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

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलेफैक्स07926305136

DIN : **20221264SW0000111B96**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/424,425/2022/6531-35

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-112 to 113/2022-23**
दिनाँक Date : **28-12-2022** जारी करने की तारीख Date of Issue 29.12.2022

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

ग Arising out of OIO No. **51/Addl. Commr./2009** दिनाँक: **04.03.2009 and** OIO No **23/Addl. Commr/2008 dt. 29.02.2008** passed by Additional Commissioner, Central Excise, Ahmedabad-I

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s C Doctor India Pvt Ltd
Plot No. 3607-3608, GIDC Estate,
Phase IV, Vatva, Ahmedabad – 382445

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 संचिव, 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 हानिकार खाने 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 मे 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 भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 के अंतर्गतः–

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. 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 होत हुए भी कि लिखा पढ़ी 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

4ए सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इए लिया गलत सेनवैट क्रेडिट की राशि;
बए 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:

(ccxxxii) amount determined under Section 11 D;
(ccxxxiii) amount of erroneous Cenvat Credit taken;
(ccxxxiv) 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. C. Doctor India Pvt. Ltd., Plot No.3607-08, Phase-IV, GIDC, Vatva, Ahmedabad (hereinafter referred to as the appellant) were engaged in the manufacture and clearance of Machinery and Parts thereof falling under Chapter 84 and 85 of the First Schedule to the Central Excise Tariff Act, 1985. It was observed that the appellant had cleared the bought out items such as Bearing for Fans, Motor Assembly, Fan Pulley, Motor Pulley etc. along with their manufactured items, without including the value of such bought out items in the assessable value. It appeared that as per Section 4 of the Central Excise Tariff Act, 1944, the value of bought out items were required to be included in the assessable value of the goods manufactured and cleared by the appellant.

2. It was further observed that the appellant had recovered erection and installation charges from their customers for erecting and installing the machinery manufactured and supplied by them as per the specification of the customer's order. However, the erection, installation and commissioning charges were not included in the transaction value of the goods. As per Section 2(f) of the Central Excise Act, 1944 (hereinafter referred to as the Act), the appellant was required to include the erection, installation and commissioning charges in the transaction value of the goods and they were required to pay central excise duty on the same. The appellant were, therefore, issued Show Cause Notices, as detailed below, wherein it was proposed to demand and recover the central excise duty along with interest. Imposition of penalty was also proposed.

S.No.	Show Cause Notice No. & Date	Period involved	Central Excise Duty demanded
1	V.84-85/03-02/07 dated 12.02.2007	F.Y. 2003-04 to F.Y. 2005-06	Rs.6,55,722/-
2	V.84/3-84/Dem/08 dated 01.10.2008	F.Y. 2006-07 to F.Y. 2007-08	Rs.8,35,579/-.

3. The SCNs were adjudicated vide OIO No. 23/Additional Commissioner/2008 dated 29.02.2008 and OIO No.51/Additional Commissioner/2009 dated 04.03.2009 (hereinafter referred to as the impugned orders), wherein the demand of central excise duty was confirmed along with

interest. Penalty equivalent to the duty confirmed was also imposed. Being aggrieved with the impugned orders, the appellant filed appeals before the Commissioner (Appeals-I), Ahmedabad, who vide OIA No. 17/2008(Ahd-I)CE/ID/Commr(A) dated 04.08.2008 and OIA No. 113/2010(Ahd-I)CE/MM/Commr(A)/Ahd dated 20.04.2010 rejected the appeals filed by the appellant.

4. Being aggrieved, the appellant carried the matter before the Hon'ble CESTAT, Ahmedabad and the Hon'ble Tribunal vide their Order No. A/10989/2017 dated 17.05.2017 and Order No. A/12608/2018 dated 29.10.2018 set aside the OIAs and remanded the matter back to the Commissioner (Appeals-I), Ahmedabad.

5. Personal Hearing in the case was held on 22.11.2022. Shri Dhaval K. Shah, Advocate, appeared on behalf of appellant for the hearing. He stated that one of the premises was locked by bank and hence, they were not able to procured documents relevant to the case and sought adjournment for 15 days. Accordingly, personal hearing in the case was again held on 09.12.2022. Shri Dhaval K. Shah, Advocate appeared on behalf of the appellant for the hearing and submitted a compilation of case laws along with documents/invoices during the hearing. He reiterated the submissions made in appeal memorandum.

6. The appellant had, in the appeal memorandum filed, contended that :

i. The bought out items are merely accessories of the finished goods manufactured by them. Therefore, their value is not required to be included in the assessable value of the finished goods. Reliance is placed upon the judgment in the case of CCE, Mumbai Vs. Voltas Limited – 2006 (196) ELT 358 (Tri.-Mumbai) and CCE, Ahmedabad Vs. Air Control & Chem. Engg. Co. Ltd. – 2005 (181) ELT 242 (Tri.-Mumbai).

ii. They had availed cenvat credit paid on the bought out items and when the same was cleared, central excise duty, equal to the cenvat credit availed, was debited. Therefore, the value of the bought out items has already suffered central excise duty.

iii. The bought out items are not part and parcel of the finished goods i.e. Centrifugal and Axial Flow Fans. For instance, Electric Motor which is separately installed and 50% of the buyers purchase Electric Motor on their own. Similarly, other bought out items are also totally separate items and are not components of fan. Therefore, on such items, no duty is demandable as they had cleared such bought out items on payment of central excise duty equal to the cenvat credit originally availed.

iv. Regarding Erection, Commissioning and Installation charges, it is clear that these charges cannot form part of the assessable value in view of the judgment in the case of Ericsson India Pvt. Ltd. Vs. CCE, Pondicherry – 2007 (212) ELT 198 (Tri.-Chennai); Brimco Plastic Mach. P. Ltd. Vs. CCE, Mumbai – 2006 (204) ELT 455 (Tri.-Mumbai); Kerala State Electronic Dev. Corpn. Vs. CCE, Trivandrum – 2008 (224) ELT 88 (Tri.-Bang.); Bharat Heavy Electricals Ltd. Vs. CCE, Kanpur – 2008 (230) ELT 187 (Tri.-Del.); Thermax Ltd. Vs. CCE – 1998 (99) ELT 481 (SC); Emerson Network Power India P. Ltd. Vs. CCE, Mumbai – 2004 (176) ELT 168 (Tri.-Mumbai); Carrier Aircon Ltd. Vs. CCE, Delhi-III – 2003 (160) ELT 419 (Tri.-Del) and Rollatainers Ltd. Vs. CCE, Delhi – 2003 (157) ELT 465 (Tri.-Del.).

v. They were paying service tax on the Erection, Commissioning and Installation charges and, therefore, the matter is revenue neutral.

vi. All the transactions regarding the bought out items and Erection, Commissioning and Installation charges were recorded in their statutory central excise and service tax records. Therefore, the larger period of limitation cannot be sustained for recovery of differential duty. Reliance is placed upon the judgment in the case of Usha Martin Construction Ltd. Vs. CCE, Kanpur – 2008 (228) ELT 276 (Tri.-Del.).

vii. In a similar matter pertaining to them for the earlier period, the CESTAT, Ahmedabad has granted an unconditional stay and the appeal was pending for disposal. The present SCN was issued on 01.10.2008 for the period 2006-07 and 2007-08 by invoking the larger period. Therefore, the demand is hit by limitation.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The issues before me for decision are :

A. Whether the value of the bought out items are to be included in the assessable value of the finished goods cleared by appellant.

B. Whether the Erection, Commissioning and Installation charges are required to be included in the assessable value of the finished goods cleared by the appellant.

The demand pertains to the period from F.Y. 2003-04 to F.Y. 2007-08.

8. It is observed that the remand proceedings are in terms of the directions of the Hon'ble Tribunal, Ahmedabad contained in Order Nos. A/10989/2017 dated 01.05.2017 and A/12608/2018 dated 29.10.2018. In the Order dated 01.05.2017, the Hon'ble Tribunal held that :

> "6. On going through the impugned order, we find that the Ld Commissioner has not discussed in detail all the issues raised before him nor recorded reasoning relating to includability of the value of bought out items in the assessable value of the goods. It has simply recorded that the value of erection and commissioning charges are incudable in the assessable value of the goods, in view of Board Circular No.1.7.2002. We do not find merit in the impugned order being devoid of reasoning and passed without considering all the issues raised by the appellant. In the result, the impugned order is set aside and the appeal is remanded to the Ld Commissioner (Appeals) to decide the matter afresh on merit after recording. In the result, the impugned order is set aside and the appeal is allowed by way of remand."

8.1 In the Order dated 29.10.2018, the Hon'ble Tribunal held that :

> "6. We have carefully considered the submissions made by both the sides and perused the record, we find that as regard the valuation of the service of erection commissioning installation the finding is similar to the finding given in the earlier order, hence, the matter remanded by the Tribunal Vide Order dated 17.05.2017. Therefore, in the interest of justice both the matter need to be decided together. Therefore we set aside the impugned order and remand the matter to the Commissioner (Appeals) to decide afresh in the light of this Tribunal's order No.A/10989/2017 dated 17.05.2017".

8.2 Therefore, in terms of the directions of the Hon'ble Tribunal, I take up both the appeals filed by the appellant for decision on the issues involved and considering the grounds advanced by the appellant.

9. It is observed that the SCN demanding central excise duty in respect of the bought out items cleared by the appellant to their buyers has been issued on the grounds that the value of the same is required to be included in the assessable value of the manufactured items cleared by the appellant to their buyers. It has been alleged that the appellant are receiving a composite order

and that the bought out items are parts/components/accessories of their manufactured product and the bought out items are supplied along with their manufactured products. The department has also relied upon the definition of 'Transaction Value' as per Section 4 (2)(d) of the Central Excise Act, 1944 for including the value of the bought out items in the assessable value of the goods manufactured by the appellant.

9.1 The adjudicating authority had, by relying upon the judgment in the case of Commissioner of Central Excise, Delhi Vs. Frick India Ltd. – 2007(216) ELT 497 (SC), held that the value of the bought out items are includible in the assessable value of the manufactured goods cleared by the appellant. I have perused the said judgment of the Hon'ble Supreme Court and find that it was held at Para 16 that :

> **"16.** However, we find merit in these civil appeals filed by the Department on the question of valuation. As stated above, the concept of "classification" is different from the concept of "valuation". In the present matter, along with the "standalone" compressor, the assessee has supplied fly wheel, safety valve and filter to its buyers. They have also supplied bought-out items like V. belt, motor, pulley, belt guard, gauge, gauge board, angle valve, M.S. male flange, C.A.F. Gasket, set of tools, bolts and nuts, etc. to their buyers, as a package. Therefore, on the question of valuation, the Commissioner should have examined the pricing aspect of the entire package supplied by the assessee to its buyers. For example, when a ceiling fan is sold to the buyer, apart from the parts of the ceiling fan, there may be a remote which is a part of the package supplied to the buyer. That remote is fan-specific in matter of valuation since the remote is an additional feature provided with the ceiling fan its value has also to be taken into account. This is because the remote which operates the fan may be an accessory but still it makes value addition and, therefore, its value is liable to be included in the assessable value of the ceiling fan. These aspects have not been considered by the Commissioner, therefore, in addition to the question remitted by CEGAT to the Commissioner we also direct the Commissioner to *de novo* consider the question of valuation. In this connection, the Commissioner will call for the cost statements and shall also ascertain the manner in which the assessee has priced its goods. The Commissioner may also consider invocation of Section 14A of the Central Excise Act, 1944 which deals with "special audits in certain cases". In our view, in the present matter "costing" as a concept will play an important role and, therefore, if the Commissioner so deems fit he can order special audits and call for the report of the cost accountant to assist him (Commissioner) to arrive at the correct value of the entire package cleared by the assessee from its factory gate."

9.2 Having gone through the judgment of the Hon'ble Supreme Court, I find that in the case before the Hon'ble Supreme Court, the appellant had supplied bought out items along with their manufactured goods as a package. It was in this context that the Hon'ble Supreme Court held that the value of the bought out items was liable to be included in the assessable value of the manufactured goods.

9.3 In the instant case, it is observed from Para 4.2 of the impugned order dated 29.02.2008 that the appellant were called upon to submit material and purchase orders to substantiate their plea of non-inclusion of value of the bought out items. It is recorded in the said Para 4.2 that the appellant had submitted copies of 11 purchase orders and invoices of various customers.

9.4 It is observed that the adjudicating authority has rejected the claim and contention of the appellant and given his finding at Para 4.3 that "*no adequate material could be produced to satisfy and ascertain the manner in which the assessee has priced the goods under assessment*". It has been further stated by the adjudicating authority that "*The supply of the "entire package" by the assessee and its pricing was required to be explained with costing and technical data and relevant purchase orders to arrive at a conclusion whether the bought out items are contributing to the value of the product being transacted*".

9.5 It is observed that the appellant have not submitted any document or evidence to indicate that the goods manufactured and sold by them to their customers are functional goods without the bought out items supplied by them. They have merely given copies of a few purchase orders in terms of which only the bought out items are sold by them. However, this in itself does not establish that the bought out items are not integral to the goods manufactured and sold by them. It is not disputed that there may be instances where the customer, who has purchased the goods manufactured by the appellant, require only specific Parts/components as spares or as replacement. The appellant have also not brought on record any evidence to counter the allegation in the SCN that the goods manufactured by them and the bought out items are supplied as a package in terms of a composite purchase order. It needs to be appreciated that the allegations in respect of the manufactured goods and the bought out items being supplied as part of a composite order was based upon the findings of the Departmental Audit officers, who had examined and audited the records of the appellant. The bought out items, the value of which is sought to be included in the goods manufactured by the appellant, are Bearing for Fan, Motor Assembly, Motor Pulley, Fan Pulley, V-Belts, Shaft Sleeve, Electric Cable, Cooling Coil, Starter Panel, Pressure Gauge etc. These bought out items are

clearly Parts/Components of the Centrifugal and Axial Flow Fans manufactured and sold by the appellant and the functionality of the Centrifugal and Axial Flow Fans is not achieved without these Parts/Components supplied by the appellant as bought out items.

9.6 I also find it pertinent to refer to the judgment of the Hon'ble Tribunal in the case of Walchandnagar Industries Ltd. Vs. Commissioner of C.E., Pune-III – 2014(311) ELT 274 (Tri.-Mumbai). In the said case, the Hon'ble Tribunal had held that :

> **"22.** As regards the submission that department has not produced any evidence to show that the centrifugal machine is complete without the electric motor and control panel, we find that the very process of manufacture, supply and the process of fulfilment of purchase orders shows that the centrifugal machine is assembled in the factory, tested with an electric motor and electric panel, disassembled and afterwards supplied. This process itself shows that electric centrifugal machine is incomplete without electric motor and control panel. Whether it is supplied with electric motor and control panel or without them, the assessment has to be treating the same as centrifugal machine. As regards valuation, we have to depend upon the provisions of Section 4 of Central Excise Act, 1944 and the fact that centrifugal machine is incomplete or complete with the electric motor and panel does not help the appellant. This is case according to Rule 2(a) of Interpretative Rules of the Tariff, even a machine incomplete or unfinished, has to be treated as the finished product if it has attained the essential characteristic. From the facts and circumstances of the case, it is quite clear that the centrifugal machine manufactured by the appellant can be called centrifugal machine even without electric motor and electric panel. Therefore the fact that the centrifugal machine was presented for assessment or assessed by the appellant without electric motor and electric panel does in any way help the appellant. The claim of the appellant that it is settled legal position that the assessment of the goods has to be based on the condition in which the goods are removed from the factory is not correct in view of the observations of Hon'ble Supreme Court in the case of *MIL India Ltd., Sirpur Paper Mills Ltd.* - 1998 (97) E.L.T. 3 (S.C.) and *Honda Siel Power Products Ltd.* - 2007 (208) E.L.T. 292 (Tri.-Del.). The decision of the Hon'ble Supreme Court in the case of *Narne Tulaman Mfgrs. Pvt. Ltd.* - 1988 (38) E.L.T. 566 (S.C.) also shows that the claim of the appellants that it is a settled legal position that assessments of the goods has to be based on the condition on which the goods are removed from the factory is not correct. The decision in the case of *Sirpur Paper Mills, Narne Tulaman Mfgrs. Pvt. Ltd.* and *MIL India Ltd.* clearly show that the condition in which the goods would be erected/installed at the site would also be relevant. In the case of *MIL India Ltd.*, Hon'ble Supreme Court itself allowed the deductions of duty paid on the goods supplied as bought out items. Therefore the claim of the appellant that what they had cleared was centrifugal machines without the bought out items and therefore the value of bought out items cannot be added is not correct."

9.7 The facts involved in the present case are similar to that in the above said case, and therefore, the judgment of the Hon'ble Tribunal is squarely applicable to the facts and circumstances of the present case. In view of the facts discussed hereinabove as well as by following the judgments of the Hon'ble Supreme Court and the Hon'ble Tribunal supra, I am of the considered

view that the value of the bought out items are includible in the assessable value of the goods manufactured and cleared by the appellant. Therefore, the impugned orders confirming the demand of central excise duty in this regard is upheld along with interest and penalty.

10. As regards the issue whether the Erection, Commissioning and Installation charges are required to be included in the assessable value of the finished goods cleared by the appellant, it is observed that the adjudicating authority has relied upon Circular No. 646/34/2002-C.Ex. dated 01.07.2002 issued by the CBIC, the relevant portion of which is reproduced below :

> "If the final product is not excisable, the question of including these charges in the assessable value of the product does not arise. As for example, since a Steel Plant, as a whole, is an immovable property and therefore not excisable, no duty would be payable on the cost of erection, installation and commissioning of the steel plant. Similarly, if a machine is cleared from a factory on payment of appropriate duty and later on taken to the premises of the buyer for installation/erection and commissioning into an immovable property, no further duty would be payable. On the other hand if parts/components of a generator are brought to a site and the generator erected/installed and commissioned at the site then, the generator being an excisable commodity, the cost of erection, installation and commissioning charges would be included in its assessable value. In other words if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable goods, these charges would be included in the assessable value of the goods. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such resultant property. [Refer Board's 37B Order No: 58/1/2002-CX., dt. 15-1-2002]"

10.1 In the instant case, it is observed that the appellant are clearing the goods manufactured by them along with the bought out items, which are then erected, installed and commissioned at the site of the customer. The Centrifugal or Axial Flow Fan comes into existence after the goods manufactured by the appellant and the bought out items are erected/installed and commissioned at the site of the customer. Therefore, the excisable goods comes into existence at the customer's site after the erection, installation and commissioning is done by the appellant. Consequently, the charges towards such erection, installation and commissioning is includible in the assessable value of the goods cleared by the appellant and central excise duty is leviable thereon.

10.2 The judgment relied upon by the appellant is not applicable to the facts the present case inasmuch in the case relied by the appellant, no excisable

goods came into the existence consequent upon the erection, installation and commissioning at the customer's site. However, in the instant case, the excisable goods comes into existence upon erection, installation and commissioning at the customer's site. I am, therefore, of the considered view that the appellant are liable to pay central excise duty on the erection, installation and commissioning charges.

10.3 The appellant have contended that they are paying service tax on the Erection, Commissioning and Installation charges and, therefore, no central excise duty is payable. In this regard, I find that it is a settled legal position that the same transaction cannot be subjected to levy of central excise duty as well as service tax as it would amount to double taxation, which is not legally permissible. However, I find that Commissioning and Installation was brought under the service tax net with effect from 14.05.2003 by way of Section 65 (105) (zzd) of the Finance Act, 1994. Subsequently, the said Section was amended w.e.f. 10.09.2004 to make the service of Erection, Commissioning and Installation a taxable service. The demand raised vide SCN dated 12.02.2007 pertains to the period from F.Y. 2003-04 to F.Y.2005-06. Therefore, it is required to be verified whether the appellant had paid service tax prior to 14.05.2003 or 10.09.2004, when Erection, Commissioning and Installation was made a taxable service. As there is no material on record to indicate that the appellant had actually paid service tax in respect of the Erection, Commissioning and Installation service provided by them, the same is required to be verified by the adjudicating authority. The appellant would be liable to pay central excise duty for the period when service tax was not being paid by them. For the period when service tax was being paid by them, the appellant are not liable to pay central excise duty. To verify this aspect and re-quantify the demand, the impugned order bearing No.23/Additional Commissioner/2008 dated 29.02.2008 is remanded back to the adjudicating authority. The appellant are directed to submit before the adjudicating authority the relevant records/documents showing payment of service tax by them in respect of the erection, commissioning and installation service, as claimed by them.

11. The appellant have also raised the issue of limitation. In this regard, I find that the appellant was issued the first SCN on 12.02.2007 for the period

from F.Y. 2003-04 to F.Y. 2005-06 by invoking the extended period of limitation in terms of the erstwhile proviso to Section 11A of the Central Excise Act, 1944. The second SCN was issued to the appellant on 01.10.2008 for the period from F.Y. 2006-07 to F.Y. 2007-08 also by invoking the extended period of limitation in terms of the erstwhile proviso to Section 11A of the Central Excise Act, 1944. However, it is a settled legal position that extended period of limitation cannot be invoked to issue SCN for the subsequent period. The Hon'ble Supreme Court had in the case of Nizam Sugar Factory Vs. Collector of Central Excise, A.P. – 2006 (197) ELT 465 (SC) had held that :

> **"9.** Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."

11.1 Therefore, the demand in respect of the subsequent period issued vide SCN dated 01.10.2008 can be raised only within the normal period of limitation, which at the material point of time was one year from the relevant date, which would be the date on which the prescribed return was filed by the appellant. Accordingly, in respect of SCN dated 01.10.2008, the demand for the normal period of limitation is upheld and the rest of the demand is held to be hit by limitation. Accordingly, I remand the matter back to the adjudicating authority to re-quantify the demand of central excise duty, issued vide SCN dated 01.10.2008, within the normal period of limitation.

11.2 As a consequence of the demand being restricted to the normal period in respect of SCN dated 01.10.2008, the quantum of penalty imposable under Section 11AC of the Central Excise Act, 1944 is also required to be re-determined, as the provisions of the said Section mandating imposition of penalty equal to the amount of central excise duty confirmed a held by the adjudicating authority would not be applicable. The appellant would also be liable to pay interest, on the re-quantified demand of central excise duty, in terms of Section 11AB of the Central Excise Act, 1944.

12. In view of the facts discussed hereinabove, I am of the considered view that :

I) The value of the bought out items are includible in the assessable value of the goods manufactured and cleared by the appellant and they are liable to pay central excise duty applicable thereon.

II) The appellant are not liable to pay central excise duty for the period when service tax was being paid by them on the erection, commissioning and installation charges.

III) The demand in respect of SCN dated 01.10.2008 is also restricted to the normal period of limitation along with consequential reduction in imposition of penalty and interest as held in Para 11.2 above.

12.1 The impugned orders are, accordingly, partially set aside to the above extent and remanded back to the adjudicating authority for denovo adjudication in terms of the directions contained in Para 10.3 and 11.1 above.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stands disposed of in above terms.

28th December, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 28.12.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. C. Doctor India Pvt. Ltd., — Appellant
lot No.3607-3608, Phase-IV,
GIDC, Vatva, Ahmedabad

The Additional Commissioner, — Respondent
CGST,
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
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