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:. 20231064SW000000CCC7

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3216/2023 12466-70

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-144/2023-24**
दिनाँक Date : 16-10-2023 जारी करने की तारीख Date of Issue 20.10.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)

ग Arising out of OIO No. 75/AC/KANTILAL DHARAMSING PATEL/Div-II/A'bad-South/JDM/2022-23 दिनाँक: **23.01.2023** passed by Assistant Commissioner, CGST, Ahmedabad South.

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Shri Kantilal Dharamsing Patel,
Proprietor of M/s. Parth Engineering Works,
B-3/6, Plot No.56, Gayatri Estate,
Bharat Cement Compound,
Vatva GIDC-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 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 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 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 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.

1ण 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;
इ॰ लिया गलत सेनवैट क्रेडिट की राशि;
ब॰ 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

The present appeal has been filed by Shri Kantilal Dharamsing Patel, Proprietor of M/s Parth Engineering Works, B-3/6, Plot.No. -56, Gayatri Estate, Bharat Cement Compound, Vatva, GIDC-382445 (hereinafter referred to as the *"the Appellant"*) against Order in Original No. 75/AC/KANTILAL DHARAMSING PATEL/DIV-II/A'bad-South/JDM/ 2022-23 dated 23.01.2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division II, Ahmedabad South (hereinafter referred to as *"adjudicating authority"*).

2. Briefly stated, the facts of the case are that the Appellant were not registered with Service Tax department holding PAN No. AWSPP4290K. As per the information received from the Income Tax Department, it was noticed that the Appellant had earned substantial income from service provided during F.Y. 2016-17, however they failed to obtain Service Tax Registration and also failed to pay service tax on such income. The Appellant were called upon to submit copies of relevant documents for assessment for the said period, however, they neither submitted any required details/documents nor did offer any clarification/explanation regarding gross receipts from services rendered/income earned by them.

3. Subsequently, the Appellant were issued Show Cause Notice bearing No. WS0204/TPD/2016-17/17/21-22 dated 21.10.2021, wherein it was proposed to:

a) Demand and recover an amount of Rs. 1,75,913/- for the F.Y. 2016-17 under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 along with interest under section 75 of the Finance Act 1994 (hereinafter referred to as *'the Act'*).

b) Impose penalty under the provisions of Section 77 (1) and 78 of the Act.

3. The SCN was adjudicated exparte vide the impugned order wherein:

a) The demand of service tax amounting to Rs. 1,75,913/- for the period 2016-17 was confirmed under provision to Section 73(1) read with Section 68 of the Act along with interest under Section 75 of the Act.

b) Penalty amounting to Rs. 1,75,913/- was imposed under 78(1) of the Act.

c) Penalty amounting to Rs. 10,000/- was imposed under 77(1) of the Act for failure to include the supply services in their registration under the provision of Section 69 of the Act.

d) Penalty amounting to Rs. 10,000/- was imposed under 70 of the Act read with Rule 7(c) of Service Tax Rules, 1994 for each non/late filing of ST-3 Return.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

➢ That the Appellant has not availed any opportunity of hearing though the Appellant had received hearing notice but not attended as unaware of procedure. In absence of any reply to SCN and explaining the case without hearing, the said OIO confirming the duty is not proper and legal.

➢ That while demand is confirmed on the ground of CBDT data, the cum duty price benefit is not extended. Therefore, the said OIO deserves to be set aside.

➢ That it is admitted fact that in ITR for the period 2016-17, the amount of income shown is Rs. 11,72,758/- which is considered as taxable service by adjudicating authority but on what ground it is considered as taxable value is not mentioned

anywhere in notice. Therefore, in absence of any ground, the said SCN & OIO for demanding service tax is not sustainable.

➢ That even the department has not taken care to investigate the matter whether, in fact, the amount of income as per ITR return is liable to service tax. Therefore in absence of any evidence, the Appellant is not liable to pay service tax as mentioned in OIO & notice though there is difference in duty amount. Therefore, on this count, the said demand of service tax is not sustainable. Reliance is placed on the judgment reported in 2019 (24) GSTL 606 in the case of Kush Construction.

➢ That in the notice, there is no classification of service has been mentioned; that it does not transpire which type of service had been provided by the Appellant which is liable to pay service tax of Rs.1,75,913/- for the period 2016-17. Reliance is placed on judgment reported in 2018(10) GSTL 392 in the case of Deltax Enterprise, 2015 (040) STR 1034 & 2020 (43) GSTL 533 in the case of Vaatika Constructions. Therefore, in absence of any specific allegation made in the notice for service, the said OIO deserves to be set aside any reply to SCN and explaining the case without hearing, the said OIO confirming the duty is not proper and legal.

➢ That the Appellant relies upon recent judgment reported in 2022 (58)) GSTL 324 in the case of Ganpati Mega Builders (I) Pvt. Ltd & 2002(58) 245 in the case of Quest Engineers & Consultant (P) wherein Hon'ble Tribunal held that - "Form 26AS is not prescribed documents for ascertaining gross turn over of Assessee. The case of the Appellant is covered by above judgments of Hon'ble Tribunal and therefore, the said OIO requires to be dropped.

➢ That the Appellant was doing all types of precision work and fabrication. The material were Supplied by Excise registered person. The said Company had raised job - work challan under

Rule 4(5) of CCR to Appellant for movement of goods i.e. one factory to another factory for further processing /operation/ machining. The Appellant after doing the process of goods on material sent by Excise Regd. person, returned back goods to Material supplier i.e. Excise Registered person. This activity of the Appellant is exempted vide Mega Notification No. 25/2012-ST dated 26/06/2012 vide E. No. 30 (i) & (c). Therefore, the demand is not sustainable.

➢ That the Appellant submitted that the department could have called for details from income tax department within statutory time limit instead of taking more than 4 years. Therefore, there is no suppression of facts as alleged in the SCN as the Appellant had filed so called IT return within time prescribed under Income Tax Act and the Appellant is still in dilemma that why the SCN issuing authority has taken more than 5 years for demanding service tax on the taxable value declared in ITR return. Therefore, the invocation of extended period to cover liability for the period 2016-17 is totally baseless and vague by issuing notice on 21/10/2021. Therefore, the demand is totally time barred. Therefore, the said OIO is not sustainable. Further, the following judgments are also relied upon by the Appellant which are as under:

- Commissioner of Central Excise, Jalandhar V. Royal Enterprises -2016 (337) ELT 482 in the case of Commissioner
- Jasishri Engineering Co. (P) Ltd. V. C.C.E. - 1989 (40) E.L.T. 214 (S.C)
- Hi-Life Tapes(P) Ltd. V. Collector of Central Excise – 1990 (46) E.L.T. 430 (Tri.)
- Hindustan Steel V. State of Orissa [1978 (2) E.L.T. (J 159) (S.C))

➢ It is well settled, by catena of decision that penalty is imposable on the act or omission or deliberate violation with disregard to the statue and in absence of any allegation made in the SCN regarding the activity / involvement of the Appellants,

and presence of mens-rea being a mandatory requirement, in absence of same proposal for imposition of penalty is unjustified, as enshrined by the judgments set out under:

- 2008 (226) E.L.T. 38 (P & H) CCE, Jalandhar V. S. K. Sacks (P) Ltd. 1998 (33) E.L.T. 548 (Tri.) -Indopharma Pharmaceutical Works
- 2000 (125) E.L.T. 781 (Tri.) - Bhillai Conductors (P) Ltd.
- 1994 (74) E.L.T. 9 (SC) - Tamil Nadu Housing Board

➢ That penalty is proposed to be imposed under Section 70 77 in addition to Section 78 is not proper and legal in as much as the Appellant is not liable to pay service tax as explained above and till issuance of above SCN, no letter or no notice is issued for any contravention of Provisions of Section or Rule of Finance Act, 1994. Therefore, the Penalty is proposed to be imposed is unwarranted. The interest is also not liviable. Reliance is placed on judgment reported in 2019 (27) GSTL 575 (Tri. Bang) in the case of Jossy Edwin Pinto. In the light of the aforesaid submissions made by Appellants, the appellant submits that they have a substantial case not just on merits but also on time bar. In light of this position, the said OIO requires to be set aside.

5. Personal Hearing in the case was held on 10.10.2023. Shri Naimesh K. Oza, Advocate, appeared on behalf of appellant for the hearing and reiterated the contents of the written submissions made in appeal memorandum and requested to allow the appeal. The Appellant submitted copy of Profit & Loss Account, Balance Sheet for F.Y. 2016-17, sample copies of Delivery Job work Challans for the impugned period.

6. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax

amount of Rs. 1,75,913/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2016-17.

7. It is observed that the demand of service tax was raised against the Appellant on the basis of the data received from Income Tax department. It is stated in the SCN that the nature of the activities carried out by the Appellant as a service provider appears to be covered under the definition of service; appears to be not covered under the Negative List of services as per Section 66D of the Act and also declared services given in 66E of the Act, as amended; appears to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 as amended. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Act. No cogent reason or justification is forthcoming for raising the demand against the appellant. It is also not specified as to under which category of service, the non payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

7.1 I find in pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

> "It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.
>
> 3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to monitor

> and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

7.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

8. Coming to the merit of the case it is observed that the main contention of the Appellant is whether they were liable to pay service tax despite the fact that income had been received by them by doing job work from precision work and fabrication. Job work is defined under Rule 2(n) of Cenvat Credit Rule, 2004 which reads as under:

> *"job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;*

9. The Appellant would receive materials from Central Excise Registered Unit (Principal Manufacturer) and after precision and fabrication work would return to Principal Manufacturer under job work challan issued in terms of Rule 4(5) of Cenvat Credit Rule, 2004. The Appellant contended that the income of Rs. 11,72,758/- booked in P & L account or ITR is related to only the income received from Job Work process done and therefore that income is exempted from the service tax as per Sr. No. 30 (c) of the Notification No. 25/2012-ST dated 20.06.2012.

10. It is also observed that the adjudicating authority has

passed the impugned order ex-parte. The adjudicating authority did not taken care to investigate the matter whether the income received by the Appellant is taxable or otherwise. Without investigation how can they reach on the belief that the nature of the activities carried out by the Appellant as a service provider appeared to be covered under the definition of service; appeared to be not covered under the Negative List of services as per Section 66D of the Act and also declared services given in 66E of the Act, as amended; appeared to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 as amended.

11. Service tax cannot be chargeable on the Appellant in cases of income received by them from doing job work for Principal Manufacturer. I have perused samples Job Work challans submitted by the Appellant it is quite clear that the work which is attributable to manufacture of Goods as per section 2(f) of the Central Excise Act, 1944 is exempted in terms of Entry No. 30 (c) of Notification No. 25/2012-ST dated 20.06.2012. For ease of reference, I hereby produce the relevant text of the Notification No. 25/2012-ST dated 20.06.2012, as amended, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ... ...

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

(a) agriculture, printing or textile processing;

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

(c) any goods excluding alcoholic liquors for human

consumption, on which appropriate duty is payable by the principal manufacturer; or

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

12. In view of the above discussion, I am of the considered opinion that the activity carried out by the Appellant is not liable to pay Service Tax. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

13. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

14. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

(Gyan Chand Jain)
Commissioner (Appeals)
Dated: 16.10.2023

Attested

(Amrendra Kumar)
Superintendent(Appeals)
CGST Ahmedabad.

BY RPAD/ SPEED POST

To

Shri Kantilal Dharamsing Patel, Appellant
Proprietor of M/s Parth Engineering Works,
B-3/6, Plot No. -56,
Gayatri Estate,
Bharat Cement Compound, Vatva,
GIDC-382445

The Assistant Commissioner Respondent
CGST & Central Excise
Division II, Ahmedabad South.

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad South.
3. The Asstt. Commissioner, CGST, Division-II, Ahmedabad South.
4. The Asstt. Commissioner (HQ System) Central GST, Ahmedabad South (for uploading the OIA).
5. Guard File.
6. P.A. File.