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: 20230864SW000000B3DC

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1591/2023 /1949-50

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-93/2023-24**
दिनाँक Date : **25-08-2023** जारी करने की तारीख Date of Issue 28.08.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of OIO No. 59/CGST/Ahmd-South/JC/MT/22-23 दिनाँक: **20.12.2022** passed by Joint Commissioner, CGST, Ahmedabad South.

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Madhuram Synthetics Pvt. Ltd,
33/3, Opp. Gujarat Weigh Bridge,
Sewage Farm Road, Behrampura,
Ahmedabad-380022.

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;
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:

(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 M/s. Madhuram Synthetics Pvt. Ltd., 33/3, Opp. Gujarat Weigh Bridge, Sewage Farm Road, Behrampura, Ahmedabad – 380022 (hereinafter referred to as "the appellant") against Order-in-Original No. 59/CGST/Ahmd-South/JC/MT/22-23 dated 20.12.2022 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAICM3305SD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that there is difference of value of service amounting to Rs. 9,25,41,117/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant were called upon to submit clarification for difference along with supporting documents, 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. STC/04-01/O&A/Madhuram/21-22 dated 21.04.2021 demanding Service Tax amounting to Rs. 1,33,96,422/- 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; and imposition of penalties under Section 70, Section 77 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. 3,48,62,466/- 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 FY 2015-16 to FY 2017-18 (up to June-2017). Further (i) Penalty of Rs. 3,48,62,466/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 1,34,200/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994.

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

- The appellant are a Private Limited Company inter-alia engaged in spinning, weaving and finishing of textiles. In regular course of business, the appellant undertakes job work for and on behalf of various companies whereby the appellant receives textile fabrics from such companies and the same are then processed in terms of the requirements of the principal company. For the process undertaken by the appellant, the consideration is received in the form of job charges and the processed fabrics are sent back to the principal company. They have submitted copies of specimen invoices issued by them for undertaking such work along with appeal memorandum.

- As the work undertaken by the appellant did not amount to manufacture and/or activity which was leviable to service tax, the bills raised on the Principal Company merely carried job charges for carrying out the said job work. For the said reason, the amount of consideration received from such Companies though disclosed as consideration in the Income Tax Returns and Financial Statement, but were not included in the taxable consideration disclosed in the ST-3 returns filed by the appellant.

- The adjudicating authority not only confirmed demand which was raised in the show cause notice for the period 2015-16 but also for the period 2016-17 and 2017-18 which was never even proposed in the show cause notice. As against a proposal of confirmation of demand of Rs. 1,33,96,422/- which was raised in the show cause notice, the adjudicating authority confirmed a demand of Service Tax of Rs. 3,48,62,466/- along with interest and penalty. Thus, the adjudicating authority have gone beyond the scope of the show cause notice which was issued only for the period 2015-16 without putting the appellant to any notice thereof for the further period. Thus, there is an overall failure in complying with the principles of natural justice on part of the authority in this case and the order now passed by him suffers from violation of the principles of Natural Justice. The order is therefore void and hence liable to be set aside. In this regard, in support of their aforesaid view, they have relied upon the following case laws:

  a) Commissioner of Central Excise and Customs, Belgaum vs Mahakoshal Beverages Pvt. Ltd. 2014 (33) STR 616 (Kar.)
  b) Commissioner vs Reliance Ports and Terminals Ltd. 2016 (334) ELT 630 (Guj.)

- There is no dispute to the fact that the appellant is exclusively engaged in the business concerning textile articles. This being the case the observation of the adjudicating authority that the appellant had not provided proof to show that the job work was

taken in respect of textile cloth processing is not only absurd but also ex-facie high handed and arbitrary. The appellant submitted that if the factual position was not clear and if any doubt was entertained by the authority, it would have been in the fitness of things for the authority to call upon the appellant to produce such documents. By not expressing any doubts during the course of hearing and to then hold the issue against the appellant on absence of information is absolutely unfair and improper on part of the adjudicating authority.

- In the present case, other than the difference in the income declared by the appellant, the department has not brought on record even an iota of evidence to show that the amount received was taxable under law. No basis or evidence has been brought on record to reject the submission of the appellant that the amount was earned as job charges for processing textile.

- In such circumstances, assuming that the adjudicating authority could have raised objection, the same should have been put to the appellant for bringing appropriate evidence on record to ascertain the correct factual position. Be that as it may, to put the issue at rest, the appellant herewith brings on record a certificate of the Chartered Accountant, specimen copies of bills raised by the appellant on the principal buyer as well as certificates from some of the major buyers which clearly shows that the job charges were in respect of processing of textile articles only. The appellant have submitted said copies of the Certificates along with appeal memorandum.

- The appellant submitted that processing of textile fabrics does not attract any service tax. Notification No. 25/2012-Service Tax dated 20 June, 2012, provides blanket exemption to any intermediate production process as job work (textile processing) not amounting to manufacture or production in relation to textile processing. The appellant submitted that the services provided by the appellant were merely a Job Work service whereby the textile provided by the principal company was processed for and on their behalf. The law on the subject whether the activity amounts to manufacture or not is also well settled and the Hon'ble Supreme Court in Delhi Cloth and General Mills Co. Ltd. Vs. UOI, 1962 (10) TMI 1 has held that excise duty are being leviable on the manufacture of goods and not on their sale and that mere processing cannot be equated to manufacture which means bringing into existence a new substance. In view of the said judgment of the Hon'ble Supreme Court and in view of the processing activity undertaken by the appellant, it is clear that the processing activity does not bring into existence any distinct article with a distinctive name, character or use and therefore, the said activity though amounting to processing

of textile article cannot be equated to manufacturing process so as to attract levy of any excise duty thereon. It is therefore, submitted that as the activity undertaken by the appellant was clearly in the nature of processing of textile provided by the principal company, the same was exempt from levy of service tax under Sr. No. 30(ii)(a) of Mega Exemption under Notification No.25/2012-service tax dated 20June, 2012.

- The appellant further submits that the Revenue has not found any positive act or omission on the appellant's part which established that such information was suppressed with an intention to evade payment of any tax. On the contrary, it is an admitted fact that all the business transactions were duly shown in the appellant's books of account and balance-sheets, and it is on the basis of the balance-sheets and audited books of accounts that all the figures are obtained by the officers for raising demand of service tax. Therefore, it is a case where there was no deliberate suppression of facts on the appellant's part regarding business activities undertaken by the appellant.

- The adjudicating authority can not invoked the extended period without any grounds and without intent to evade tax payment. The law about invocation of extended period of limitation is well settled. Only in a case where the assessee knew that certain information was required to be disclosed and yet the assessee deliberately did not disclose such information, the case would be that of suppression of facts.

- In the present case, the demand for the period 2015-16 was raised by way of show cause notice dated 21.04.2021; whereas, the returns for the period April to September, 2015 was filed on 17.10.2015. For the said period April to September, 2015, show cause notice even invoking the extended period could only have been issued on or before 17.10.2020. In the present case, as highlighted hereinabove, the show cause notice was issued only on 21.04.2021, that is much after the expiry of the last date to issue the show cause notice for the said period. In view of the said submission, the demand raised for the period April to September, 2015, has even otherwise been beyond the statutory mandate provided under Section 73 of the Finance Act.

- In the instant case, there is no short levy or short payment or non-levy or non-payment of any service tax. The action of the adjudicating authority in ordering recovery of interest under Section 75 of the Act is also bad and illegal and hence, liable to be set aside.

- The adjudicating authority has committed a grave error in imposing penalty upon the appellant under various sections viz. Section 77 and Section 78 of the Finance Act, 1994.There was no case of any malafide or ill intention made out against the appellant in respect of non-payment of tax or in respect of any of the provisions of the Act, and therefore even a token penalty was not justified in this case.

4. Personal hearing in the case was held on 11.08.2023. Shri Paritosh R. Gupta, Advocate, appeared on behalf of the appellant for personal hearing and handed over additional written submissions with a paper book of case laws relied upon by them. He reiterated submissions made in appeal memorandum and those in the additional submissions. He submitted that the appellant provided job work in relation to textiles, which is exempted under Notification No. 25/2012-ST. The lower authority has not granted the exemption merely because of non-submission of invoices relating to such job work. The same are now submitted at the appeal stage. He drew attention to the show cause notice, which was issued for the Financial Year 2015-16 for an amount of Rs. 1,33,96,420/- . However, the lower authority has passed the impugned order for an amount of Rs. 3,48,62,466/- for the years 2015-16, 2016-17 and 2017-18. As the lower authority has gone beyond the scope of show cause notice, the subject impugned order is bad in law and deserves to be set aside. He also submitted that the nature of service provided by them has been certified by respective clients and the Chartered Accountants. He also referred to the decisions wherein, it has been held that the show cause notice issued on the basis of ITR data alone, without any verification is not sustainable. Also, the show cause notice issued is beyond five years from the date of filing of ST-3 return for the first half of 2015-16. Therefore, he requested to set aside the impugned order and to allow the appeal.

4.1 The appellant vide their additional submission inter alia re-iterated the arguments put forth by them in the appeal memorandum. They have also submitted paper books containing various case laws on which they have relied upon and discussed in 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 FY 2015-16 to FY 2017-18 (up to June-2017).

6. It is observed that the main contentions of the appellants are that (i) they are engaged in doing the job work related to Textile processing and this activity is exempted vide Sr. No.

30(ii)(a) of Notification No. 25/2012-ST dated 20.06.2012 and therefore, service tax is not leviable; (ii) the show cause notice was issued for the Financial Year 2015-16, however, the lower authority has passed the impugned order for the FY 2015-16, FY 2016-17 and FY 2017-18. Thus, the adjudicating authority has gone beyond the scope of show cause notice; (iii) the show cause notice for the first half of 2015-16 issued is beyond five years from the date of filing of ST-3 return and time barred.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide the impugned order observing that the appellant have failed to submit any substantial documents like sales invoice &Job work challan, which shows that they are engaged in job work for textile cloth processing. The relevant portion of the impugned order reads as under:

"19.4.3 The relevant extract of Notification No. 25/2012-Service Tax dated 20.06.2012 is reproduced below:-

30. Carrying out an intermediate production process asjob work in relation to -

(a) agriculture, printing or textile processing;

19.5 I have gone through the copy of Audited Balance Sheet for the Financial year 2015-16 submitted by the said service provider wherein ***Note 15 (Revenue from operation) shows with name and style shown as sales (job work) Rs. 9,25,41,117/-.***

19.6 I find that the service Provider in their defence submission has mentioned that they arenot liable to pay service tax under Notification No. 25/2012-ST dated 20.06.2012 since they are providing Job work service i.e. Textile Processing, ***however they have failed to submit any substantial documents like sales invoice & Job work challan, which shows that they are engaged in job work for textile cloth processing.*** *I also find that the service provider has submitted the documents with name and style shown at Para 19.5 above doesn't show that they are providing job work for textile cloth processing.*

19.7 I have also gone through 26AS submitted by the service provider and find that there were numerous deductors viz. Arpitkumar Arvindkumar Almal, Aditia Devendrakumar Gadodia, Ankit Sushil Choudhary, Aruna prashant mandovara, Ankit pawankumar Patni, Ankitkumar Chhaganraj HUF, Ashanityanand Agarwal, Mangilal Bandmal HUF etc. Who deducted TDS of the said Service provider under Section 194C of Income Tax Act, 1961 and I find that from the name and style of TDS

deductors, I cannot ascertain whether all such deductors are engaged in the business of textile or otherwise.

19.7.1 According to the Section 194C of the Income Tax Act, any individual making a fee to a residential individual, who carries out 'work' as a contract between the 'specified individual' and the 'resident contractor', is obliged and required to deduct TDS (Tax Deducted at Source).

The word 'work' comprises the following:

- *Catering;*
- *Advertising;*
- *Broadcasting and telecasting;*
- *Conveyance of goods/travellers by any method of transport excluding railway;*
- *Production/supplying a product based on the specification of buyers by utilising material acquired from the buyer. Nevertheless, it doesn't bear when the materialis purchased from an unspecified person other than the buyer.*

From the above, I find that recipients of goods/services may deduct TDS under section 194C for supply of services other than job work.

19.7.2 I have carefully gone through the citation of the judgment of the Hon'ble Apex Court in the case of M/s. Prestige Engineering India Ltd. Vs CCE Meerut- 1994 (9) TMI-66 and in the case of ***M/s Delhi Cloth and General Mills Co. Ltd. Vs UOI- 1962 (10) TMI-1*** *on which the service provider relied and find that the such citations are not relevant in the instant case.*

20. In view of foregoing paras i.e. 19.6, 19.7, 19.7.1 and 19.7.2 above, I find that the service provider is not entitled for benefit of exemption under Notification No. 25/2012-ST dated 20.06.2012, as they have not submitted any substantial evidence which shows that they areengaged in the business of job work of processing of textile as claimed in their defence submission as well as during personal hearing.

21. Further, I also find that the activity carried out by the service provider do not come within the ambit of Negative list specified in Section 66D of the Finance Act, 1994, therefore, in terms of sub-section 44 and 51 of Section 65B of the Finance Act, 1994, the activities carried out by the said service provider are considered as taxable service and they were required to pay service tax at the rate specified as per Section

66B as amended from time to time in terms of Section 68 of the Finance Act, 1994. Moreover, I also find that the service provider has failed to do so. Therefore, I find that the allegation made in Show Cause Notice that the said service provider has failed to pay service tax and demand of the same is legal and sustainable."

7. 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."

7.1 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.

8. 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. However, while passing the impugned order, the adjudicating authority also confirmed the demand for the FY 2016-17 and FY 2017-18 (up to Jun-2017). In this regard, I find that when in the SCN the demand has

not been quantified and raised for the FY 2016-17 and FY 2017-18 (up to Jun-2017), then confirmation of demand by the adjudicating authority for the said period in the impugned order is not justifiable, legal and proper. A similar view has been taken by the Hon'ble Tribunal in the case of Shree Bankey Brass Products Vs. Commissioner of Central Excise, Meerut-II – 2017 (358) ELT 1104 (Tri. All.). The relevant parts of the said judgment are reproduced below :

> *"5. Having considered the rival contentions and on perusal of records, we find that said show cause notice dated 26-6-1997 has not quantified the demand raised. It has mentioned that the quantification would be done at the stage of adjudication. As the demand was not quantified through the show cause notice such show cause notice is not sustainable. There has been total failure of framing of charges. Therefore, we hold that the said show cause notice dated 26-6-1997 is not sustainable. We therefore, allow the appeal. The appellant shall be entitled for consequential relief, as per law."*

8.1 I also find it relevant to refer to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Gas Authority of India Ltd.= 2008 (232) ELT 7 (SC), the relevant part of the said judgment is reproduced below :

> *"7. As repeatedly held by this Court, show cause notice is the foundation of the Demand under Central Excise Act and if the show cause notice in the present case itself proceeds on the basis that the product in question is a byproduct and not a final product, then, in that event, we need not answer the larger question of law framed hereinabove. On this short point, we are in agreement with the view expressed by the Tribunal that nowhere in the show cause notice it has been alleged by the Department that Lean Gas is a final product. Ultimately, an assessee is required to reply to the show cause notice and if the allegation proceeds on the basis that Lean Gas is a by-product, then there is no question of the assessee disputing that statement made in the show cause notice."*

8.2 A similar view as taken by the Hon'ble High Court of Madras in the case of R.Ramdas Vs. Joint Commissioner of Central Excise, Puducherry - 2021 (44) GSTL 258 (Mad.). The relevant parts of the said judgment are reproduced below :

> *"7. It is a settled proposition of law that a show cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific and must give full details regarding the proposal to demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals.*
>
> .....

11. The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are required to address such objections raised. This is the basis of the fundamental Principles of Natural Justice. In cases where the consequential demand traverses beyond the scope of the show cause notice, it would be deemed that no show cause notice has been given, for that particular demand for which a proposal has not been made.

12. Thus, as rightly pointed out by the Learned Counsel for the petitioner, the impugned adjudication order cannot be sustained, since it traverses beyond the scope of the show cause notice and is also vague and without any details. Accordingly, such an adjudication order without a proposal and made in pursuant of a vague show cause notice cannot be sustained."

8. 3 Further, in the case of Reliance Ports and Terminals Ltd. Vs. Commissioner= 2016 (334) ELT 630 (Guj.), the Hon'ble High Court of Gujarat had held that at Para 9 of the judgment that :

"Under the circumstances, in the light of the settled legal position as emerging from the above referred decisions of the Supreme Court, that the show cause notice is the foundation of the demand under the Central Excise Act and that the order-in-original and the subsequent orders passed by the appellate authorities under the statute would be confined to the show cause notice, the question of examining the validity of the impugned order on grounds which were not subject matter of the show cause notice would not arise."

8.4 In view the above judicial pronouncements, I find that it is settled position of law that a SCN is the foundation of demand. In the instant case, I find that no SCN has been issued to the appellant demanding service tax for the FY 2016-17 and 2017-18 (up to Jun-2017).

8.5 In view of the above, I find that the adjudicating authority has clearly travelled beyond the scope of the SCN issued to the appellant and therefore the impugned order is not sustainable for the FY 2016-17 and 2017-18 (up to Jun-2017).

9. I also find that the appellant contended that the observation of the adjudicating authority that the appellant had not provided proof to show that the job work was taken in respect of textile cloth processing is not correct, if the factual position was not clear and if any doubt was entertained by the authority, it would have been in the fitness of things for the authority to call upon the appellant to produce such documents. In this regard, I find that the CBIC had, vide instruction dated 26.10.2021, as enumerated above, clearly directed that *"in all such cases where the notices have already been issued, adjudicating authority are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."*. However, I find that in the present case, the adjudicating authority, without verifying the documents of the service provided, confirmed the service tax demand. I am of the considered view that the adjudicating authority was required to give adequate and ample

opportunity to the appellant for producing the documents in his favour in backdrop of the situation that SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service and it is only thereafter, the impugned order was required to be passed. I also find that the adjudicating authority has confirmed the demand of service tax, without considering the legal provisions and verification of the documents. If the documents were not submitted by the appellant, the adjudicating authority was required to call for the further documents from the appellant, which was not done by the adjudicating authority. As mentioned in para supra, the CBIC had, vide Instruction dated 26.10.2021, specifically directed that the adjudicating authorities are expected to pass a judicious order after proper appreciation of facts. However, the adjudicating authority failed to do so in the present case.

10. I also find that the appellant have also contended that the demand for the period April, 2015 to September, 2015 is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2015 to September, 2015 was 25th October, 2015 and thus last date for issuance of the Show Cause Notice falls on 24.10.2020 and in the instant case the last date for issuance of the Show Cause Notice falls on 16.10.2020 as the appellant filed ST-3 return for the April-September-2015 on 17.10.2015. However due to COVID pandemic, in terms of relaxation provision of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, and the CBIC Notification G.S.R. No. 418(E), dated 27-6-2020, the Central Government extended the time limit in the taxation and other laws. In terms of said Ordinance, where the time limit specified in an Act falls during the period from 20th March, 2020 to 29th September, 2020 the same shall stand extended to 31st March, 2021. In the instant case the due date for issuing SCN was 16th October, 2020, which shall stand extended to 31St March, 2021, however, the SCN was issued on 21.04.2021. I, therefore, agree with the contention of the appellant that, the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2015 to September, 2015, as the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

11. The appellant also contended that service provided by them were exempted under Sr. No. 30 of Notification No. 25/2012-ST dated 20.06.2012. For ease of reference, I reproduce the relevant provision of Sr. No. 30 of 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... ... ...

(During 01.07.2012 to 30.03.2017)

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;

(W.e.f. 31.03.2017)

[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"

9. I find that the appellant submitted copies of Invoices, delivery challans and a Certificate dated 16.02.2023 (UDIN: 23071688BGTOSW3337) issued by the M/s. Jagdish Verma & Co., Chartered Accountants, certifying that the income of Rs. 9,25,41,117/- during the FY 2015-16, Rs. 10,03,50,991/- during the FY 2016-17 and Rs. 4,39,80,165/- during the period from April-2017 to June-2017, shown in the Profit & Loss Accounts of the appellant has been in the nature of job charges received for carrying out dyeing and printing on grey fabrics received from their clients. I also find that the appellant have submitted certificates from the various customers, as detailed below, inter alia, certifying that they have sent the grey fabrics to the appellant for dying on job charge basis and they have paid only job charges to the appellant.

(i) Certificate dated 16.02.2023 issued by M/s. Shree Tirupati Fabrics, Ahmedabad.

(ii) Certificate dated 16.02.2023 issued by M/s. Shri Mahalaxmi Textile, Ahmedabad.

(iii) Certificate dated 16.02.2023 issued by M/s. Mahendra Cotton Mills Pvt. Ltd., Ahmedabad.

(iv) Certificate dated 16.02.2023 issued by M/s. S. Vimal Kumar, Ahmedabad.

9.1 On scrutiny of the aforesaid documents submitted by the appellant, I find that the appellant engaged in intermediate production process as job work in relation to textile processing, i.e. dyeing works, which is not amounting to manufacture or production, therefore, the job work carried out by the appellant was exempted from service tax as per Sr. No. 30(a) / 30(ii)(a) of Notification No. 25/2012-ST dated 20.06.2012, as amended, and the appellant not required to pay any service tax on the income received by them during the FY 2015-16 to FY 2017-18 (up to June-2017).

10. In view of the above discussion, I am of the considered view that the activity carried out by the appellant not liable to pay Service Tax during the FY 2015-16 to FY 2017-18 (up to June-2017). 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. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of job work income received by the appellant

during the FY 2015-16 to FY 2017-18 (up to June-2017), is not legal and proper and deserve to be set aside on various count as enumerated above.

12. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant, with consequential relief.

13. 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.

25-8-23

(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 25.08.2023

Attested

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

By RPAD / SPEED POST

To,
M/s. Madhuram Synthetics Pvt. Ltd.,
33/3, Opp. Gujarat Weigh Bridge,
Sewage Farm Road, Behrampura,
Ahmedabad – 380022

Appellant

The Joint Commissioner,
Central GST,
Ahmedabad South

Respondent

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad South
3) The Joint Commissioner, CGST, Ahmedabad South
4) The Assistant Commissioner, CGST, Division IV, Ahmedabad South
5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
6) Guard File
7) PA file