

::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्कः: O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL garden, et alle alle exercise exercise exercises and exercise and exercise exercises and exercise exercise exercise exercises and exercise exercise



दवितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,

<u>राजकोट / Rajkot – 360 001</u>

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

रजिस्टर्डडाकए.डी.द्वारा :-

DIN-20201064SX00009MFADD

अपील / फाडलसंख्या/ क

मूल आदेश सं / O.I.O. No.

दिनांक/

Appeal /File No.

Date

V2/4/BVR/2020

AC/JND/01/2020-21

30/04/2020

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

BHV-EXCUS-000-APP-048-2020

आदेश का दिनांक /

जारी करने की तारीख /

08.10.2020

Date of Order:

01.10.2020

Date of issue:

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/

Passed by ShriGopi Nath, Principal Commissioner (Appeals), Rajkot

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद श्ल्क/ सेवाकर/वस्त् एवंसेवाकर, ग राजकोट / जामनगर / गांधीधाम। द्वारा उपरतिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,

Raikot / Jamnagar / Gandhidham :

अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name&Address of theAppellant&Respondent :-घ

M/s. Aditya Birla Nuvo Ltd. (Unit: Indian Rayon), now M/s Grasim Industries Ltd., Junagadh-Veraval Road, Veraval-362266, District: Gir-Somnath

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष 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.

सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती हैं ।/ (A)

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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी 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.

उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/ (11)

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para-1(a) above

अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपन्न EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग (iii) बियारत किए गय प्रपत्र EA-3 का चार प्रतियों में देज किया जानी चाहिए। इनमें से कम से कम एक प्रति के सीय, जहाँ उत्पाद शुल्क की मींग , इयाज की माँग और लगाया गया जुर्माना, रुपए 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 अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-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 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.5000/-, Rs.10,000/- where amount of dutydemand/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/-

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपन्न S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संतर्ग करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/-रुप्ये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए,। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/ (B)

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 interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in fayour 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/-



- वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवार्ती. 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपन्न S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
 - The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 3(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 Commissionerauthorizing 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 प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियन 1944 की धारा 35एफ के अंतर्गेत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के 焼 अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपिक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

- धारा 11 डी के अंतर्गत रकम (i)
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम (iii)

- बशर्ते यह कि इस धारा के प्राद्रधान वितीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष

- बशर्ते यह कि इस धारा के प्राद्रधान वितीय (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकार्र के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

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 कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अतर्गतअवर सचित, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 provise to subsection (1) of Section-35B ibid:

- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण 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 (i)
- भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) के (ii) नामले 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 on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- यदि उत्पाद शुल्क का भगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
 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 of after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998. (iv)
- उपरोक्त आवेदन की दो प्रतियां प्रपन्न संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्देष्ट है, इस आदेश के संप्रेषण के 3 माह 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 अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य 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. (v)
- पुनरीक्षण आवेदन के साथ निम्नितिखित <mark>निर्धारित शुल्क की अदायगी की जानी चाहिए ।</mark> जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो (vi) तो रूपये 1000 -/ का भुजतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees Care Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुक्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये! इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थित अपीलीय नयधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता 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 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 lake fee of Rs. 100/- for each. (D)
- यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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-I in terms of the Court Fee Act,1975, as amended. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982. (F)
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट (G) www.cbec.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.cbec.gov.in

:: ORDER-IN-APPEAL ::

M/s Aditya Birla Nuvo Ltd. (Unit :Indian Rayon), now M/s Grasim Industries Ltd., Junagadh-Veraval Road, Veraval-362266, Dist.: Gir - Somnath (hereinafter referred to as "the Appellant") filed Appeal No. V2/4/BVR/2020 against Order-in-Original No. AC/JND/01/2020-21 dated 30.04.2020 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST & Central Excise Division, Junagadh (hereinafter referred to as 'adjudicating authority').

- 2. The brief facts of the case are that a Show Cause Notice was issued to the Appellant on 29.01.2010 for non-payment of Service Tax of Rs. 46,13,585/- under the category 'Scientific & Technical Consultancy Services' in foreign currency by the service provider from a foreign country other than India and services received in India. The said SCN was adjudicated vide OIO dated 31.01.2017 by the Assistant Commissioner, Central Excise and Service Tax, LTU, Mumbai under which Service Tax demand of Rs. 10,40,790/- was dropped for the period from 01.01.2005 to 17.04.2006 and remaining demand of Rs. 35,72,795/- was confirmed for the period from 18.04.2006 to 2007-08 under Section 68 of the Finance Act, 1994 and penalty of Rs. 35,72,795/- under Section 76,77 and 78 of the Finance Act, 1994 and Rule 7(c)(iii) of the Service Tax Rules, 1994 was imposed.
- 2.1 Aggrieved, the Appellant preferred an appeal before the Commissioner (Appeals), CGST, Rajkot who vide OIA dated 21.08.2018. remanded the matter back to the adjudicating authority to verify all the Invoices/Debit Notes and copies of Agreements and directed not to include reimbursement expenses to the taxable value of the services. The adjudicating authority vide the impugned order confirmed the demand of Rs. 19,27,696/- along with interest and penalty.
- 3. Being aggrieved with the impugned order, the Appellant has preferred appeal on the following grounds:-
- 3.1 That they received a letter through email on 23.04.2020 from the adjudicating authority to submit the supporting documents to defend the

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remand proceedings, the appellant replied that the details comprising of copy of debit/credit notes and copy of Agreement cannot be emailed and due to Lockdown they are unable to submit the same through courier and requested the adjudicating authority to allow them to send the details after the opening of the lockdown; but the appellant received a copy of the impugned order by email on 30.04.2020.

- 3.2 That the impugned order is erroneous in as much as it has failed to provide the basis of the calculations of demand of Rs. 19,27,696/-; that they submitted the detailed statement showing the total service tax paid on services availed from foreign parties alongwith copies of TR-6 challan, but the adjudicating authority completely ignored the submission; that they have discharged all their service tax liability.
- 3.3 That the service tax not paid mainly comprises of boarding and lodging expenses and travel and transport expenses reimbursed to foreign technical experts who were deputed to work in India; that service tax is chargeable only on the gross value of taxable services which shall not include the reimbursement of various expenses; that they relied upon the ruling in the case of Plantech Consultants Pvt. Ltd. Vs CCE, Pune-I [2016(41 STR 850) (Tri.-Mumbai_ wherein the CESTAT held that expenses reimbursed in connection with provision of Consulting Services was not to be included in gross value of taxable services; they have further relied upon the Hon'ble Supreme Court's judgement in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. [2018-TIOL-76-SC-ST]. In view of the above submissions, they requested to set aside the impugned order and allow their appeal.
- 4. In hearing, Shri Ashok Herma, AGM (Indirect-Tax) appeared on behalf of the Appellant for the personal hearing on Virtual mode and reiterated the grounds of Appeal Memorandum filed by them and also filed additional submissions for consideration.
- 5. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions made by the Appellant. The issues to be decided is whether the impugned order confirming the demand of service tax along with interest and imposition of penalty equal

to service tax is correct or otherwise.

- On going through the records, I find that the appellants are registered with the Service Tax department in the category of 'Scientific & Technical Consultancy Services'. The appellant availed certain scientific and technical services from foreign parties for which they paid service tax under reverse charge mechanism. The said services included services of M/s Glanzstoff Austria GMBH & Co. KG (hereinafter referred to as "Glanzstoff"). As per their agreement, Glanzstoff would provide knowhow and technical services at the appellant's site to improve the production process and achieve the quality objectives and sometimes also render training to the Appellant's technician. It is the contention of the appellant that reimbursement expenses i.e boarding and lodging expenses and travel expenses reimbursed to the foreign technical experts deputed to work in India is not includable in the gross value of the taxable services, therefore they are not liable to pay any service tax. The adjudicating authority has confirmed the entire demand of service tax amounting to Rs. 19,27,696/-.
- 7. Now, before I take up the issue mentioned in the para supra, I want to discuss the relevant legal provision viz-a-viz Section 67 of the Finance Act, 1994. The said provision deals with the valuation of taxable services and the expenses to be included or excluded from the taxable value for the purpose of levying Service Tax.
- 7.1 I find that realizing that Section 67, dealing with valuation of taxable services, includes reimbursable expenses for providing such service, Legislature was amended by Finance Act, 2015 with effect from May 14, 2015, whereby the said clause (a) which deals with 'consideration' was suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, with effect from May 14, 2015, by virtue of provisions of Section 67 itself, reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax and **not prior to the amendment**.
- 7.2 In this regard, I place reliance in a landmark judgment by the Hon'ble Supreme Court in the case of <u>Union of India Vs</u>



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Intercontinental Consultants and Technocrats Pvt. Ltd. It is pertinent here to mention that the defense as well as the case laws cited by the appellant are also relying on the judgement. Through the said judgement, the Hon'ble Supreme Court had resolved the existing controversy regarding whether reimbursable expenses provided by the service receiver are to be included in the value of taxable service for the purposes of charging to service tax.

7.3 The Hon'ble Supreme Court clearly pointed out that with effect from 14th May 2015, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service by virtue of amended provisions of Section 67 of the Finance Act, 1994. The relevant portion of the judgement is given below for ready reference.

"......the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax."

- 7.4 Thus I find that, through this landmark judgment, the Hon'ble Supreme Court has brought an end to the controversy by clarifying that expenditure or cost incurred like boarding, lodging and travel expenses provided by the service recipient to the service provider in the course of providing the taxable services shall not be treated as consideration for the taxable services and such value shall not be included in the gross value for the purpose of charging service tax.
- 7.5 Further, I find that the period involved in the instant case is **2006-07 and 2007-08** which is prior to the above said amendment i.e. May 14, 2015. Hence, I find that the value of expenditure provided by the appellant to the Glanzstoff and others in the course of providing the taxable services should not be included in the gross value for the purpose of charging service tax.



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- 8. On going through the submissions of the appellant and the worksheet submitted along with the appeal memorandum, I observe that there is difference in the amounts shown by the appellant. For eg. The total of the non-taxable service is shown as Rs. 30,75,384/- in the Annexure and Rs. 30,74,489/- is shown in the submissions. Further, I note that the appellant has not submitted all the supporting documents and have not submitted copy of agreements entered into with other foreign companies, therefore, I am unable to determine the correct service tax liability. In view of the current pandemic situation and the appellant's inability to submit all the documents, I am of the considered view that it is a proper case to remand the matter back to the adjudicating authority for proper scrutiny of the documents and for passing a reasoned order. I also direct the appellant to submit all the relevant documents/invoices/debit notes to the adjudicating authority within 30 days of receipt of the order.
- 9. In view of the above, I set aside the impugned order and remand the case back to the adjudicating authority.
- 9.1 अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 The appeal filed by the Appellant is disposed off as above.

(Gopi Nath)

Pr. Commissioner(Appeals)

By R.P.A.D.

To,

M/s Aditya Birla Nuvo Ltd. (Unit Fudian Rayon), now M/s Grasim Industries Ltd., Junagadh-Veraval Road, Veraval-362266, Dist.: Gir - Somnath

प्रति:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, Bhavnagar आयुक्तालय, Bhavnagar को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, केन्द्रीय वस्तु एवं सेवा कर, Junagadh मण्डल, Junagadh को आवश्यक कार्यवाही हेतु।
- 4) अधीक्षक, केन्द्रीय वस्तु एवं सेवा कर रेंज-।/॥, Veraval, को आवश्यक कार्यवाही हेतु।

