सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal)
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
.☎ 07926305065- टेलेफैक्स07926305136

DIN : 20220664SW0000888D94

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1444/2021 2116 TO 2120

ख अपील आदेश संख्याOrder-In-Appeal Nos.**AHM-EXCUS-001-APP-031/2022-23**
दिनाँक Date : **24-06-2022** जारी करने की तारीख Date of Issue 28-06-2022

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

ग Arising out of Order-in-Original Nos**. 27 to 29/AC/Div-I/RBB/2020-21** दिनाँक**: 16.03.2021** issued by Assistant Commissioner, Central GST, Division –I, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant/ ~~Respondent~~**

M/s Arvind B Safal Homes LLP
24, Government Servants Society,
Behind Citibank, CG Road, Ahmedabad-380009

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 अधीनसचिव, 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 मे चाहे वह किसी कारखानेमें 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.

अंतिमउत्पादनकीउत्पादन शुल्क के भुगतान के लिए जोडयूटीकेडिटमान्य की गईहैऔर ऐसेआदेशजोइस धारा एवंनियम के मुताबिकआयुक्त, अपील के द्वारापारित वो समय पर या बादमेंवित्तअधिनियम (नं.2) 1998 धारा 109 द्वारानियुक्तकिए 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 अंतर्गतविनिर्दिष्टप्रपत्र संख्या इए–8 मेंदोप्रतियोंमें, प्रेषितआदेश के प्रतिआदेशप्रेषितदिनाँकसेतीनमास के भीतरमूल–आदेश एवंअपीलआदेश की दो–दोप्रतियों के साथउचितआवेदनकियाजानाचाहिए।उसकेसाथ खाता इ.कामुख्यशीर्ष के अंतर्गत धारा 35–इ मेंनिर्धारितफी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रतिभीहोनीचाहिए।

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) रिविजनआवेदन के साथजहाँ संलग्नरकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीसभुगतान की जाए औरजहाँ संलग्नरकम एक लाख सेज्यादाहोतो 1000/– की फीसभुगतान 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 एवंसेवाकरअपीलीय न्यायाधिकरण के प्रतिअपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्कअधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखितपरिच्छेद 2 (1) क मेंबताए अनुसार के अलावा की अपील, अपीलो के मामलेमेंसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबादमें2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,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) यदिइसआदेशमेंकईमूलआदेशोंकासमावेशहोताहैतोप्रत्येकमूलओदश के लिए फीसकाभुगतानउपर्युक्तढंग सेकियाजानाचाहिए इसतथ्य के होतेहुए भीकिलिखा पढी कार्यसेबचने के लिए यथास्थितिअपीलीय न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको एक आवेदनकियाजाताहैं।

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 अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रू.6.50 पैसेकान्यायालय शुल्कटिकटलगाहोनाचाहिए।

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) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

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

(15) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलेमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

(i) *(Section)* खंड 11D केतहतनिर्धारितराशि;
(ii) लियागलतसेनवैटक्रेडिटकीराशि;
(iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇨ **यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.**

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:
(xxviii) amount determined under Section 11 D;
(xxix) amount of erroneous Cenvat Credit taken;
(xxx) amount payable under Rule 6 of the Cenvat Credit Rules.

इसइस 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

The present appeal has been filed by M/s. Arvind B Safal Homes LLP, Rohit Mills Premises, Rohit Circle, Khokhra, Ahmedabad (hereinafter referred to as the appellant) against Order in Original No. 27 to 29/AC/Div-I/RBB/2020-21 dated 16.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – I, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are a non-registered manufacturer and had informed vide letter dated 02.12.2011 that they own and operate Macons make Ready Mix Concred (RMC) mixing plant and were availing the benefit of Nil Rate of duty in accordance with Serial Number 74 of Notification No.4/2006-CE dated 01.03.2006, which is in respect of 'Concrete Mix' manufactured at site of construction for use in construction work at such site. The appellant had informed that they were manufacturing RMC in their plant and supplying the same to other Arvind and B Safal group entities on job work basis. Safal Homes, Safal Constructions Pvt. Ltd. and Arvind Infrastructure Ltd. were the principal manufacturers. The raw material were procured by the principal manufacturers and they were raising retail invoices for job charges based on the cost of manufacture in accordance with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2.1 It appeared that the excisable goods manufactured on job work basis was exempted from payment of central excise duty subject to various conditions viz. the goods received from the job-worker were further used in or in relation to the manufacture of specified goods which were cleared under valid exemption or on payment of duty as applicable. In the event of failure on the part of the principals, the job worker was required to pay the duty on such goods manufactured on job work basis. In the instant case, the goods manufactured on job work basis by the appellant was used in the construction of building, which were not specified goods. Accordingly,

central excise duty was leviable on such goods i.e. RMC at the time of removal. Thus, the appellant was liable to pay central excise duty on the RMC removed from their plant to different construction sites, including their own sites as the RMC was not specified goods for the purpose of exemption notification claimed by them and they were not entitled to exemption in terms of the clarification issued by the CBIC with regards to location of sites.

2.2 The appellant had during the period from May,2011 to October, 2012 manufactured and cleared RMC valued at Rs.17,43,88,276/- without obtaining central excise registration and without payment of the applicable central excise duty. The appellant were, therefore, issued a Show Cause Notice bearing No. V.38/15-34/Arvind/ADC/OA-1/2012 dated 05.12.2012 wherein it was proposed to :

A. Recover the central excise duty amounting to Rs.22,45,931/- under Section 11A (5) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944.
B. Impose penalty under Section 11A(5) read with Section 11AC (b) of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.
C. Hold the RMC valued at Rs.17,43,88,276/- liable for confiscation under Rule 25 of the Central Excise Rules, 2002.

2.3 As the appellant continued to wrongly avail the benefit of exemption under Notification No.4/2006-CE dated 01.03.2006 and clear RMC without payment of central excise duty, they were issued the SCNs as detailed below :

S.No.	Period	SCN No. & Date	Value (Rs.)	Duty (Rs.)
1	November, 2012 to March, 2013	V.38/15-55/Arvind/ADC/OA-/2013 dated 27.11.2013	5,80,10,487/-	11,95,016/-
2	July, 2013 to March, 2014	V.38/15-32/Arvind/ADC/OA-/2014 dated 03.06.2014	3,47,03,486/-	7,14,892/-

3. All the three SCNs was adjudicated vide the impugned order wherein the demand for central excise duty, totally amounting to Rs.41,55,839/-, was confirmed along with interest. Penalty amounting to Rs.20,77,920/- was imposed under Section 11AC (b) of the Central Excise Act, 1944. The goods valued at Rs.26,71,02,249/- were ordered to be confiscated under Rule 25 of the Central Excise Rules, 2002, however, as the goods were not physically available, redemption fine of Rs.5,00,000/- was imposed.

4. Being aggrieved with the impugned order, the appellant have filed the instant appeal on the following grounds :

i. The impugned order is incorrect and not tenable. The adjudicating authority has neither applied his mind nor examined the submissions but instead chosen to extensively reproduce other decisions. He has also not examined the applicability or relevant of the decisions relied upon by him.

ii. The notices are issued from 2012 to 2014, hearing was fixed on 04.02.2021 i.e. after seven to nine years. The delay has the effect of denying proper opportunity to defend and, hence, is in violation of the principles of natural justice. This itself is sufficient grounds to set aside the demand.

iii. The abnormal delay is not attributable to them. Such abnormal delay has the effect of denying proper opportunity of defending their case since many records would not be available. Therefore, it is not permissible to adjudicate the matter after such prolonged delay.

iv. They refer and rely upon the decision in the case of Y.N. Shah – 2004 (170) ELT 353; Kuil Fireworks Industries – 1997 (95) ELT 3 (SC); Jass Kann International – 2003 (162) ELT 445 (Tri.-Del.); Calcom Electronics Ltd.- 2000 (123) ELT 1030 (Tribunal); Shree Vallabh Glass Works Ltd. – 1999 (112) ELT 619 (Tribunal); J.M.Baxi & Co.- 2016 (336) ELT 285 (Mad.) and Lanvin Synthetics Private Ltd.- 2015 (322) ELT 429 (Bom.).

v. For the period from 2010-11 to 2014-15, a SCN dated 11.04.2016 (subsequent notice) was issued to them. The period covered under this

notice is the entire period covered under the impugned three notices. The demand is made in respect of job charges for the manufacture of RMC. The case of the department is that since no duty is paid on the said manufactured product, the benefit of exemption Notification No.8/2005 is not available. Consequently, the demand is made. Thus for the same amount, the three SCNs were issued demanding excise duty and subsequently demand is made as service provider.

vi. The subsequent notice was adjudicated confirming the demand under OIO No. SD-05/07/DKJ/DC/2017-18 dated 31.05.2017 issued by the Deputy Commissioner, Division-V, Ahmedabad South. Their appeal against this order was rejected vide OIA No. AHM-EXCUS-001-APP-053-18-19 dated 19.09.2018 by the Commissioner (Appeals), Ahmedabad.

vii. It is settled law that there cannot be simultaneous levy of central excise duty and service tax. Both levies are exclusive. In their case, the department has taken final view that the activity was liable to service ta. In view of the view taken by the department, it is not permissible to demand excise duty. The present notices, therefore, must be vacated.

viii. The issue involved is regarding duty on RMC. The department seeks to demand excise duty by classifying the concrete mix manufactured by them under Chapter Heading 3824.01.10. This classification and demand is mainly based on the Circular issued in 1998.

ix. It would be necessary to refer to the judgment of the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. dated 06.10.2015. In order to apply the ratio of the said decision, it would be necessary first to establish that the facts are same. However, there is no inquiry nor even any reference to any of the facts. Since the classification is a burden on the department, the department has failed to support the classification and also bring the present case within the ratio of the Supreme Court decision.

x. The Board had vide Circular dated 06.01.1998 clarified the issue and subsequently, the Punjab & Haryana High Court in the case of Chief Engineer, Sagar Dam has also given the benefit of Notification No.

4/1997. Therefore, in their case, they are correctly covered under the exemption notification.

xi. During investigation, in their statement they had brought on record their belief. This was prior to the first SCN. Despite the statement, the notice does not taken any cognizance of the said statement. The said statement clearly bring out their belief and reason for non-payment of tax. Considering the same, the demand is barred by limitation.

xii. It is clear that before the judgment of Supreme Court, all persons in the trade and department were of the belief that the concrete mix manufactured at site and used at site was never liable to excise duty.

xiii. In Para 19 of the said judgment it is stated that "*appellant are also inclined to agree with the stand taken by the Revenue that it is the process of mixing the concrete that differentiates between CM and RMC*". In order to apply the test laid down in that case to the facts of the present case, there must be investigation, averment and discussions as to facts. Merely relying upon the decision is not sufficient to come to a conclusion about the product in question. Unfortunately, there is no examination or details of facts to apply the ratio of that decision to the facts of the present case.

xiv. The notices draw boundaries of the charges made in the present case. Once the facts necessary to apply the ratio of Supreme Court are not found, the said decision cannot be applied. Except for the Circular, there is no material to support the demand. Once the ratio of L&T case is not applicable, the notice must fail.

xv. Till the law was clarified by the Supreme Court in the L&T case, concrete mix was always held to be exempted if manufactured at site for use in construction at site. In the facts of the present case, they have also manufactured concrete mix at site and, therefore, it was exempted.

xvi. The department had already taken a stand in Circular No.368/1/98-CX dated 06.01.1998, that if concrete is mixed in terms of IS 456:1978, then it would be treated as 'Concrete Mix' and if it was by IS 4926:1976 it would be RMC. It is submitted that IS 456:1978 talks of manual

batching and mixing of concrete under paragraph 9.2 whereas there was a separate standard for manufacture of RMC viz. IS 4926:1976.

xvii. The IS which governs plain and reinforced concrete was revamped vide IS 456:2000 which not specifically mentioned that for large and medium projects, concrete would be manufactured in captive automated batching and mixing plants.

xviii. Even if concrete is manufactured by use of on-site automatic batching plants, it will still be considered as Concrete Mix manufactured in accordance with IS 456:2000.

xix. The distinction drawn by the Apex Court based on the method or manner of manufacture of concrete is no longer relevant as the standard itself stated that even concrete produced in an automated plant can also qualify as plain or reinforced concrete as contemplated in IS 456:2000.

xx. The only test which will be applicable during the impugned period of dispute is whether the concrete has been manufactured at site or otherwise, and the test laid down by the Hon'ble Supreme Court will no longer be applicable in the facts of the present case.

xxi. Entry No. 144 mentioned that the exemption will be available to goods falling under Chapter 38 and does not specifically mention any particular sub-heading including that of RMC, viz. 38245010, which it has mentioned for various other entries in the said Notification. The legislature clearly intended to extend the benefit to all types of concrete mixes manufactured at site of construction for use in the construction activity as has been held in the recent decision of the Hon'ble Tribunal in the case of CCE, Delhi-II Vs. Consolidated Construction Consortium Ltd. – 2017 (347) ELT 295 (Tri.-Del).

xxii. Extended period of limitation has been wrongly invoked and penalty has been wrongly imposed in the present case. They had in their statement clearly communicated their belief as to the exemption available, with reasons thereof. The belief is not only held by them but all similarly situated persons in their line of business. Even the department was under similar belief. Therefore, extended period of limitation cannot be applied.

xxiii. The extended period of limitation cannot be applied in view of the earlier clarification of Board as well as the decision of the Appellate Authority, including High Court as prevailing prior to Supreme Court decision in L&T case. They rely upon the decision in the case of Shapoorji & Pallonji Co. Ltd.- 2016 (344) ELT 1132 (Tri.-Mumbai).

xxiv. During the impugned period there was a favourable decision of the Madras High Court in L&T Vs. Union of India - 200– (198) ELT 177 (Mad.) as well as larger Bench decision in the case of Chief Engineer, Ranjit Sagar Dam Vs. CCE, Jalandar – 2006 (198) ELT 503 (Tri.-LB) which was affirmed by the Punjab & Haryana High Court – 2007 (217) ELT 345 (P&H). They also rely upon the decision in the case of Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I – 2007 (216) ELT 177 (SC).

xxv. When the demand is not maintainable, the question of interest or penalty does not arise. When the extended period is not applicable, penalty under Section 11AC will not be applicable.

5. Personal Hearing in the case was held on 18.11.2021 through virtual mode. Shri S.J.Vyas, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as the material available on records. I find that the issue to be decided in the case is whether Central Excise duty is payable by the appellant in respect of the RMC manufactured on job work basis and cleared to different construction sites. The demand pertains to the period from 17.03.2012 to March, 2014.

7. I find that the appellant have, apart from contesting the issue on merits, also raised the issue of abnormal delay in adjudication of the SCNs and duplication of demand.

8. Regarding the issue of abnormal delay in adjudication of the SCNs, I find that the three SCNs were issued to the appellant in December, 2012, November, 2013 and June, 2014. The personal hearing in respect of these SCNs was held on 04.02.2021 and the SCNs were adjudicated vide the impugned order dated 16.03.2021. It is clear from the dates of events that the SCNs have been adjudicated after passage of a considerable period of time. I find that the appellant had raised this issue before the adjudicating authority in their written submission dated 01.02.2011 and the same has been recorded in the impugned order at Para 15.2. However, I find that the adjudicating authority has not addressed this issue in the impugned order and has not given any reason for the delay in adjudication of the SCNs and neither has he given any finding on the submission of the appellant in this regard.

9. Regarding the issue of duplication of demand, I find that subsequent to the issuance of SCNs to the appellant in December, 2012, November, 2013 and June, 2014, another SCN was issued to them on 11.04.2016 demanding service tax. The appellant have submitted a copy of the said SCN and on going through the same I find that the demand for service tax was raised on the grounds that they were providing Business Auxiliary Services and as no central excise duty was paid by the Principals in respect of the RMC manufactured by the appellant on job work basis, the benefit of exemption under Notification No. 8/2005-ST was not available to them. Accordingly, demand of Rs.31,81,814/- was raised against the appellant vide the SCN dated 11.04.2016 for the period from 01.07.2012 to F.Y. 2014-15. I further, find that the said SCN was adjudicated vide OIO No. SD-05/07/DKJ/DC/2017-18 dated 31.05.2017 and the demand was confirmed. It is apparent from the above facts that for the same activity and for the same period the appellant has been issued different SCNs demanding both Central Excise duty as well as Service Tax.

9.1 I find that the appellant had also raised the issue of duplication of demand vide their written submission dated 01.02.2011 and the same has been recorded in the impugned order at Para 15.3. However, I find that the

adjudicating authority has not dealt with the issue and also not given any findings in the impugned order in this regard. Before proceeding to deal with the merits of the case, the adjudicating authority ought to have dealt with the issue of duplication of demand on the same activity/same goods and for the same period as the issue is very significant and has a bearing on the outcome of the adjudication of the case. The department cannot demand Service Tax on the grounds that central excise duty on RMC, manufactured on job work basis by the appellant, is not paid by the principals to whom such RMC was cleared by the appellant and at the same time also demand central excise duty from the appellant on the grounds that RMC manufactured on job work basis was not used in the manufacture of specified goods and also on the grounds that the RMC was not specified goods for the purpose of exemption claimed by them.

9.2 In view of the facts as discussed hereinabove, I am of the considered view that as the significant issues raised by the appellant have not been considered in the adjudicating proceedings, the case is required to be remanded back to the adjudicating authority. Therefore, I set aside the impugned order and remand the case back to the adjudicating authority to decide the case afresh after considering the submissions of the appellant regarding abnormal delay in adjudication and duplication of demand and giving his findings on these submissions of the appellant. Needless to say, the principles of natural justice should be followed before adjudication of the case in the remand proceedings.

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

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

(Akhilesh Kumar)
Commissioner (Appeals)
Date: .06.2022.

Attested:

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

F No.GAPPL/COM/STP/1444/2021

BY RPAD / SPEED POST

To

M/s. Arvind B Safal Homes LLP, Appellant
Rohit Mills Premises, Rohit Circle,
Khokhra, Ahmedabad

The Assistant Commissioner, Respondent
CGST, Division- I,
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)
4. Guard File.
5. P.A. File.