



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 : 20230564SW000061666D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1245/2023 / 1265 - 69
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-38/2023-24
दिनांक Date : 25-05-2023 जारी करने की तारीख Date of Issue 26.05.2023
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. MP/105/DC/Div-IV/22-23 दिनांक: 14.12.2022 passed by Assistant Commissioner, CGST, Division IV, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Lilaben Bachubhai Patel
Proprietor of M/s Jay Sanderi Engineers
G-10, Sitabaug Tenement,
Opp. Gujarat Warehouse,
Gebansa Bus Stand, Isanpur,
Ahmedabad - 382443

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

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

भारत सरकार का पुनरीक्षण आवेदन :

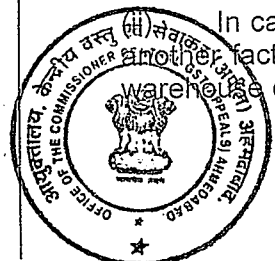
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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, 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 में हो माल की प्रक्रिया 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 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 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 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 होती 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 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. 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.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.

- 10 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलों 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.

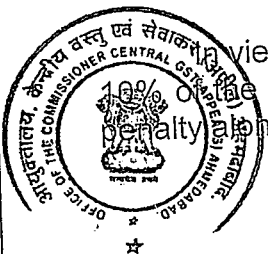
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (ccl) amount determined under Section 11 D;
(ccli) amount of erroneous Cenvat Credit taken;
(cclii) 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 the penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by Mrs. Lilaben Bachubhai Patel, Proprietor of M/s. Jay Sanderi Engineers, G-10, Sitabaug Tenament, Opp. Gujarat Warehouse, Gebansa Bus Stand, Isanpur, Ahmedabad – 382443 (hereinafter referred to as “the appellant”) against Order-in-Original No. MP/105/DC/Div-IV/22-23 dated 14.12.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division-IV, 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. ANMPP4611K. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that the appellant had earned income of Rs. 11,16,73/- 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 period from FY 2014-15 to FY 2017-18 (up to June-2017). From the documents submitted by the appellant vide letter dated 01.10.2020, it was observed by the jurisdiction officers that the appellant were receiving income as Labour Income. The appellant were requested vide letter dated 02.12.2020 to submit further documents like copy of contract, detailed income ledger, sample invoices, etc. However, the appellant had not submitted any further details / documents or offer any explanation / clarification regarding income earned by them. The details of income from Labour services received by the appellant during the said period is detailed below:

Financial Year	Taxable Value as per Balance Sheet i.e. Sales / Gross receipts from Services (Amount in Rs.)
2014-15	11,16,730/-
2015-16	10,39,125/-
2016-17	8,70,068/-
2017-18 (up to June-2017)	1,41,405/-

2.1 Subsequently, the appellant were issued Show Cause Notice No. Div-IV/SCN-201/2020-21 dated 22.12.2020 demanding Service Tax amounting to Rs. 4,40,422/- for the period from FY 2014-15 to FY 2017-18 (up to June-2017), 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; 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. 4,40,422/- 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. 4,40,422/- was also 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; and (iii) Penalty of Rs. 5,000/- was imposed on the appellant for not submitting documents to the department, when called for.

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 doing all types of precision job work and fabrication.
- The appellant was doing all types of precision work and fabrication. The materials were supplied by M/s. Patels Air Flows Ltd., who was working under the Excise Act and registered with Excise department having Registration No: AACCP7869DXM001. The said Company had raised job - work challan under Rule 4(5) of CCR to the 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 M/s. Patels Air Flow Ltd., returned back goods to Material supplier, i.e. M/s. Patels Air Flows Ltd. 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.
- The appellant had done job work of M/s. Patel Airflows Ltd., who had paid Central Excise duty on the said goods. They submitted Certificate issued by M/s. Patel Airflows Ltd. along with appeal memorandum.
- In view of the above, the remaining differential income for each year, i.e. from each year total income minus the job work income received from M/s. Patel Airflows Ltd., is below threshold exemption limit of Rs. 10 lac prescribed under Notification No. 33/2012-ST dated 20.06.2012. The detail is as under:

(Amount in Rs.)

Financial Year	Total Income as per Financial statement	Exempted Job work income	Differential amount



2014-15	11,16,730/-	4,24,475/-	6,92,255/-
2015-16	10,39,125/-	3,97,785/-	6,41,340/-
2016-17	8,70,068/-	3,94,990/-	4,75,078/-
2017-18 (up to June-2017)	1,41,405/-	93,505/-	47,900/-

- There is no suppression of facts as alleged in the notice as the appellant have filed so called IT Return on the basis of which department has issued notice. The appellant are still in dilemma that why the notice 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 2014-15 to 2017-18 (June-2017) is totally baseless and vague by issuing notice on 22/12/2022.
 - It is well settled law, 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 show cause notice regarding the activity / involvement of the appellant, and presence of mens-rea being a mandatory requirement, in absence of same proposal for imposition of penalty is unjustified,
 - That penalty is proposed to be imposed under Section 77 in addition to Section 78 is not proper and legal in as much as the appellant are 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 leviable.
 - The penalty of Rs. 5,000/- is imposed on the ground that the appellant has not submitted documents to department, when called for. The said penalty is not sustainable as it is imposed without authority of Law and without mentioning provision of Finance Act, 1994. Moreover, the adjudicating authority in his impugned order in the Brief of Facts - para 2 mentioned that the appellant has submitted documents vide letter dated 1/10/2020, therefore, the question does not arise to impose penalty without any findings.
4. Personal hearing in the case was held on 16.05.2023. Shri Naimesh K. Oza, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted a written submission during hearing along with a copy of reply dated 01.10.2020 submitted to the Superintendent, AR-II, Div-IV, CGST, Ahmedabad



4.1 The appellant have in their additional submission dated 16.05.2023, inter alia, reiterated the submissions made in the appeal memorandum.

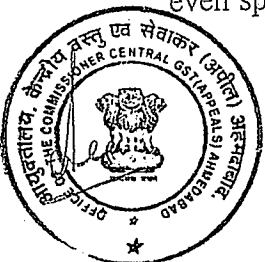
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax 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 from FY 2014-15 to FY 2017-18 (up to June-2017).

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 to FY 2017-18 (up to June-2017) 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 without any further inquiry or investigation, the SCN has been issued only on the basis of details submitted by the appellant on 01.10.2020, 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 provided job work services to M/s. Patels Air Flow Ltd., which were exempted vide Mega Notification No. 25/2012-ST dated 26/06/2012 vide Entry No. 30 (i) & (c); and (ii) the remaining differential income for each year is below threshold exemption limit of Rs. 10 lac prescribed under Notification No. 33/2012-ST dated 20.06.2012. It is also observed that the adjudicating authority has issued impugned order, ex-parte.

7. For ease of reference, I reproduce the relevant provision for Notification No. 25/2012-ST dated 20.06.2012 as amended, which reads as under:

For the period from 01.07.2012 to 30.03.2017

"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:-

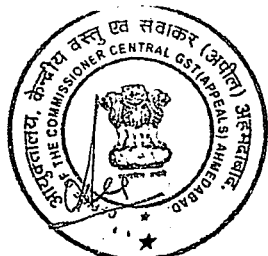
1...

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,]*
*{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;”

For the period with effect from 31.03.2017

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. Services by way of carrying out, -

(i) any process amounting to manufacture or production of goods
excluding alcoholic liquor for human consumption; or

(ii) any intermediate production process as job work not amounting to
manufacture or production 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;] substituted by Notification No.7/2017-ST,dated 2.2.2017 w. e. f. 31.3.2017”

7.1 In view of the legal provisions under Notification No. 25/2012-ST dated 20.06.2012, as amended, any intermediate production process as job work, on which appropriate duty is payable by the principal manufacturer, were exempted from the Service Tax as per Sr. No. 30(c) of the said notification during the period from 01.07.2012 to 30.03.2017 and as per Sr. No. 30 (ii)(c) of the said notification during the period from 31.03.2017 to 30.06.2017.

7.2 On verification of the documents submitted by the appellant viz. Certificate dated 12.01.2023 issued by M/s. Patel Air Flows Ltd. along with ledgers for the period from FY 2014-15 to FY 2017-18 (up to June-2017) maintained by M/s. Patel Air Flows Ltd. in respect of appellant, I find that M/s. Patel Air Flows Ltd. clearly certified that they were manufacturing Fan / Blower and spares falling under CETSH 84145930/9040 and holding Central Excise Registration No. AACCP7869DXM001. They, inter alia, also certified that the appellant carried out job work send by them and they were paying Central Excise duty on the final products cleared by them. Thus, I find that the job work service provided by the appellant to M/s. Patel Air Flows Ltd. during the period from 01.07.2012 to 30.06.2017 were exempted from the Service Tax as per Sr. No. 30(c) / 30(ii)(c) of the Notification No. 25/2012-ST dated 20.06.2012, as amended. In view of the above, I find that the appellant are not liable to pay service tax on income of Rs. 4,24,475/- for the FY 2014-15; Rs. 3,97,785/- for the FY 2015-16; Rs. 3,94,990/- for FY 2016-17; and Rs. 93,505/- for FY 2017-18 (up to June-2017) received from M/s. Patel Air Flows Ltd.



8. With regard to the remaining income, whether the benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 admissible to the appellant or not, I find that the total value of service provided during the Financial Year 2013-14 was Rs. 8,38,635/- as per the Profit & Loss Account submitted by the appellant, which is relevant for determining exemption under Notification No. 33/2012-ST dated 20.06.2012 for the FY 2014-15. I also find that the remaining income received by the appellant was Rs. 6,92,255/- during the Financial Year 2014-15. Therefore, the appellant are eligible for benefit of exemption upto value of Rs. 10,00,000/- during the FY 2014-15. Therefore, they are not liable to pay Service Tax on remaining amount of Rs. 6,92,255/- received during the FY 2014-15.

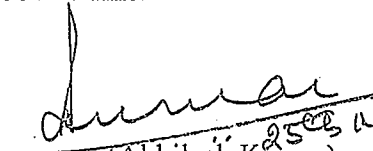
9. As regard, the remaining income of Rs. 6,41,340/- for the FY 2015-16, Rs. 4,75,078/- for FY 2016-17 and Rs. 47,900/- for FY 2017-18 (up to June-2017), the benefit of threshold limit of exemption under Notification No. 33/2012-ST dated 20.06.2012 are available to the appellant as the remaining income received by the appellant was Rs. 6,92,255/- during the Financial Year 2014-15. Thus, the appellant are not liable for the service tax for the whole income received by them during the FY 2014-15 to FY 2017-18 (up to June-2017).

10. In view of above, I hold that the impugned order passed by the adjudicating authority, in respect of income received by the appellant during the FY 2014-15 to FY 2017-18 (up to June-2017), 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.

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


12. 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)

Date : 25.05.2023

Attested


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



CGST, Ahmedabad

By RPAD / SPEED POST

To,
Mrs. Lilaben Bachubhai Patel,
Proprietor of M/s. Jay Sanderi Engineers,
G-10, Sitabaug Tenament,
Opp. Gujarat Warehouse,
Gebansa Bus Stand, Isanpur,
Ahmedabad – 382443

Appellant

The Assistant Commissioner,
CGST, Division-IV,
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 IV, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- 5) Guard File
- 6) PA file

