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::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश नं / O.D. No.	दिनांक / Date
	V2/43/GDM/2016 <i>4632 to 4635</i>	37/ST/AC/2015-16	22.04.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-014-2017-18

आदेश का दिनांक / Date of Order:	11.09.2017	जारी करने की तारीख / Date of issue:	12.09.2017
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**कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग **अथ आयुक्त/अयुक्त/अयुक्त/उपअयुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवा कर, राजकोट / जामनगर / गन्धिधम। द्वारा उपरलिखित जारी मूल आदेश से सूचित।**

Arising out of above mentioned O/D issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-**
M/s. A.N. Electricals, Room No. 11, 2nd Floor, Vandana Commercial, Centra, Plot No. 280, Ward No. 12/B, Ghandhidham, Dist. Kutch-370201

इस आदेश(अपील) से स्वयंति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के द्वारा अपील दायर कर सकता है /
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अपिलेटिव, 1944 की धारा 35B के अन्तर्गत एवं क्लिफ अपिलेटिव, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, एच. के. पुरम, नई दिल्ली, को की जाती चाहिए /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बतलाए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (शिस्टैट) की प्रांतीय शाखा में दायर की जानी चाहिए, /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलार्थ न्यायाधिकरण के अलावा अपील दायर करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमसूची, 2001, के विधिसूचक 5 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को धारा 4(1) में दायर करने में दायर किया जाना चाहिए। इसमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, व्याज की सीमा और अलावा तथा अर्थगत, 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्डित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। शेषगत आदेश (स्टे ऑर्डर) के लिए अपील-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 5 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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलार्थ न्यायाधिकरण के अलावा अपील क्लिफ अपिलेटिव, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमसूची, 1994, के विधिसूचक 9(1) के तहत निर्धारित फॉर्म S.T.-5 में दायर करने में दायर किया जाना चाहिए। इसमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, व्याज की सीमा और अलावा तथा अर्थगत, 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्डित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। शेषगत आदेश (स्टे ऑर्डर) के लिए अपील-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

(i) क्विंट अपीलियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दाये की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती है एवं उसके साथ आवश्यक, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (जहाँ से एक प्रति प्रमाणित होती चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को अपील दाये करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होती। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय अधिकरण (सेल्वेट) के प्रति अपील के जवाब में केन्द्रीय उत्पाद शुल्क अपीलियम 1944 की धारा 35ए के अंतर्गत, जो की क्विंट अपीलियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इन आदेश के प्रति अपीलीय अधिकरण में अपील करते समय उत्पाद शुल्क/सेवाकर का मात्र के 10 प्रतिशत (10%), जब मात्र एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दाय करीब तय में अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'जमा किए गए शुल्क' में निम्न शामिल है:
 - (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेल्वेट जमा की गई हुई गलत राशि
 - (iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त कि इस धारा के अंतर्गत क्विंट अपीलियम (सं. 2) अपीलियम 2014 के अंतर्गत से पूर्व किसी अपीलीय अधिकारी के समक्ष विचारणीय स्थिति अती एवं अपील को लागू नहीं होगी। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन : **Revision application to Government of India:** इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के प्रथम पराग के अंतर्गत अथवा समित, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, पृथी मंत्राल, जीवन टॉप भवन, ताज मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under-Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह में या भंडारण में माल के परिवहन के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे भारत के विनिर्माण में प्रयुक्त कच्चे माल पर अभी नई केन्द्रीय उत्पाद शुल्क के छूट (पिब्रेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) क्रेडिटिंग उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इव्यूटि क्रेडिट इस अपीलियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा क्विंट अपीलियम (नं. 2), 1998 की धारा 109 के द्वारा क्विंट की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संकेत के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अपीलियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दाय से किया जाना चाहिए। इस लक्ष्य के होने हुए भी की रिखा नहीं कराये से बचने के लिए क्विंट अपीलियम अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In case, if the order covers various numbers 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scripps work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) धारासंशोधित न्यायालय शुल्क अपीलियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं संलग्न आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सर्वे विधि) नियमावली, 1982 में बतलाने एवं अन्य संबंधित मामलों की परिभाषित करने वाले नियमों की और भी ध्यान अकर्षित किया गया है। / Attention is also invited to the rules covering the above and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय अधिकारी का अपील दाखिल करने के लिए अधिकतम मूल्य निर्धारण और नवीनतम प्रावधानों के लिए, अपीलीय विभागीय वेबसाइट www.cbet.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbet.gov.in



:: ORDER-IN-APPEAL ::

M/s. A. N. Electricals , Room No. 11, 2nd Floor, Vandana Commercial Centra, Plot No. 280, Ward 12/B, Gandhidham, Dist. Kutch- 370201(hereinafter referred to as "the appellant") filed the present appeal against the Order-in-Original No. 37/ST/AC/2015-16 dated 22.04.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Gandhidham-Kutch (hereinafter referred to as "the lower adjudicating authority").

2. Brief facts of the case are that during the course of audit (FAR No. E-598/2012-13) of the records of M/s. Cargil India Pvt. Ltd., Gandhidham, it was noticed that the appellant is providing service of supply of tangible goods to M/s. Cargil India Pvt. Ltd., Gandhidham but the appellant has not charged service tax for the year 2008-09, whereas for the subsequent years, the appellant had charged service tax but not paid service tax and a SCN bearing No. V.ST/ST-AR-I/Gandhidham/241/Commr./2013 dated 15.10.2013 for Rs. 94,20,918 for the period 2008-09 to 2012-13 has been issued by the Commissioner, Central Excise Rajkot. On being called for the documents and on verification of profit and loss account and ST-3 returns for the subsequent period of 2013-14, it was noticed that the appellant had not paid service tax of Rs. 4,14,689/-.

2.1 SCN No. IV/15-21/ST-ADJ/2015 dated 10.04.2015 (hereinafter referred to as "the impugned SCN") was also issued proposing recovery of service tax of Rs. 4,14,689/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") alongwith interest under Section 75 of the Act and imposition of penalties under Section 70, 76 and 77 of the Act. The lower adjudicating authority, vide impugned order, confirmed demand of service tax under Section 73(1) of the Act along with interest under Section 75 of the Act and also imposed penalty under Section 76 as well as Section 77 of the Act.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal on the grounds as under:

(i) Value of services as per Profit & Loss Account mentioned in show cause notice of Rs. 2,94,92,796/- is incorrect and taken from provisional accounts. The correct value of services as per Profit & Loss Account as per audited Report for the year 2013 – 14 is Rs. 2,86,92,796/-. The appellant stated that they had provided services of Rs. 24,40,915/- to M/s. Schmetz India Pvt. Ltd., a unit in

Special Economic Zone and Form A2 has been issued by the Assistant Commissioner, Service Tax Division, Rajkot to M/s. Schmetz India Pvt. Ltd. for receiving services without payment of service tax. Therefore, the appellant was not required to charge service tax on value of services provided to M/s. Schmetz India Pvt. Ltd. Further, the appellant has also made sale of certain miscellaneous items valued Rs. 1,36,028/- to their customers on the specific request of customers. The sale of goods is not subjected to service tax and hence the appellant has not charged service tax on such supply of goods. Therefore, there is no difference in taxable value of services as per profit and loss account and as per ST-3 returns as shown in below reconciliation table:

Particulars	As per SCN	Claimed by the Appellant
Value of Services (turnover) as per Profit & Loss Account	2,94,92,796/-	2,86,92,796/-
Less : Value as per ST-3	2,61,37,705/-	2,61,37,705/-
Difference in value	33,55,091/-	25,55,091/-
Less : Value of Services Provided to Schmetz India Pvt. Ltd. (unit in SEZ) on which no service tax is payable		24,40,915/-
Less : Value of sales of goods		1,36,028/-
Actual Difference		-21,852/-

3.2 There is no demand on the appellant and accordingly the appellant is not liable to pay any interest u/s. 75 of the Act.

3.3 The appellant has properly discharged service tax and there is no demand outstanding against the appellant; when there is no outstanding demand, the question of interest and penalty do not arise. Section 80 of the Act states that notwithstanding anything contained in the provisions of Section 76, Section 77 [or Section 78], no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure. The appellant has disclosed all the relevant facts and has paid service tax on the taxable service income without any suppression of income or delay of payment of service tax. Therefore, penalties under section 77 and 78 should be deleted. They relied on the judgments (i) Hindustan Steel Ltd. Vs State of Orissa [2002-TOIL-148-SC-CT-LB] (ii) Commissioner of Service Tax v. M/s. Motorworld and others [2012-TIOL-418-HC-KAR-ST]

4. Shri Abhishek Doshi, Chartered Accountant appeared on for personal hearing in the matter on behalf of the appellant and reiterated grounds of appeal and stated that audited account was not available with them at the time of SCN/inquiry. There was supply of services of Rs. 24,40,915/- to M/s. Schmetz India Pvt. Ltd., a unit in Special Economic Zone, where no service tax is payable in

terms of Notification No. 40/2012-ST dated 20.06.2012 as amended by 12/2013-ST dated 01.07.2013; that they had supplied goods of Rs. 1,36,028/- to various parties and these are not for services and hence Service Tax is not payable. Therefore, no Service Tax is payable over and above what has been paid as per ST-3 returns. He submitted, copies of invoices for supply of goods on 01.08.2017.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant. The limited issue to be decided in the present appeal is whether the confirmation of demand of service tax under Section 73(1) of the Act along with interest under Section 75 and imposition of penalty under Section 76 and Section 77 of the Act is correct or not.

6. I find that the lower adjudicating authority has confirmed demand of service tax along with interest and penalty as proposed in the impugned show cause notice whereas the appellant has assailed the impugned order stating that value of services (as per Profit & Loss Account) mentioned in show cause notice of Rs. 2,94,92,796/- is incorrect having been taken from provisional accounts. The correct value of services as per audited Profit & Loss Account for the year 2013-14 is Rs. 2,86,92,796/- submitted by them before the undersigned. I find that as per audited balance sheet for the year 2013-14 submitted by the appellant, Rs. 8,00,000/- has been shown as "written off" and accordingly the appellant claimed that they have earned income of Rs. 2,86,92,796/- only. However, I find that as per Rule 3(a) of Point of Taxation Rules, 2011, 'the point of taxation' shall be, the time when the invoice for the service provided or agreed to be provided is issued and if invoice is not issued then within the time period specified in Rule 4A of the Service Tax Rules, 1994 and the point of taxation shall be the date of completion of provision of the service. Therefore, I hold that Rs. 8,00,000/- cannot be excluded from the total value of taxable services provided by the appellant as the appellant is liable to pay service tax on the said amount as per Point of Taxation Rules, 2011 and this argument of the appellant is devoid of merits.

6.1 The appellant has submitted that they have made sale of goods valued at Rs. 1,36,028/- during year 2013-14 to their customers on their specific request and submitted Ledger Account in respect of Supply Income along with sample invoices issued by them. I find that the definition of "Service" provided under Section 65B(44) of the Finance Act, 1994 excludes an activity which constitutes merely a transfer of title in goods by way of sale or such transfer,

delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution. Thus, I find that service tax cannot be leviable on income generated out of sale of goods and Rs. 1,36,028/- is required to be deducted from total value of taxable services.

6.2 The appellant submitted that out of the total value of services provided during the year 2013-14, they have provided services of Rs. 24,40,915/- to M/s. Schmetz India Pvt. Ltd., a unit situated in Kandla Special Economic Zone. In support of their contention, the appellant has submitted Form A-2 (Authorization for Procurement of Services by a SEZ Unit/Developer for authorized operations under Notification No. 12/2013 – Service Tax dated 01.07.2013) issued by the Assistant Commissioner, Service Tax Division, Rajkot to M/s. Schmetz India Pvt. Ltd. for receiving services without payment of service tax from the appellant and also submitted a Ledger Account for the financial year 2013 – 14 in respect of K. S. E. Z. work. The appellant contended that exemption is available to them for services provided to SEZ unit by virtue of Notification No. 12/2013 – ST dated 01.07.2013. I find that the appellant has not made this plea before the lower adjudicating authority and therefore the lower adjudicating authority has not given any findings in this regard. I find that this exemption was available to the appellant subject to the observance of procedures and conditions specified under paragraph 3 (II) of the said Notification. However, the appellant has not provided any documents i.e. Contract/Work order, Invoices etc. and documents evidencing receipt of services by the SEZ unit for exclusive use for the authorized operation, which is mandatory requirement for the purpose of availment of this exemption. In view of above facts, I am not in a position to decide as to whether the exemption sought for by the appellant is allowable or not. The lower adjudicating authority shall verify the authenticity of the said documents and its co-relation with the service provided by the appellant by calling for required documents and give his findings whether the appellant followed the procedure and the conditions prescribed under said Notification for claiming exemption for the services provided to SEZ.


6.3 Since the claim of exemption now being made by the appellant for value of services of Rs. 24,40,915/- on the ground that they have provided services to SEZ unit i.e. M/s. Schmetz India Pvt. Ltd., is not verifiable at this juncture, as discussed in Para 6.1 above, I feel it appropriate to remand this issue to the lower adjudicating authority in light of the decision of the Hon'ble CESTAT delivered in the case of Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-

Del) wherein it is held that power to remand in appropriate cases is inbuilt in Section 35A(3) of the Central Excise Act, 1944 even after amendment. The Hon'ble CESTAT in the case of Honda Seil Power Products Ltd. reported as 2013 (287) ELT 353 (Tri-Del) has also held that Commissioner (Appeals) has inherent power to remand a case under the provisions of Section 35A(3) of the Central Excise Act, 1944. The Hon'ble High Court of Gujarat, in Tax Appeal No. 276 of 2014 of Associated Hotels Ltd. has held that even after amendment in Section 35A(3) of the Central Excise Act, 1944 in 2011, the Commissioner(Appeals) has powers to remand.

6.4 In view of the above factual & legal position, the appellant is directed to submit the said documents as discussed in paragraph No. 6.2 & 6.3 to the jurisdictional authority, who shall verify the genuineness of the documents along with other relevant documents and after verifying genuineness of the documents and taking submissions made by the appellant. It is needless to say that he should pass a speaking order offering fair and reasonable opportunities to the appellant to explain their case.

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

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


(कुमार संतोष)
आयुक्त (अपील्स)

By Speed Post

To,
M/s. A. N. Electricals,
Room No. 11, 2nd Floor,
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Plot No. 280, Ward No. 12/B,
Gandhidham, District – Kutch.

मे. ए. एन. इलेक्ट्रिकल्स,
रूम नं. 11, 2nd फ्लोर,
वंदना कमर्शियल सेंटर,
प्लॉट नं. 280, वर्ड नं. 12/बी,
गांधीधाम, डिस्ट्रिक्ट – कच्छ.

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Kutch Commissionerate, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise Division, Gandhidham.
- 4) Guard File.