



सत्यमेव जयते

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

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



DIN : 20230564SW0000714409

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/97/2023 /1728 -32
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-37/2023-24  
दिनांक Date : 24-05-2023 जारी करने की तारीख Date of Issue 25.05.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 09/AC/Harsiddh Electro Mech/Div2/A'bad South/JDM/2022-23 दिनांक:  
18.10.2022 passed by Assistant Commissioner, CGST, HQ, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

1. M/s Harsiddh Electro Mech Pvt Ltd  
Plot No. 1907 A, Phase IV, GIDC Vatva,  
Ahmedabad 382445
2. M/s Harsiddh Electro Mech Pvt Ltd  
712, Shed No. 14-15, Parmeshwar Est.,  
Phase-I, GIDC 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 पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



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

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

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

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

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

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के 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 रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

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



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

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

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

44<sup>प</sup> 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;  
इण लिया गलत सेनवैट क्रेडिट की राशि;  
बण 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:

- (ccxlvii) amount determined under Section 11 D;  
(ccxlviii) amount of erroneous Cenvat Credit taken;  
(ccxlix) 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



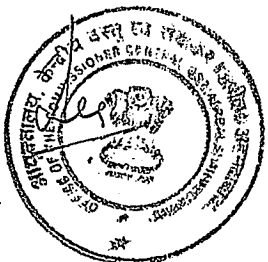
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Harsiddh Electro Mech Pvt. Ltd., Plot No. 1907A, Phase-IV, GIDC, Vatva, Ahmedabad – 382418 (hereinafter referred to as “the appellant”) against Order-in-Original No. 09/AC/Harsidhh Electro Mech/Div2/A’bad-South/JDM/2022-23 dated 18.10.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, HQ, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AADCH1116L. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 50,00,599/- during the FY 2015-16, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” or “Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but have neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. 312/2019-20 dated 12.06.2020 under F.No. WS0204/Third Party(15-16)/1/Harsiddh/2020-21 demanding Service Tax amounting to Rs. 7,25,087/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994; and imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 7,25,087/- was confirmed 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 for the period from FY 2015-16. Further (i) Penalty of Rs. 7,25,087/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994 for failure to taking Service Tax Registration; and (iii) Ordered for recoveries of late fees from the appellant under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.



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

- The appellant are engaged in the business of manufacturing of machine parts falling under CETSH 848790000 as well as doing job work services on the goods supplied by the other manufacturers. During the FY 2015-16, the appellant had provided the job work services amounting to Rs. 50,00,599/- to various manufacturers.
- Job work income received from the said activity has been reported as income from service activity by the registered person in the income tax return filed by it.
- As per Sr. No. 30(a) of the Notification No. 25/2012-ST dated 20.06.2012, services by way of carrying out any process amounting to manufacture or production of goods exempted from Service Tax.
- They have also submitted copy of invoices raised for job work; copy of delivery challans for goods supplied by other manufacturer for carrying out job work activities; copy of delivery challans for process goods supplied by them to other manufacturer after carrying out job work activities; Income Tax Return for the FY 2014-15 and FY 2015-16; Form 26AS for the FY 2014-15 and FY 2015-16; Audit Report for the FY 2014-15 and FY 2015-16; Sales Register for the FY 2015-16; and Purchase Register for the FY 2015-16.

4. Personal hearing in the case was held on 16.05.2023. Shri Nirav Malkan, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted a written submission during hearing.

4.1 The appellant have in their additional written submission submitted during the course of personal hearing, inter alia, re-iterated the submission made in the appeal memorandum and also made the following further submissions:

- The appellant are engaged in the business of manufacturing of machine parts falling under CSTSH 848790000 as well as job work services on the goods supplied by the other manufacturers.
- On the job work services amounting to Rs. 50,00,599/- provided by the appellant, they have not charged service tax due to following reasons:



(i) The appellant have provided job work services amounting to Rs. 48,76,098/- on which appropriate duty is payable by the principal manufacturer. As per Sr. No. 30 of the Notification No. 25/2012-ST dated 20.06.2012,

(a) Services by way of carrying out any process amounting to manufacture or production of goods or

(b) any intermediate production process as job work not amounting to manufacture or production in relation to any goods on which appropriate duty is payable by the principal manufacturer.

exempted from payment of service tax.

(ii) For the remaining amount of services provided for Rs. 3,24,501/- the appellant is not required to discharge the service tax liability in view of Notification No. 33/2012-ST dated 20.06.2012.

- Out of the total value of services provided of Rs. 50,50,599/-, the appellant have mainly provided the job work services to following four parties:

(Amount in Rs.)

| Name of the party                      | Central Excise Registration No. | Value of Job work done during FY 2015-16 |
|--|---------------------------------|--|
| M/s. Dhall Enterprise & Eng. Pvt. Ltd. | AAACD5351JXM001                 | 2,50,819/-                               |
| M/s. Harsiddh Industries               | ACPPP9345LEM001                 | 31,08,081/-                              |
| M/s. Prasad GWK Cooltech Pvt. Ltd.     | AABCP4965DXM002                 | 10,69,545/-                              |
| M/s. Mamata Machinery Pvt. Ltd.        | AABCM8241PEM002                 | 2,47,653/-                               |
|  | <b>Total</b>                    | <b>46,76,098/-</b>                       |

- The appellant have also submitted the following documents to substantiate their case:
  - Copy of invoices raised for job work services provided.
  - Copy of delivery challans for goods supplied by other manufacturer for carrying out job work activity.
  - Copy of delivery challans for processed goods supplied by them to other manufacturer after carrying out job work activity.
- The appellant have not charged the service tax on job work activity as they were under bonafide belief that any intermediate production process as job work not amounting to manufacture or production in relation to any goods on which appropriate duty is payable by the principal manufacturer is exempted from payment of service tax.



5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, 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."*

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax.



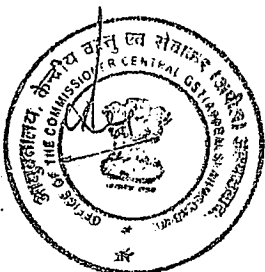
7. It is observed that the main contentions of the appellant are that (i) they have carried out job work for an amount of Rs. 48,76,098/- on which appropriate duty is payable by the principal manufacturer, therefore, the same is exempted from payment of service tax as per Sr. No. 30 of the Notification No. 25/2012-ST dated 20.06.2012; (ii) for the remaining amount of services provided for Rs. 3,24,501/- the appellant is not required to discharge the service tax liability in view of Notification No. 33/2012-ST dated 20.06.2012.

7.1 It is observed that the adjudicating authority has in the impugned order observed that even under negative list regime, (i) if the process amounts to manufacture, Service Tax is not applicable and one should refer negative list serial number (f) for the same and (ii) if the process does not amount to manufacture; one should refer to the exemption provided in Notification No. 25/2012-ST dated 20.06.2012, as per the said Notification, job work in relation of any goods, on which appropriate duty is payable by the principal manufacturer is exempted. The adjudicating authority has also observed that the appellant had carried out manufacturing process on job work basis on the goods supplied by their Principals. However, while confirming demand of service tax, he has held that the appellant has failed to submit any documentary evidence in support of their claim in respect of job work carried out by them, evidencing that the Principal would discharge duty on goods produced by the appellant. The adjudicating authority has, while confirmed the demand of Service Tax, in the impugned order held as under:

*"16. From the copies of the documents submitted by the noticee as detailed hereinabove, I find that the Noticee is a private limited company working under the name and style of M/s. Harsiddh Electro-Mech Pvt. Ltd. They are engaged in manufacturing of machine parts falling under C.E.T.H. 8487 9000, as declared in their C. Ex. Return. They are also engaged in job work on machine parts supplied by their Principals. The C. Ex. Regi. No. of the noticee was AADCH 1116L EM001. It transpires from the copy of Excise Return submitted that they were discharging C. Ex. duty on the goods manufactured by them during the relevant period.*

*17. As per their books of account, their total sale for F.Y. 2015-16 was Rs. 2,30,56,549/- and out of which job work income is Rs. 50,00,599/-. The remaining income is from sale of goods manufactured by them.*

*18. Now, I discuss whether Service Tax is leviable on the income earned by the noticee as job worker, as detailed above, or otherwise.*





19. For this, I will examine the legal provisions in this regard. Section 66D of the Finance Act, 1994 lists certain services as Negative List services which are NOT subject to Service Tax. In this connection, the relevant provision of the Section is reproduced herein below:

.....

19. Further, job work was also exempted from levy of Service Tax vide Sr. No. 30 of Notification No. 25/2012-ST dated 20.06.2012 (as amended), which are as under:

.....

20. Thus, as per Section 66D(f) of the Finance Act, 1994; any process amounting to manufacture or production of goods is not taxable service. Accordingly, it is clear that if the process amount to manufacture, then no Service Tax liability arises. Further, what is "Process amounting to manufacture or production of goods", which is defined under Section 65B(40) of the Finance Act, 1994, means, a process on which duties of excise are leviable under Section 3 of the Central Excise Act, 1994 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for time being in force.

21. Hence, it is clear that even under negative list regime, if the process amounts to manufacture, Service Tax is not applicable and one should refer negative list serial number (f) for the same. Next, if the process does not amount to manufacture; one should refer to the exemption provided in Notification No. 25/2012-ST dated 20.06.2012. As per the said Notification, job work in relation of any goods, on which appropriate duty is payable by the principal manufacturer is exempted.

22. I find that the noticee had carried out manufacturing process on job work basis on the goods supplied by their Principals. However, I find that the noticee has failed to submit any documentary evidence in support of their claim in respect of job work carried out by them, viz. Name, Address, C. Ex. Registration Nos. of their Principals, copies of job-work challan as prescribed under C. Ex. Law, evidencing that the Principal would discharge duty on goods produced by the noticee, etc."

8. For ease of reference, I reproduce the relevant provision of Section 66D(f) of the Finance Act, 1994 and relevant provision for Notification No. 25/2012-ST dated 20.06.2012

as amended, which reads as under:



**“SECTION 66D. Negative list of services.—**

The negative list shall comprise of the following services, namely :-

(a) ..... (b) .....

(f) Services by way of carrying out any process amounting to manufacture or production of goods”

For the period from 01.07.2012 to 30.03.2017,

Notification No. 25/2012-Service Tax dated 20th June, 2012 reads as under:

“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...

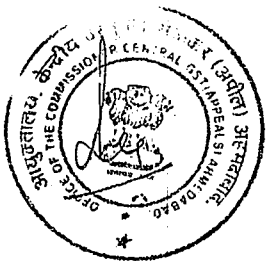
2... ..

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,]\*  
\*{inserted vide Notification No. 6/2015-ST dated 01.03.2015} 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;

9. Based on the legal provisions above, I find that if the process amounts to manufacture, Service Tax is not applicable as per Section 66D(f) of the Finance Act, 1994. On verification of the (i) copy of invoices raised for job work services provided; (ii) copy of delivery challans for goods supplied by other manufacturer for carrying out job work activity; and (iii) copy of delivery challans for processed goods supplied by them to other manufacturer after carrying out job work activity, I find that the appellant had carried out process of Powder Coating on the goods / material supplied by the principals.

9.1 I also find that the appellant have contended that out of the total value of services provided amounting to Rs. 50,50,599/-, they have mainly provided the job work services amounting to Rs. 46,76,098/- to following four parties:

(Amount in Rs.)

| Name of the party                      | Central Excise Registration No. | Value of Job work done during FY 2015-16 |
|--|---------------------------------|--|
| M/s. Dhall Enterprise & Eng. Pvt. Ltd. | AAACD5351JXM001                 | 2,50,819/-                               |
| M/s. Harsiddh Industries               | ACPPP9345LEM001                 | 31,08,081/-                              |
| M/s. Prasad GWK Cooltech Pvt. Ltd.     | AABCP4965DXM002                 | 10,69,545/-                              |
| M/s. Mamata Machinery Pvt. Ltd.        | AABCM8241PEM002                 | 2,47,653/-                               |
|  | <b>Total</b>                    | <b>46,76,098/-</b>                       |

9.2 The appellant have also submitted copies of delivery challans for receiving the material for job work from the aforesaid entity and delivery challans for supplying the material after job work to aforesaid entity. All the above four entity are registered with Central Excise and the finished goods are leviable to the Central Excise duty.

9.3 In view of the above provisions of Notification No. 25/2012-ST dated 20.06.2012 and on verification of the documents submitted by the appellant as explained above, I find that the job work service amounting to Rs. 46,76,098/- provided by the appellant to the aforesaid four



entity during the relevant period were exempted from the Service Tax as per Sr. No. 30(c) of the Notification No. 25/2012-ST dated 20.06.2012.

10. I also find that the adjudicating authority has in the impugned order confirmed the demand of service tax by holding that the appellant has failed to submit any documentary evidence in support of their claim in respect of job work carried out by them, viz. Name, Address, C. Ex. Registration Nos. of their Principals, copies of job-work challan as prescribed under C. Ex. Law, evidencing that the Principal would discharge duty on goods produced by the appellant. However, I find that in the present case the appellant have contended that they have carried out job work amounting to Rs. 46,76,098/-, which was exempted as per Sr. No. 30 of the Notification No. 25/2012-ST and also submitted copies of job work Challans, Name, Address and C.Ex. Registration Nos. of their Principals in support of their contentions.


11. As regards the leviability of service tax on the remaining income of Rs. 3,24,501/- and that whether the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 is admissible to the appellant or not, I find that the total value of service provided during the Financial Year 2014-15 was Rs. 31,16,691/-. Out of which the taxable value of job work service provided during the FY 2014-15 was Rs. 6,44,993/- as per the details submitted by the appellant, which is relevant for the value based exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2015-16. I also find that the remaining job work income received by the appellant was Rs. 3,24,501/- during the Financial Year 2015-16. Therefore, the appellant are eligible for benefit of exemption upto a value of taxable service amounting to Rs. 10,00,000/- during the FY 2015-16 and they are not liable to pay Service Tax on remaining amount of Rs. 3,24,501/- for the FY 2015-16.

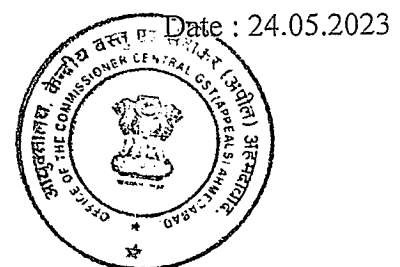
12. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of service tax on job work income of Rs. 50,50,599/- received by the appellant during the FY 2015-16, is not legal and proper and deserves to be set aside. Since the demand of service tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

13. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.


14. अपील कर्ता 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) 24<sup>th</sup> May, 2023 ..



Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

To,  
M/s. Harsiddh Electro Mech Pvt. Ltd.,  
Plot No. 1907A,  
Phase-IV, GIDC, Vatva,  
Ahmedabad – 382418

Appellant

The Assistant Commissioner,  
CGST,HQ,  
Ahmedabad South

Respondent

Copy to :

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

- 5) Guard File
- 6) PA file

