आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

26305065-079 : टेलेफैक्स26305136 - 079 :

DIN-20210264SW0000223052

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/267,271/2020

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-71-72/2020-21**
दिनाँक Date : 25.01.2021 जारी करने की तारीख Date of Issue : 11.02.2021

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

ग Arising out of Order-in-Original No. MP/01-02/AC/Div.IV/20-21 dated 29.06.2020 passed by the Assistant Commissioner, Central GST, Division-IV, Ahmedabad South.

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

M/s Span Apparels Pvt. Ltd.,
Survey No.117,
Kalgi Ghar Textile Compound,
Narol, Ahmedabad-382443.

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

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

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A 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 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.

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

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

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गतः–

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.

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

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से 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 हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

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

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

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

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

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

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

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

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

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

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

इस 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 Span Apparels Pvt. Ltd., Survey No.117, Kalgi Ghar Textile Compound, Narol, Ahmedabad-382443 (hereinafter referred to as the *'appellant'*), against Order-In-Original No. MP/01-02/AC/Div-IV/20-21dated 29.06.2020 (hereinafter referred as "*impugned order*") passed by the Assistant Commissioner, CGST, Division-IV, Ahmedabad South Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant are engaged in the manufacture of S.O. Dyes falling under Chapter 32 of the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No.AADCS3747EEM002. They were also holding Service Tax Registration No.AADCS3747ESD001 for discharging their service tax liability under Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d)(B) of Service Tax Rules, 1994 on various taxable services received by them. During the course of audit of records of the appellant, on scrutiny of the Balance Sheets for the Financial Year 2013-14 to 2016-17, it was noticed that the director of the appellant i.e. Rashmi Khandhar has rented out her immovable property to the appellant for an agreed upon consideration and that the said appellant had totally paid Rs.9,00,000/- in each financial year to the said director as rent towards such immovable property. The audit observed that Renting of Immovable Property for use in the course of furtherance of business or commerce is declared taxable service in terms of the provisions made under Section 65 and Section 66E of the Finance Act, 1994. It was further observed that since the service was provided by a Director of a Company to the said company which is a body corporate, it appeared to be liable to service tax under reverse charge mechanism under Notification No. 30/2012-ST dated 20.06.2012, as amended, and the appellant was liable to pay 100% of the service tax payable on the said services received by them. Accordingly, a Show Cause Notice dated 25.07.2018 was issued to the appellant proposing demand of service tax amounting Rs.4,87,980/- on the amount of rent paid to their Director under proviso to Section 73(1) along with interest under Section 75 of the Finance Act, 1994. Penalty upon the appellant was also proposed under Section 78 of the Finance Act, 1994. Since, the appellant had continued non-payment of Service Tax on the said service received by them, as per details obtained from them, a further Show Cause Notice dated 13.02.2020, covering the period from April-2017 to June-2017, was issued for demanding Service Tax amounting to Rs.33,750/- along with interest and imposition of penalty under Section 78 of the Finance Act, 1994. Both the above said Show Cause Notices were adjudicated by the adjudicating authority vide the impugned orders wherein he had confirmed the demands along with interest and also imposed penalty.

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

(a) The fact that the TDS is deducted under Section 194-I of Income Tax Act, 1961 on the rent paid to the director for giving property on rent/lease and is conclusive evidence that

the amount paid as rent is nothing but consideration paid for services received of renting of immovable property rendered by such directors in the capacity of property holder;

(b) Furthermore, the fact that the rent received by the whole time directors, managing directors, etc. is shown in their Income Tax Returns under the head 'Income from house property' also fortifies the fact that the amount received is in lieu of their owner of property rented to the company. As such, when CBDT, being one of the wing of the government department is accepting the amount paid to the managing directors, whole time directors, etc. as rent for the property usages, the other wing of the government department, i.e., CBEC cannot take a contrary stand to levy service tax on the same. Therefore, the consideration received by the directors as a property holder/owner from the company is in fact in the capacity of owner of property and cannot be considered as 'service' as per the definition of service given under section 65B(44) of the Finance Act. When the activity of renting of immovable property service has been separately classified in the service tax, the said activity is outside the purview of the definition of service and consequently no service tax is leviable on the same. Furthermore, when an activity is not within the ambit of 'service', the question of reverse charge mechanism dos not arise;

(c) The serial No.5A of the notification No.30/2012-ST does not make distinction between different types of directors. Therefore, service tax demands are being raised on payments made to all directors by the company. However, service tax should be demanded on the amount paid to non-executive directors only and other amounts paid to executive directors such as sitting fees, commissions, etc.

(d) General Circular No.24/2012 dated 09.08.2012 issued by the Ministry of Corporate Affairs confirms the fact that service tax is payable on the commission/sitting fees payable to the Non-Whole Time Directors of the company and the increase in the quantum of remuneration paid to them on account of service tax will not be considered for the purpose of approval of Central Government under section 309 and 310 of the Companies Act even if it exceeds the limit of 1% or 3% of the profit. This indicates that even the MCA, which is a part of government, believes that service tax is payable only on the sitting fees/commission payable to the directors and not on the renting charges paid to them as a owner of property;

(e) On the basis of the supra, it has been concluded that the service tax is payable only on the amounts paid to the directors other than in lieu of their capacity as employee of the company & owner of property;

(f) The extended period of limitation cannot be invoked in the present case since there is no suppression, wilful mis-statement on the part of the appellant. The show cause notice has entirely failed to make out any case of suppression, wilful statement on the part of the appellant; and

(g) Penalty under Section 78 of the Finance Act, 1994 is not imposable in the present case as the appellant has not suppressed any information from the department and there was no wilful mis-statement on the part of the appellant. No case has been made out on the ground of suppression of facts or wilful mis-statement of facts with the intention to evade the payment of service tax. The appellant is entitled to entertain the belief that their acitivities were not taxable. That cannot be treated as suppression from the department. They rely on Hon'ble Gujarat High Court decision in case of Steel Cast Ltd.[2011 (21) STR 500 (Guj).].

4. Personal hearing in the matter was held on 20.01.2021 through virtual mode. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of personal hearing. The issue to be decided in the case is whether the appellant, as a service recipient, is liable to pay service tax under reverse charge mechanism on the rent amount paid to their Directors in respect of immovable property given on rent to the company in the light of provisions of Rule 2(1)(d)(EE) inserted w.e.f 07.08.2012 read with the provisions of Notification No. 30/2012-ST dated 20.06.2012 as amended, or not.

6. It is observed from case records that the appellant had paid an amount of Rs.38,25,000/- [Rs.36,00,000/- (1st SCN)+ Rs.2,25,000/- (2nd SCN)] during the period Financial Year 2013-14 to Financial Year 2017-18 (upto June, 2017) as rent to the Director of their firm for renting to company the immovable property owned by the Director. The department has sought to charge these expenditures as services under Section 65B(44) of the Finance Act, 1994 by contending that the Directors, being owner of property, has become service provider and the appellant has become service recipient. As the appellant firm is a body corporate, it has been contended that they become liable to pay 100% of the service tax payable in respect of such services under reverse charge mechanism under Rule 2(1)(d) (EE) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 07.08.2012 .

6.1 The legal provisions contained under Section 65B(44) of the Finance Act, 1994 are reproduced below:

"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) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or (iii) a transaction in money or actionable claim;

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

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Section 66E of the Act specifies declared services, which reads as under:

SECTION 66E. Declared services. *— The following shall constitute declared services, namely :—*

*(a) **renting of immovable property***

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation. *— For the purposes of this clause,—*

(I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;

(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;

(h) service portion in the execution of a works contract;

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.]

[(j) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof.]

Further, the legal provisions contained under Rules 2(1)(d)(EE) of the Service Tax Rules, 1994 are reproduced below:

(d) "person liable for paying service tax", - (i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

.....

(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service;

6.2 It is observed from the legal provisions discussed above that the term 'service' as defined under Section 65B(44) of the Finance Act, 1994 specifically includes 'declared service' and 'renting of immovable property' is a declared service as per clause (a) of Section 66E of the Act ibid. Hence, if the nature of the activity carried out being renting of immovable property, the same becomes a taxable service under legal provisions discussed above. It is not the case of the appellant that the nature of the impugned activity is not renting. It is also not their case that the said activity of renting of immovable property by the Directors is in lieu of their capacity as employee of the company. When that is so, the activity of renting of immovable property by the directors to the appellant company in the present case is a taxable service under the provisions of the Finance Act, 1994. Further, the reliance placed by the appellant on the provisions of Income Tax Act and the Circular issued by the Ministry of Corporate Affairs does not help their cause in the matter as they do not have any relevance to the facts of the case and the issue under dispute. Therefore, I do not find any merit in the contentions of the appellant regarding taxability of the impugned service.

6.2 In fact, the taxability of the service provided or received in the case viz. the renting of immovable property is not in dispute. The dispute is regarding whether the said service, in the facts of the present case, is taxable at the hands of the service recipient or otherwise. The adjudicating authority has held that as per Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST as amended by Notification No.45/2012-ST, it is very clear that any services provided by the director to the company, the company is required to pay Service Tax on the amount of Service received from the Director and that it clearly comes out that the appellant had received taxable service viz. Renting of Immovable Property from its Director and an amount of Rs.9,00,000/- rent paid in each financial year to them and therefore,

condition of Notification No.45/2012-ST dated 07.08.2012 is squarely applicable to the said case and they are liable to pay service tax under Reverse Charge Mechanism.

6.3 It is observed in this regard that the said view of the adjudicating authority does not seem to be a fair and correct interpretation of law as it is not supported by the language used in the Notification. The words used in the Notification are 'by a director of a company to the said company' and not 'by a person who is director of a company'. Therefore, if the director of the company provides a service in some other capacity, the tax liability would be of the director as an individual service provider and it will not be correct to consider the same as a service provided in the capacity of a director of the company to said company. The notification intends to cover the services provided by a Director of the company to said company in the capacity of the director post held by him. Other services performed beyond the function of Director are not covered by the above Notification. Such a view can fairly be inferred on analysis of other similar kind of entries in the Notification like entries pertaining to taxable services provided or agreed to be provided by an insurance agent to any person carrying on the insurance business and taxable services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company. In these entries, taxable services provided as insurance agent or as recovery agent are what are intended to be covered. The said entries can only be said to be referring to taxable services provided in the capacity in which services sought from such person by the recipient. By no stretch of imagination, it can be assumed that all taxable services provided by such persons are covered under the said notification. The intention of the legislation is to cover only those services provided by the person for which it was necessary to be in that capacity and not all services which can also be provided without being in that capacity. Therefore, I do not find any merit on the contention of the adjudicating authority that any service provided by the Director would be attracting service tax under reverse charge mechanism.

6.4 It is pertinent to mention that the owner of the property has given his property on rent to the appellant and is getting the rent from the appellant being the owner of the property and not being the Director of the appellant. Appellant is also paying the rent to the owner being the owner of the property (who has provided service to the appellant) and not being the Director of the appellant. It is not the case of the department that the Directors have rented their immovable properties to the company as they were obliged to do so for being appointed as directors of the company or that the renting services were provided by them as a part of their function as director of the company. Further, it is a fact that for providing renting services one need not be a director of the company. The department has not brought on record anything which suggest that the impugned renting services received by the appellant from their Director were received by them in the capacity of Director of the company. Whereas the appellant has contended that the said services were received by them from their directors as owner of the property and not as a director of the company. They are paying the rent to the person being the owner of the property and not being the Director of the appellant and the Director is receiving

the amount not as remuneration for his services as a director but in his individual capacity of an owner of the property. Such a case, in my view, is not intended to be covered under the reverse charge mechanism in terms of Notification No.30/2012-ST but rather the director, as a service provider, would be liable to discharge the applicable service tax liability, if any.

6.5 Further, it is observed that had the Director of the appellant given his property on rent to some other company, the Director of the appellant would have been held liable to pay the service tax being the owner of the property and being in his individual capacity as service provider. Similarly, if such a renting service is received by the appellant from an individual other than Director, then liability to pay tax, if any, on such service is not on the appellant but on the service provider. This logic makes it clear that if the Director of a company is providing any sort of service in the capacity of Director to the said company, then only the service becomes liable to service tax at the end of that company being service recipient. This is the intention of law and therefore such words have been incorporated in the said rules and in the Notification. Further, I find that the CBEC, in their Circular No.115/9/2009-ST dated 31.07.2009 issued on the subject of Service tax on commission paid to Managing Director / Directors by the company has clarified that *"the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax"*. In other words, the service provided by the Director in the personal capacity to the Company, would be payable by the person who rendered such service and not by the company under Reverse Charge Mechanism.

6.6 Under the circumstances, the fair conclusion which can be drawn is that just because the owner of the property is Director of the appellant, the renting service received by the appellant does not become taxable at their end being the service recipient. The rent paid by the appellant company in the present matter, therefore, cannot be charged to service tax under Notification No.30/2012-ST. The liability to pay service tax in the case would lie on the service provider. Hence, the order of adjudicating authority to charge service tax amounting to Rs.5,21,730/- [Rs.4,87,980/- + Rs.33,750/-] under reverse charge mechanism under Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 and Notification No.30/2012-ST, as amended, is not legally correct and fails to sustain on merits and requires to be set aside.

6.7 It is further observed that similar view has been taken by the Commissioner (Appeals), Ahmedabad earlier also in Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s. Jay Pumps Pvt. Ltd. and in Order-In-Appeal No. AHM-CXCUS-003-APP-003-18-18 dated 27.04.2018 in the case of M/s Advance Addmine Pvt. Ltd.

6.8 The adjudicating authority also seems to have made an observation that service tax liability of the service recipient fastened under Notification No.30/2012-ST dated 20.06.2012,

cannot become void on the reason that the service tax payable by the service recipient has too been paid by the service provider. I do not find any relevance to the said observation on the facts of the present case as no such contention seems to have been raised by the appellant at any stage of the proceedings in the matter as per facts revealed from records.

7. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of limitation raised by the appellant. When the demand fails to survive, there does not arise any question of interest or penalty in the matter.

8. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal filed by the appellant.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.

25th January, 2021.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 25.01.2020.

Attested

(Anilkumar P.)
Superintendent (Appeals),
CGST, Ahmedabad.

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

To

M/s Span Apparels Pvt. Ltd.,
Survey No.117,
Kalgi Ghar Textile Compound,
Narol, Ahmedabad-382443.

Copy To:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST & Central Excise, Ahmedabad-South.
3. The Assistant Commissioner, CGST & Central Excise, Division-IV, Ahmedabad South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South. (for uploading the OIA)
5. Guard file
6. P.A. File