.



(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.

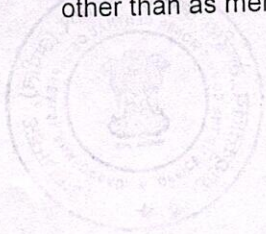
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 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

M/s. Dutron Plastics Ltd., Plot No.A-1/2 & A-1/3, GIDC Estate, Phase-I, Vatva, Ahmedabad (hereinafter referred to as "appellant") has filed the present appeal against the Order-in-Original No.CGST/Div-VI/04 to 05/Dem/SKC/Dutron/19-20 dated 30.04.2019 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner of CGST, Division-VI, Ahmedabad South (hereinafter referred to as "adjudicating authority").

2(i). The fact of the case in brief are that based on an audit objection, a Show Cause Notice (hereinafter referred to as "SCN") dated 09.06.2017 was issued to the appellant, alleging non-payment of service tax on Director's remuneration and commission under reverse charge mechanism, as stipulated under Notification No.30/2012-ST dated 20.06.2012 read with Notification No.45/2012-ST dated 07.08.2012. The said SCN proposed demand/recovery of service tax amounting to Rs.42,50,118/- alongwith interest pertains to the period of 2012-13 to 2015-16 and also proposed imposition of penalty. The adjudicating authority, vide the Order-in-Original No.CGST/Div-VI/11/Dutron/17-18 dated 04.06.2018 (hereinafter referred to as "OIO") confirmed the demand under Section 73(1) with interest under Section 75 and imposed penalty of Rs.42,50,118/- under Section 78(1) of the Finance Act, 1994.

2(ii). Being aggrieved with the OIO, appellant filed an appeal before this authority, who found that the appellant has not furnished any important documents regarding appointment of the Directors, Board Resolution etc. before the adjudicating authority apart from Form-16. Thus this authority, vide its Order-in-Appeal No.AHM-EXCUS-001-App-0129-2018-19 dated 27.12.2018, remanded the matter back to the adjudicating authority for deciding the issue afresh.

2(iii). Meanwhile, another SCN dated 16.03.2018 on the same ground was issued to the appellant for further period from April-May, 2016 to June-March, 2017, proposing demand of service tax of Rs.14,05,500/- alongwith interest and imposition of penalty under the said SCN.

2(iv). The adjudicating authority vide the impugned order adjudicated both the SCNs and confirmed the demands of service tax of Rs.42,50,118/- and Rs.14,05,500/- under the proviso to Section 73(1) alongwith interest under Section 75 of the Finance Act, 1994. The penalty of Rs.42,50,118/- and Rs.14,05,500/- were also imposed



under Section 78 and Section 76 of the Finance Act, 1994 respectively with an option of reduced penalty.

3. Being aggrieved with the impugned order, appellant preferred the present appeal on the following grounds :

- (i) that as per Section 65B(44) (b) of the Finance Act, 1994 the activity or function undertaken by an employee for the employer is not covered under the meaning of 'service';
- (ii) that copy of extract of resolution dated 30.06.1993 and 01.04.1996 and a certificate dated 16.04.2019 issued by the Company Secretary, submitted before the adjudicating authority clearly substantiate the employer-employee relationship between the appellant and the Directors;
- (iii) that the Directors were under contractual employment with the appellant and were paid salary and as such the relationship between appellant and the Directors is of employer and employee;
- (iv) that there is no bar in law that an employee can not work with other employers and as such there is no base in believing that only a whole time director can be considered as employee;
- (v) that Form-16 specifically provides note that each of the employers shall issue certificate in form No.16;
- (vi) that with regard to the contention of the adjudicating authority that the remuneration paid to the directors were shown under remuneration and commission heading instead of the head 'Salary' it was submitted that as per Company Law, remuneration paid to Directors are required to be shown separately in Balance Sheet under the heading of remuneration even if the same is salary;
- (vii) that the amount of penalty under Section 76 can not exceed 10% of the amount of service tax so demanded;
- (viii) that they relied upon some case laws in support of their contentions;

4. In hearing held, Shri P.G.Mehta, Advocate represented the appellant and reiterated the submissions and grounds of appeal. He also submitted additional submission dated 09.10.2019 for consideration.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the instant appeal is whether the appellant is liable to pay service tax on the amount paid as remuneration and commission to the Directors.

6. I find that the adjudicating authority confirmed the demand on the ground that the directors were not whole time directors; that non-whole-time directors were not employees and such remuneration would not fall under the purview of salary; that non-whole-time directors usually take away their remuneration in the form of 'fee for professional or technical services' or 'commission'. The adjudicating



authority also rejected the claim of revenue neutrality on the ground that the cenvat credit of the same is hit by limitation as the cenvat credit was required to be taken within one year. Before moving ahead, let us look at some of the facts involved in the present case :

(i) Section 65B(44) reads as under :

65B : In this chapter, unless the context otherwise requires, -

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i)

(ii)

(iii)

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c)

(ii) By virtue of Notification No.30/2012-ST as amended by Notification No.45/2012-ST, in respect of services provided or agreed to be provided by a director of a company to the said company, the recipient of the service (i.e. the said company) is made liable to pay the 100% service tax.

(iii) Section 2(94) of the Company Act, 2013 reads as under :

"whole time director" includes a director in the whole-time employment of the company."

(iv) Since the Extract of Resolution dated 30.06.1993 and 01.04.1996 have the same wordings with regard to the appointment of the Directors and their remuneration, the words used in the extract of resolution dated 30.06.1993 is shown below :

"Resolved that Shri Rasesh H. Patel & Shri Alpesh B. Patel are hereby appointed as whole time directors of the company in place of late Shri H.T.Patel, who is expired on 30.06.1993.

Further resolved that the newly appointed director Shri Rasesh H.Patel is being employed with the company with the remuneration to be fixed from time to time; normally at beginning of the financial year. This remuneration in relation to his employment with the company will be in form of salary consisting of 1. Regular monthly pay; and 2. Commission/incentive bonus/special remuneration based on sales or performance of the company.

Resolved that the appointment of Shri Rasesh H. Patel & Shri Alpesh B. Patel in place of late H.T.Patel who is expired on 30.06.1993 be intimated to the bankers of the company."

[Emphasis Supplied]

Or

7(i). I find that by virtue of Section 65B(44)(b) the service provided by the employees to their employer are kept out of the purview of service tax because in this situation service rendered by the employee is in relation to his employment. Therefore, first I would like to decide in the instant case is whether the service rendered by the Directors were in the capacity of their employment or otherwise. I



find that the appellant has produced the extract of resolutions passed in the meeting held on 30.06.1993 and on 01.04.1996 which shows that Shri Rasesh H. Patel, Shri Alpesh B. Patel and Shri Sudip B. Patel were appointed as whole-time Directors of the company i.e. the appellant. In these extract of resolution, it has also been mentioned that the Directors would get the remuneration in the form of Salary consisting of (a) regular monthly pay and (b) commission/incentive bonus/special remuneration based on sale or performance of the company. These extract of resolution show that the Directors were employed in the appellant company as whole-time Director and were getting Salary in the form of monthly Pay and the said monthly pay is not effected with the performance of the company. Monthly pay in the form of remuneration are paid to the Directors for being employed in the company as an employee. Moreover, Form-16 is issued to the employees of a company/firm and not to the others with whom the company/firm has business relations. In the present case, the Form-16 have been issued by the appellant to the Directors which goes on to show that the Directors are employee of the appellant and getting salary in the form of monthly pay for that. All these show that the services rendered by the Directors were in relation to their employment and there were employer-employee relationship between the appellant and the said Directors to the extent of receipt of Salary in the form of monthly pay from the appellant company. Once the services of the Directors to the appellant are considered in the capacity of their employment, the levy of service tax on the remuneration paid to the Directors as monthly pay is out of the purview of service tax in view of Section 65B(44)(b) of the Finance Act, 1994. I therefore set aside the demand of service tax on the remuneration paid to the directors as monthly pay as defined under extract of resolution.

On

7(ii). Now I come to the payment of commission/ incentive/ bonus/ special remuneration which has been shown by the appellant as part of salary under the said extract of resolutions. The extract of resolution shows that over and above the regular monthly pay, the Directors would also get Commission/ incentive/ bonus/ special remuneration based on sales or performance of the company. While perusing the table shown under para-5 of the SCN dated 09.06.2017, I found that the two Directors Shri Rasesh Patel and Shri Sudip Patel were given Commission during the year 2012-13 to 2014-15 however no commission was given to the other Director Shri Alpesh Patel during this period. From this, it is clear that the commission/ incentive/ bonus/ special remuneration is something which is apart from the monthly pay and is based on the performance of the company and which is given to the Directors on the basis of



their special activity or special service to the company which ultimately effect the performance of the company. Therefore, such commission/ incentive/ bonus/ special remuneration can not be considered to be an amount paid to the Directors under employer-employee relationship and can not be considered as a part of the Salary exempted from levy of service tax. If the appellant include some other heads under part of salary in the resolution, can the same be considered as Salary just because the appellant has incorporated the same in the resolution as Salary. The answer would definitely be in negative. Just including or showing the commission/ incentive/ bonus/ special remuneration as part of salary in the resolution does not make it to be considered as Salary. Therefore I am not inclined to accept the contention of the appellant that the commission/ incentive/ bonus/ special remuneration apart from the monthly pay should be treated as Salary and therefore reject the same. The appellant has contended that the commission paid to the Directors has been reflected in Form-16 and therefore the commission should be considered as salary. Just because the appellant has incorporated the commission under Form-16 does not make the payment of commission to be treated as payment of salary in the Service Tax law. It is pertinent to mention here that the tax events are independent to one another and can not be co-related or inter dependent to one another. Thus the provisions of Income-Tax law can not be always referred for deciding the levy of tax where a separate law is already available for deciding such levy. Therefore service tax would be leviable on such commission/ incentive/ bonus/ special remuneration paid to the Directors and the appellant is liable to pay the service tax on the commission paid to its Directors in view of the Notification No.30/2012-ST as amended by Notification No.45/2012-ST.

8. Regarding the contention of revenue neutrality putforth by the appellant I find that the Government has incorporated the system of reverse charge mechanism under the law and defined that person has to first pay the amount of service tax under reverse charge mechanism and then the person may be allowed to take credit of the amount of service tax paid by that person under reverse charge mechanism. If the ground of revenue neutrality is accepted then there would be situation where nobody would pay the service tax under reverse charge mechanism on the ground that they are eligible to take credit of the same. Hence when the Government has specifically introduced a system under the law, it is required on part of the appellant to obey it and follow it. In case of Commr. of C.Ex., Chandigarh v/s. M/s. Baba Asia Ltd. reported at 2011(267)ELT 115(Tri.-Del.) the Hon'ble Tribunal has accepted the contention of the Department that merely because the assessee is entitled to avail cenvat credit that



can not give leverage to the assessee to avoid payment of duty in time and held that each and every situation cannot be termed as a revenue neutral situation and it would depend upon the facts and circumstances of each case. Thus the contention of revenue neutrality put forth by the appellant is not acceptable. The appellant is in the service tax regime since long and therefore is well aware of the service tax law.

9. In view of above discussion, I allow the appeal to the extent of demand of service tax on the monthly pay, paid to the Directors of the appellant and upheld the demand of service tax on the amount paid to the Directors other than monthly pay in the present matter. It goes without saying that where the demand is upheld, the charging of interest on such demand is also upheld.

10. Regarding the penalty imposed upon the appellant under Section 78 and 76 of the Finance Act, 1994, I have already upheld the demand of service tax on the amount paid to the Directors other than monthly pay therefore the penalty under Section 78 of the Finance Act, 1994 is also upheld for such demand. Regarding the penalty imposed under Section 76, the appellant has contended that the penalty can not exceed 10% of the service tax so demanded. Section 76 of the Finance Act, 1994 reads as under :

“SECTION 76. Penalty for failure to pay service tax.— (1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax :

Provided that where service tax and interest is paid within a period of thirty days of—
(i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the penalty imposed in that order, only if such reduced penalty is also paid within such period.”

I find force in the contention of the appellant and find that the adjudicating authority has travelled beyond what is stated in the law.

11. Since the demand of service tax on the amount paid to the Directors as monthly pay is set aside and the demand of service tax on the amount paid to the Directors other than monthly pay is upheld, there is a requirement of re-quantification of demand under Section 73(1), interest over such demand under Section 75 and

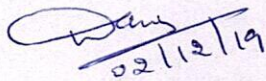


imposition of penalty under Section 78 and 76 of the Finance Act, 1994, in view of the above findings. Re-quantification of demand of service tax is also required in view of the fact that for the period April-May, 2016 and June-March, 2017 no bifurcation about the remuneration and commission etc. paid to the Directors is available in the records made available before me and the amount of penalty imposed upon the appellant under Section 76 of the Finance Act, 1994 is also more than the prescribed limit.

12. In view of above, I remand the matter back to adjudicating authority for the limited purpose of re-quantification of demand and consequential interest and penalty in terms of the directions contained hereinabove and issuance of order accordingly.

Date: .11.2019

Attested


02/12/19

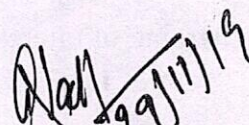
(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.

BY R.P.A.D. / SPEED POST TO :

M/s. Dutron Plastics Ltd.,
Plot No.A-1/2 & A-1/3, GIDC Estate,
Phase-I, Vatva, Ahmedabad.

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1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
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4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Division-VI, Ahmedabad South Comm'rate.
- ✓ 5. Guard File.
6. P.A. File.


(Gopi Nath)
Commissioner (Appeals)

