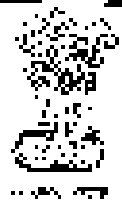


संविधान के अंतर्गत राष्ट्रीय आयोगों के अधीन कार्य करने वाले निकायों के नामों की सूची
NATIONAL COMMISSION FOR SCHEDULED CASTES (NATIONAL COMMISSION FOR SCHEDULED CASTES)



राजधानी, नई दिल्ली-110 001
New Delhi-110 001
फैसलाबाद, पाकिस्तान-75100
Faisalabad-75100
15, The Gateway, New Delhi
110 001, India
15, The Gateway, Faisalabad-75100, Pakistan

आवेदन संख्या (Application No.)

आवेदन संख्या (Application No.)
1299/2018-19

आवेदन संख्या (Application No.)

SC/Ex-1/Amendment/15

दिनांक (Date)

19/03/18

आवेदनकर्ता का पता (Address of Applicant)

RDV/EXCL/5-000-APP-105-2018

आवेदन दिनांक (Date of Order)

30.04.2019

आवेदन की तिथि (Date of Issue)

02.03.2019

श्री सुभाष चंद्र प्रसाद शर्मा (अपिल), अर्जेंट प्रोसेस में

Directed by Shri. Kumar Satish, Emergency Process in (A) (Ex-1), Rajkot

आवेदनकर्ता का पता (Address of Applicant)
आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)
आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

आवेदनकर्ता का पता (Address of Applicant)

1. The Commission shall have the right to request the applicant to provide further information or documents necessary for the assessment of the application.

2. The Commission shall have the right to request the applicant to attend a hearing or to provide a written explanation of the information provided.

3. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

4. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

5. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

6. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

7. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

8. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

9. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

10. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

11. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

12. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

13. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

14. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

15. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

16. The Commission shall have the right to request the applicant to provide a written explanation of the information provided.

ORDER-IN-APPEAL

M/s Hans Industries Pvt Ltd, Survey No. 107/108/109, Village Changhal, Sion-Changali Road, Bhavnagar filed appeal No. V2/68/2VR/2018-19 against Order-in Original No. 55/Excise/Demand/2017-18 dated 19.3.2018 (hereinafter referred to as 'impugned order') passed by the Assi. Commissioner, Central GST and Central Excise, Bhavnagar-1 Division, Bhavnagar Commissionerate (hereinafter referred to as 'lower adjudicating authority').

2. The facts of the case are that the Appellant (holding Central Excise Registration No. AABCH76163XM001) was engaged in manufacture of MS Angles/Channels MS Beams, MS Flats, MS Round Bars etc. (hereinafter referred to as "said goods") and on Audit of their records revealed that the Appellant had manufactured and supplied the said goods to various State Government companies under agreement during the period from April, 2014 to March, 2016 and had collected freight from them but not included freight in assessable value for payment of Central Excise duty; that the terms and conditions of the agreement established that the goods were to be delivered at the place of buyers and hence, place of removal was not factory gate but premises of the buyers and therefore, the Appellant was required to include freight in assessable value in terms of Section 4 of the Central Excise Act, 1944 (hereinafter referred to as "Act") and Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as "Rules").

2.1 Show Cause Notice No. VI/8(a)-47/EA-2000/AG-C/2015-16 dated 12.1.2017 was issued to the Appellant calling them to show cause as to why Central Excise duty of Rs. 45,24,989/- should not be demanded and recovered from them under Section 11A(4) of the Act along with interest under Section 11A(15) read with Section 11AA of the Act and also proposing imposition of penalty under Section 11AC of the Act.

2.2 The above said Show Cause Notice was adjudicated vide the impugned order which confirmed Central Excise duty of Rs. 45,24,989/- under Section 11A(4) along with interest under Section 11A(15) read with Section 11AA of the Act and imposed penalty of Rs. 45,24,989/- under Section 11AC(1)(k) of the Act upon Appellant No. 1 with option of reduced

penalty as envisaged under provisions of Section 71AC(1)(e) of the Act.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal on the various grounds, inter alia, as below:-

(i) The Show Cause Notice demanding duty issued beyond period of limitation is not sustainable. They had regularly filed returns which were assessed by the Department and no documents or information was called. Thus, the Department was aware about clearance of goods on payment of duty on the transaction value. The records of the Appellant had already been audited by the Department in February, 2015 but no objection was raised about payment of duty on transaction value ex factory. Thus, there was no suppression of facts with mala fide intention and invocation of extended period of limitation is not in law and relied upon following case laws:

- (a) Pragyathi Concrete Products(P) Ltd-2015(377) FTT 819
- (b) Trans Engineers India Pvt Ltd 2015 (40) STR 490
- (c) MTR Foods Ltd- 2012 (282) EIT 196
- (d) Rajkumar Forge Ltd-2010 (282) EIT 150

(ii) They had cleared the goods on payment of duty by issuing invoices in favour of the buyer and had paid VAT, which clearly establish that sale took place at factory gate whereas VAT is not applicable in case of transfer of goods (other than sale).

(iii) The provisions of Section 19 of the Sale of Goods Act specify that when property of goods transfers from one party to other; i.ea. "Clause 11: Inspection" and "Clause 22: Terms of payment" are relevant terms of the contract which specify the intention and ascertainment of goods for the purpose of sale; that terms of the contract clearly indicate that the said goods were sold at the factory gate itself and not at buyer's premises and other terms and conditions are normal commercial practice and they have nothing to relate with the ownership of the said goods as decided in following case laws:

- (a) Ispat Industries Ltd- 2015(324) EIT 670 (SC)
- (b) Escorts JCB Ltd- 2007(146) FTT 31 (SC)
- (c) Prabhat Zarda Factory Ltd- 2002 (196) ELT 497 (SC)

(iv) Para 2.4 of the SCM has stated that, " Price of the goods was inclusive of cost of material, Central Excise duty, packing charges, forwarding charges, loading, transportation, transit risk etc". However, as

per Schedule A of the Acceptance of Tenders, certain charges like Central Excise Duty, freight, VAT, Unloading charges are exclusive of sale price and said expenses beyond factory gate were borne by the buyer. This clearly proves that ownership of the goods was transferred at the factory gate only.

3.1 Shri M.A. Patel, Counsel, appeared on behalf of the Appellant and reiterated the grounds of appeal and submitted written submission dated 19.3.2019 and relied upon case law of Ispat Industries Ltd-2015(374) F.T 670 (SC) to sustain their case; that sale has taken place at their factory gate; that appeal needs to be allowed in view of above case law.

3.2 In written submission, the Appellant has contended that the Appellant manufactured and supplied said goods to the Government companies as per tender terms on payment of duty on sale value at factory gate; that it was specifically mentioned in purchase order that price excludes excise duty, freight and VAT/CST; that purchase order and sale invoices clearly reflect that the goods were sold at factory gate and VAT/CST was charged in said invoices; that the Hon'ble Supreme Court in the case of Ispat Industries Ltd-2015 (374) 2LT 670(SC) has held that when goods are cleared from factory on payment of sales tax/VAT, it could be very well said that the prices are at ex-factory and not on FOB destination. Thus, freight charges could not be included in the value for the purpose of payment of duty and hence, the impugned order is required to be set aside.

Findings:

4. I find that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 3,39,375/- @7.5% of Rs. 45,24,989/- vide Challan No. 00104 dated 9.3.2018, as submitted by them in Appeal Memorandum.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether impugned order demanding Central Excise duty of Rs. 45,24,989/- along with interest and imposing penalty of Rs. 45,24,989/- under Section

114C of the Act is correct, wrong and proper or otherwise.

6. I find that the lower authority confirmed demand of Central Excise duty of Rs. 40,24,899/- on the ground that 'place of removal in respect of the said goods was premises of the buyers and Central Excise duty is chargeable on the transaction value, including freight amount collected by the Appellant, in terms of Section 4 of the Act and Rule 5 of the Rules. The Appellant has contended that they cleared finished goods on payment of Central Excise duty by issuing invoice in favour of the buyer and paid VAT on the transaction value which established that sale took place at their factory gate; that as per terms of Acceptance of Tender, certain charges like Central Excise Duty, freight, VAT, unloading charges were exclusive of sale price and sale expenses incurred beyond factory gate were borne by the buyer which proves that ownership of the goods was transferred at the factory gate only and relies upon case law of Ispat Industries Ltd- 2015(324) ELT 670 (SC).

6.1 For deciding whether premises of buyers in the present case to be considered as 'place of removal' as held by the lower adjudicating authority or factory gate of the Appellant was 'place of removal', as contended by the Appellant, find it pertinent to examine relevant terms and conditions contained in 'Acceptance of Tender' No. PGVCL/RLT/PROC/e-96035/M5 Dorrn/575/Hans dated 1.5.2016 submitted by the Appellant in approval memorandum, which are reproduced as under:

24. Acceptance of Order & Approval:

The goods shall be subject to the approval of the concerned consignee after receipt of the notes at site.

All the raw stores and materials to be supplied under Dorrn order as per this contract will be subject to the approval of the consignee or any other Officer designated by PGVCL for this purpose. PGVCL will be at liberty to raise a note at without assigning any reasons and the order of the Officer concerned will be considered as final.

25. Inland Transit Insurance:

The prices are inclusive of Inland Transit Insurance. The goods shall be duly insured with your underwriter tag at your cost.

26. Mode of Dispatch:

As the prices are EXW, consignee's materials may be dispatched through sea

goods at the mode of transport and up to F.O.R. Destination at BUYER'S Stores.

28. Terms of Payment:

50% of the invoice price with 100% taxes, duties and T&I price of each consignment to be paid to you by the Buyer against 100% bill of lading after verifying the invoices and other related documents, approval of test certificates and of your forwarding certificates of proper dispatch of the goods in the form of bill of lading which would be sent to C.O.A., FOSCO, Rajkot along with copy of invoice.

The balance 50% of the Invoice price of each consignment will be paid after receipt of goods in correct order and in good condition as duly inspected and certified by the buyer and balance payment will be made within 15 days from the date of receipt of material at site.

29. The material shall be subject to final acceptance by BUYER after inspection, checking and testing at site after receipt of goods.

31. Prices:

The prices quoted by you in your tender for the supply of the above materials are accepted on a firm contract basis for quality F.O.R. Destination."

(Emphasis supplied)

6.2 On examination of above terms and conditions, it is evident, that the Appellant was required to supply goods at the buyers premises, since the price quoted by the Appellant was F.O.R. destination. Further, the price was inclusive of transit insurance and the Appellant was to insure goods at their own cost. The goods were subjected to final acceptance by buyer after inspection, checking and testing after receipt of goods at stores of buyer and buyer was at liberty to reject entire consignment, if not found as per specification/quality. So, as per the terms and condition of 'Acceptance of Tender', sale would be completed only when buyer accepts goods at their site/premises after inspection, checking and testing. After carefully examining the terms and conditions of 'Acceptance of Tender', it is beyond doubt, that ownership of the goods and risk in transit remained with the Appellant after clearance of goods from their factory till they reached at the site/ premises of the buyers and goods are accepted by the buyer after carrying out inspection, checking and testing at their site. Thus, 'place of removal' in the present case is buyer's premises. My views are affirmed by the judgement rendered by the

2023/345/2023-24

Hon'ble Supreme Court in the case of Am. Roofit Industries Ltd. reported as 2015 (319) E.L.T. 221 (S.C.), wherein it has been held that,

"12. The principle of law, which is well settled, is that it is to be ascertained whether as at what point of time at a particular instance whether it is an actual sale or at a particular time, i.e., when the title in the goods is effected by the buyer at his premises. This question is to be seen in the light of provisions of the Sale of Goods Act by applying the stage in the course of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have pertinence to the stage of the transfer of the ownership as mentioned in the ownership in goods stands transferred to the buyer, any expenditure incurred therefor, is to be on buyer's account and cannot be a component which stands to the seller's credit, while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning, which has to be assigned to Section 45 of the Valuation Rules.

13. In the present case, we find that most of the orders placed with the respondent assessee were by the various Governmental authorities. One such order, i.e., order dated 24.3.1956 placed by Kerala Water Authority, is an order obligating the supplier to send the goods at the said place, it becomes clear that the goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of transport charges, Central Excise duty, loading, transportation, unloading and unloading charges, and Unwar transfer damage/warehouse on the assessee's account which would clearly imply that till the goods reach the destination, ownership in the goods remains with the supplier, namely, the assessee. As per the terms of purchase order, the payment of order, TDS payment for the supplies was to be made by the purchaser after the receipt and certification of material. Thus, there was no money given earlier by the buyer to the assessee and the sale contract was to pass on only when the delivery of the goods which was at the premises of the buyer. From the aforesaid, it would be manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods at destination.

14. The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered, and by virtue of Section 15 of Sale of Goods Act, the property in goods was transferred. That is the only Section 9 reads as under

9. Property passed when contract passes. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) It shall be a different intention appears, the rules contained in Sections 20 to 24 are subject to ascertaining the intention of the parties as to the time at which the property in the goods is to pass.

15. Thus we also find no finding of fact on the aforesaid issue recorded by the Assessing Authority. However, the LRS (A) did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in the case of Am. Roofit Industries Ltd. Obviously the case is not decided in the favour of the assessee as suggested by the C.A. (A).

16. As a result, title of the GOODS is set aside and goods 'goods' is allowed according to the order stated by the Adjudicating Authority."

(Emphasis supplied)

6.3 I also find that Central Board of Indirect Taxes and Customs vide Circular No. 1065/4/2018-CX, dated 9.6.2018 has issued clarification as under:

14. Exemptions

(ii) The principle applied in the above would apply to all situations except where the contract for sale is FOB contract in the circumstances mentioned in the judgment in the case of CCB, Director of Income Tax - Punjab, (2015) 123 ELT 292 (S.C.) and CCB, Asst. Commr. Income Tax, (2015) 123 ELT 292 (S.C.). To summarise, in the case of FOB destination sale such as M/s. Jindal Ltd. and M/s. Tisco Industries where the ownership, risk in transit, remained with the seller till the goods are received by the buyer and if such time of delivery, set off alone remained the owner of goods remaining right of disposal, back to the seller, then the place of removal shall be a part of the place."

(Emphasis supplied)

6.4 In view of above, I hold that 'place of removal' in respect of the said goods manufactured and cleared by the Appellant was buyer's premise/site and consequently, the Appellant is required to include freight amount in assessable value for the purpose of payment of Central Excise duty, in terms of Section 4 of the Act. 1, therefore, uphold confirmation of Central Excise duty demand of Rs. 45,74,989/-. Since demand is confirmed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 11A(1b) read with Section 11AA of the Act. 1, therefore, uphold order to pay interest on confirmed demand.

7. I have also examined case law of Israt Industries Ltd - 2015(324) ELT 670 (SC) relied upon by the Appellant. In the said case, title of the goods had been passed on to the buyer, when the goods were handed over to the transporter and sales were made against Letters of credit / bank discounting facilities/ in advance in some cases. In that backdrop, the Apex Court held that buyer's premises cannot be 'place of removal'. Whereas, in the present case, ownership of the goods was transferred at buyer's premises, when the goods were accepted by buyer after carrying out inspection, checking and testing at their site. Further, as per payment terms, 80% of payment was to be made within 30 days of dispatch of goods and balance 20% of payment was to be made within 45 days after receipt of goods at buyer's premises duly inspected and certified by the buyer.

Thus, facts of relied upon are not different from the present case and hence, not applicable to the facts of the present case.

8. The Appellant has contended that extinction of extended period of limitation for demanding duty is not sustainable as they had regularly filed returns which were assessed by the Department and no documentary information was called for and also, the Department was aware about clearances of the said goods on payment of duty on value excluding freight; that records of the Appellant were also audited by the Department in February, 2015 but no objection was raised about payment of duty on transaction value satisfactory and hence, there was no suppression of facts with a view to evade Central Excise duty. I find that the Appellant's records were audited in May, 2015 wherein it was found that the Appellant was not including freight amount in assessable value in terms of Section 4 of the Act. Regarding previous Audit carried out in February, 2015, I find that the Appellant has not produced any documentary evidence in support of their claim about previous Audit. The Appellant has also not produced any letter/email informing the Department to have not included freight in the value. Merely filing of self assessed ER-1 Returns will not suffice to get away with charge of suppression of facts when it is revealed that non-payment of service tax was revealed only during audit of the records of the Appellant by the Department. Had there been no audit of Appellant's records, the non-payment of service tax by the Appellant would have gone unnoted and hence, ingredients for invoking extended period under Section 11A of the Act very much exist in the present case. Hence, I hold that the demand is not barred by limitation. In this regard, I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd., reported as 2013 (18) G.S.T.L. 445 (T), Chennai, wherein it has been held that:

“6.5. Ld. Advocate has been at pains to point out that there was no wilful tax evasion on the part of the appellant. He has contended that they were under the impression that the said services would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that casual period of time would not be invocable. However, we find that the accounting authority was not honest in respect of para 10 of the impugned order, where it has been brought to the notice of assessing officer that the appellant had not or not disclosed the receipt of income in respect of the activities done by them in a host of services provided by them to Six Sigma.”

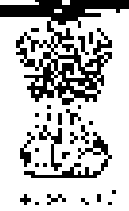
2

3

4



आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय
उत्पाद शुल्क
OFFICE OF THE COMMISSIONER (APPEALS), GST & CENTRAL
EXCISE.



इस कार्यालय की पता है: 108-1/2019 Floor: GST Bhawan
एच. सी. रिंग रोड / H. C. Ring Road
राजकोट / Rajkot - 360 001
Phone No. 0291-2477952/2441142 Email:
comptroller@stc.gst.nic.in

F. No. 02/1147/2019-19

Date: 08/20/19

CORRIGENDUM

The typographical error in Para 5 of Order No. Appeal No. F. No. EXCISE-030/APP/104/2019 dated 11/04/2019 for the words and phrases reading as "therefore, hold that the confirmation of demand of service tax of Rs.2,32,365/- by the over adjudicating authority is correct, legal and proper" may be read as "therefore, hold that the confirmation of demand of service tax of Rs.2,32,365/- by the over adjudicating authority is correct, legal and proper".

(Handwritten signature)

(Official stamp)
आयुक्त (अपील)

पत्रांक आ. 433
सेवा में,

M/s. Mahasaga Travels (P)
Kalwa Chowk
Jayshree Telecom Road,
Junagadh,

श्री श्री महासागर ट्रावल्स लिमिटेड
भारता चौक
जयश्री टेलीकॉम रोड
जुनागढ़

पति

- पत्रांक नुसार 2 अथवा 3 केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट क्षेत्र, अहमदाबाद का अधिनियम है।
 - आयुक्त केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट का आयुक्त, राजकोट, राजकोट का आयुक्त अधिनियम है।
 - अहमदाबाद केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट का आयुक्त, राजकोट का आयुक्त अधिनियम है।
- माझे 10/08/19

2

22



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



द्वितीय तल, श्री एस टी भवन / 2nd Floor SSI Bhawan,
 रक्षा कौशल रिंग रोड, / Raksha Koushal Ring Road,
 राजकोट / Rajkot - 360 001
 Tele Fax No: 0281 - 2477652/2441142 E-mail:
 oasappeals@kva.raj.nic.in

F No: VZ/114/BVR/2018 1E

Date: 3.8.2018

Handwritten signature

Handwritten initials

CORRIGENDUM

Handwritten note: 15/08/2018/305 JAV

The typographical error at Para B of Order-in-Appeal No. RHM-EXCISE-500-APP-104-2018 dated 17.08.2018 for the words and phrases reading as "1. therefore, hold that the confirmation of demand of service tax of Rs. 2,32,860/- by the lower adjudicating authority is correct legal and proper" be read as "1. therefore, hold that the confirmation of demand of service tax of Rs.29,91,351/- by the lower adjudicating authority is correct legal and proper."

Handwritten signature

Handwritten signature
 कुमार सेनापति
 प्र. व. आयुक्त (अपील)

पंजीकृत, नाम सूची
 संघर्ष

Mrs. Manasagar Travels Ltd.
 Kalwa Chowk,
 Jayshree Talkies Road,
 Jamnagadh

श्री. म. मानसागर टूरिज्म लिमिटेड
 कालवा चौक
 जयश्री टॉकीज रोड
 जामनाथ

प्रति

1. प्रमुख, राज्य आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, राजकोट को जानकारी हेतु।
2. आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट क्षेत्र, राजकोट को जानकारी हेतु।
3. राजकोट आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट क्षेत्र, राजकोट को सूचना आदान-प्रदान हेतु।
4. आई एच डी

Handwritten initials