::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर 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 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी. द्वारा :- DIN-20220364SX000000DC4F

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIONo.	दिनांक/ Date
	V2/71/RAJ/2021	DC/JAM-I/ST/23-26/2020-21	19-12-2020
	V2/72/RAJ/2021	DC/JAM-I/ST/23-26/2020-21	19-12-2020
	V2/73/RAJ/2021	DC/JAM-I/ST/23-26/2020-21	19-12-2020
	V2/74/RAJ/2021	DC/JAM-I/ST/23-26/2020-21	19-12-2020
	V2/75/RAJ/2021	DC/JAM-I/ST/23-26/2020-21	19-12-2020
	V2/76/RAJ/2021	DC/JAM-I/ST/23-26/2020-21	19-12-2020

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

RAJ-EXCUS-000-APP-089 TO 094-2021-22

आदेश का दिनांक / Date of Order: **28.02.2022** जारी करने की तारीख / Date of issue: **01.03.2022**

श्रीअखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Akhilesh Kumar,Commissioner (Appeals),Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name&Address of the**Appellant**&Respondent :-

M/s Gigaram Manglaramji, Raj Chember, Khodiyar Colony Jamnagar-361006 .
M/s. Rajhans Metals Pvt Ltd., Plot No. 21/3, GIDC Shankar Tekri, Jamnagar-361004

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.

(A) 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 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) 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.

(ii) 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 असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

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

(iii) अपीलीय न्यायाधिकुरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क 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 क्रमश: 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 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 ।/

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/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम 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 क्रमश: 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 रजिस्ट्रार 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 ।/

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) वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र 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) &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 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 अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति 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 अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/
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 अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त 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 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 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

(ii) 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 छूट (रिबेट) 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 on 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 outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट 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.

(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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case,if the order covers variousnumbers 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 lakh fee of Rs. 100/- for each.

(E) 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.

(F) 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 ओर 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.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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 ::

The below mentioned appeals have been filed by the Appellants (*hereinafter referred to as* 'Appellant No. 1 and Appellant No. 2', as detailed in Table below) against the Orders - in - Original Nos. DC/JAM-I/ST/23-26/2020-21 dated 19.12.2020 (*hereinafter referred to as* 'impugned orders') passed by the Deputy Commissioner, Central GST and Central Excise Division-I, Jamnagar (*hereinafter referred to as* 'adjudicating authority'):-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/71-74/RAJ/2021	Appellant No.1	M/s Gigaram Mangalaramji, Raj Chamber, Khodiyar Colony, Jamnagar.
2.	V2/75-76/RAJ/2021	Appellant No.2	M/s Rajhans Metals Pvt. Ltd., Plot No.21/3, GIDC, Shanker Tekri, Jamnagar.

1.1 Since issue involved in above appeals is common, all appeals are taken up together for decision vide this common order.

2. The facts of the case, in brief, are that Appellant No. 2 was engaged in manufacture of goods falling under Chapter No. 74 of the Central Excise Tariff Act, 1985 and was registered with Central Excise Department. During audit of the records of Appellant No. 2, it was observed that Appellant No. 1 had provided temporary manpower for carrying out (a) breaking, cutting and sorting of the scrap, unloading of containers (b) casting work of brass scrap into billets in the foundry and (c) processing and packing of brass rods/section, during the manufacturing of excisable goods in the factory premises of Appellant No. 2 and raised labour charges bills on monthly basis. It appeared that the above service provided by Appellant No. 1 to Appellant No. 2 was covered under the category of "Manpower Recruitment or Supply Agency" defined under Section 65(68) of the Finance Act, 1994 (hereinafter referred to as 'Act') and was liable for levy of service tax.

2.1 Based on audit observations, Appellant No. 1 was issued two Show Cause Notices covering the period from F.Y. 2005-06 to October, 2010, which were adjudicated by the Joint Commissioner, erstwhile Central Excise, Rajkot vide Order-in-Original No. 49-50/JC/2011 dated 24.11.2011 who dropped the demand. The said Order was reviewed by the Department and appeal was filed before the then Commissioner (Appeals), Rajkot who rejected the appeal vide Order-in-Appeal No. 863/2012 (RAJ) CE/AK/Commr(A)/Ahd dated 6.11.2012. The

Department challenged the said Order-in-Appeal before the Hon'ble CESTAT, Ahmedabad but the same was rejected on monetary limit.

2.2. For the subsequent period from November, 2010 to June, 2012, two Show Cause Notices were issued to Appellant No. 1 calling them to show cause as to why service tax totally amounting to Rs. 13,91,823/- should not be demanded from them under Section 73 of the Act along with interest under Section 75 and proposing imposition of penalty under Sections 76,77 and 78 of the Act.

2.3 For the period from July, 2012 to September, 2014, two more Show Cause notices were issued to Appellant No. 1 calling them to show cause as to why service tax totally amounting to Rs. 4,47,349/-, being 25% of total service tax liability, should not be demanded from them under Section 73 of the Act along with interest under Section 75 and proposing imposition of penalty under Sections 76,77 and 78 of the Act. In the said Show Cause Notices, Appellant No. 2 was also called upon to show cause as to why service tax totally amounting to Rs. 13,42,050/-, being 75% of total service tax liability, should not be demanded from them, being recipient of service, under Section 73 of the Act along with interest under Section 75 and proposing imposition of penalty under Sections 76,77 and 78 of the Act.

3. The above Show Cause Notices were adjudicated by the adjudicating authority vide the impugned orders who confirmed Service Tax demand of Rs. 18,39,172/- in respect of Appellant No. 1 and Rs. 13,42,050/- in respect of Appellant No.2 under the provisions of Section 73 (2) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs. 18,39,172/- on Appellant No. 1 and penalty of Rs. 13,42,050/- on Appellant No.2 under Section 78 of the Act. He imposed penalty of Rs. 80,000/- upon Appellant No. 1 and Rs.50,000/- upon Appellant No. 2 under Section 77(2) of the Act and late fee of Rs. 1,60,000/- and 1,00,000/- on Appellant No. 1 and Appellant No. 2 respectively under Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994.

4. Being aggrieved with the impugned orders, Appellant No. 1 and Appellant No. 2 have preferred appeals on various grounds, *inter alia*, as below :-

Appellant No. 1:-

(i) The impugned order is untenable in law in as much as the same was issued against the principal of judicial discipline. That on the very same issue, they were issued two show cause notices for the previous

period, which were dropped by the erstwhile adjudicating authority and an appeal preferred by the Department in the matter was also dismissed by the Commissioner (Appeals), Rajkot. Further, an appeal filed by the Department against the above referred OIA before the Hon'ble CESTAT, Ahmedabad was also dismissed as withdrawn and hence, the order of the Commissioner (Appeals), Rajkot had attained finality in the issue on hand. The principle of judicial discipline requires that orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not 'acceptable' to the Department is no ground for not following it unless its operation has been suspended by a competent court, which had never happened in the present case. The action of the adjudicating authority, to not follow the order of the Commissioner (Appeals), Rajkot, is against the principle of judicial discipline and hence, the impugned order is untenable in law on that count.

(ii) That the compensation received by them was based upon the quantum of work executed and not according to number of persons used by them and therefore the same cannot be classified under the taxable category of 'Manpower Recruitment or Supply Agency Services'. That the appellant carried out the work through their labourers (manpower) who performed the task under the supervision and control of Appellant. Thus, the conclusions arrived at by the adjudicating authority to classify the said services as 'Manpower Recruitment or Supply Agency Services' and demanding tax thereon is untenable in law.

(iii) That as per the agreement, the appellant was required to provide 'manufacturing' services of 'brass rods / sections', through the process of extrusion, upon the 'brass billets' provided by the company and thereafter pack it and the said agreement nowhere talks about 'supply of manpower'. That the compensation received by them from the company is based on the 'quantum of work' performed by them and not on the basis of man-days or man-hours. Hence, the impugned order, classifying services provided under such 'agreement' under the taxable category of 'Manpower Recruitment or Supply Agency Service' and demanding tax thereon, is unsustainable in law and relied upon Board's Circular dated 15.12.2015.

(iv) That they carried out the work as a contractor, employing its own labour and such activity undertaken by them cannot be classified under the taxable category of 'Manpower Recruitment or Supply Agency' and therefore the impugned order is unsustainable in law and relied upon following case laws:

(a) Rameshchandra C. Patel - 2012 (25) S.T.R. 471
(b) K. Damodarareddy -2010 (19) S.T.R 593 (Tri. - Bang.)
(c) Ritesh Enterprises - 2010 (18) S.T.R. 17 (Tri. - Bang.)
(d) Divya Enterprises - 2010 (19) S.T.R 370 (Tri. - Bang.)

(v) The appellant refers to clause (f) of section 66D of the Act and submit that the process undertaken by them i.e. converting brass billets into brass rods / sections etc. amounts to 'manufacture' and specifically included in negative list of services under clause (f) of section 66D of the Act and hence, the impugned order, confirming demand of service tax for the period from July, 2012 to September, 2014 is not sustainable.

(vi) That the impugned order imposing penalties on them under Sections 70, 77 and 78 of the Act, is unsustainable in law since the demand of service tax itself is unsustainable in law.

Appellant No. 2:-

(i) The impugned order is untenable in law in as much as the same was issued against the principal of judicial discipline. That on the very same issue, the jobworker was issued two show cause notices for the previous period, which were dropped by the erstwhile adjudicating authority and an appeal preferred by the Department in the matter was also dismissed by the Commissioner (Appeals), Rajkot. Further, an appeal filed by the Department against the above referred OIA before the Hon'ble CESTAT, Ahmedabad was also dismissed as withdrawn and hence, the order of the Commissioner (Appeals), Rajkot had attained finality in the issue on hand. The principle of judicial discipline requires that orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not 'acceptable' to the Department is no ground for not following it unless its operation has been suspended by a competent court, which had never happened in the present case. The action of the adjudicating authority, to not follow the order of the Commissioner (Appeals), Rajkot, is against the principle of judicial discipline and hence, the impugned order is untenable in law on that count.

(ii) That the impugned order has been issued based on provisions contained at Serial No. 8 of Notification No. 30/2012 - ST dated 20.06.2012, which is applicable only when there is 'supply of manpower', whereas, in the present case there is no such 'supply of manpower', whatsoever, as discussed hereunder.

(iii) That the compensation paid to their job worker M/s Gigaram Mangalramji was based upon the quantum of work executed and not according to number of persons used by their jobworker and therefore the same cannot be classified under the taxable category of 'Manpower Recruitment or Supply Agency Services'. That their job worker carried out the work through their labourers (manpower) who performed the task under the supervision and control of jobworker. Thus, the conclusions arrived at by the adjudicating authority to classify the said services as 'Manpower Recruitment or Supply Agency Services' and demanding tax thereon is untenable in law.

(iv) That as per the agreement, the jobworker was required to provide 'manufacturing' services of 'brass rods / sections', through the process of extrusion, upon the 'brass billets' provided by the company and thereafter pack it and the said agreement nowhere talks about 'supply of manpower'. That the compensation paid to jobworker by them is based on the 'quantum of work' performed by them and not on the basis of man-days or man-hours. Hence, the impugned order, classifying services provided under such 'agreement' under the taxable category of 'Manpower Recruitment or Supply Agency Service' and demanding tax thereon, is unsustainable in law and relied upon Board's circular dated 15.12.2015.

(v) The appellant refers to clause (f) of Section 66D of the Act and submit that the process undertaken by the job worker i.e. converting brass billets into brass rods / sections etc. amounts to 'manufacture' and specifically included in negative list of services under clause (f) of section 66D of the Act and hence, the impugned order, confirming demand of service tax for the period from July, 2012 to September, 2014 is not suatainable.

(vi) That the impugned order imposing penalties on them under Sections 70, 77 and 78 of the Act, is unsustainable in law since the demand of service tax itself is unsustainable in law.

4. Personal Hearing in the matter was held on 30.12.2021 in virtual mode through video conferencing. Shri Dineshkumar Jain, Chartered Accountant, appeared on behalf of both Appellants in all 6 appeals. He reiterated the submissions made in appeal memoranda.

5. I have carefully gone through the facts of the case, the impugned orders, the appeal memoranda and written as well as oral submissions made by the Appellants. The issues to be decided in the present appeals are whether,

(i) Appellant No. 1 is liable to pay service tax on labour charges recovered by them in respect of manpower service rendered to Appellant No. 2 during the period from November, 2010 to June, 2012 or not ?

(ii) Appellant No. 1 and Appellant No. 2 are liable to pay service tax on labour charges recovered by Appellant No.1 in respect of manpower service rendered to Appellant No. 2 during the period from July, 2012 to September, 2014 or not ?

6. On perusal of the records, I find that Appellant No. 1 had carried out the work of (a) breaking, cutting and sorting of the scrap, unloading of containers (b) casting work of brass scrap into billets in the foundry and (c) processing and packing of brass rods/section, during the manufacturing of excisable goods in the factory premises of Appellant No. 2 and raised labour charges bills on monthly basis during the period from November, 2010 to June, 2012. The adjudicating authority has held the service rendered by Appellant No. 1 to Appellant No. 2 under "Manpower Recruitment or Supply Agency" as defined under erstwhile Section 65(68) of the Act and confirmed service tax demand totally amounting to Rs. 13,91,823/- under Section 73 of the Act, along with interest and imposed penalty of Rs. 13,91,823/- under Section 78.

6.1. Appellant No. 1 has contended that the compensation received by them was based upon the quantum of work executed and not according to number of persons used by them. They carried out the work through their labourers (manpower) who performed the task under the supervision and control of Appellant and therefore the same cannot be classified under the taxable category of 'Manpower Recruitment or Supply Agency Services'.

7. I find it is pertinent to examine the definition of "Manpower Recruitment or Supply Agency" under erstwhile Section 65(68) of the Act, which reads as under:-

" 'manpower recruitment or supply agency' means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person."

7.2 The term 'supply of manpower' has been defined under Rule 2(1)(g) of the Service Tax Rules, 1994 as under:

" 'supply of manpower' means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control"

7.3. From the plain reading of definitions above, I find that there has to be (i) supply of manpower and (ii) manpower so supplied has to work under superintendence or control of the client, in order to get covered under the taxable category of 'Manpower Recruitment or Supply Agency Service'.

8. Now, I examine the agreement dated 31.3.1992 entered between Appellant No. 1 and Appellant No. 2 and sample copies of invoices furnished by Appellant No. 1 in appeal memorandum. The relevant clauses of said agreement are reproduced as under:

"2. To carry out extrusion of goods from billets supplied by the company through extrusion press and also to do the process of picking, painting, drawing, straightening and reeling and then do packing and weighing as per the requirement of the Company.

3. Labour charges will be Rs. 0.25 per kg on net packing basis.

4. Labour required for the work will be recruited by jobworker and their responsibility will be on jobworker and Company will not be responsible for them."

8.1 It is observed that essence of the above agreement was to carry out specific work on lump sum basis and there is no whisper of any supply of manpower, as such, by Appellant No. 1 to Appellant No. 2. It is also not forthcoming from said agreement that labour deployed by Appellant No.1 to carry out the said work were under superintendence or control of service recipient i.e. Appellant No. 2. Further, in the sample copies of invoices furnished by Appellant No. 1, labour charges were raised on 'per kg' basis and not on 'per hour' or 'per day' basis. So, consideration received by Appellant No. 1 depended upon total work carried out by it and not on the basis of number of persons deployed for the work. After careful examination of facts emerging from records, it is apparent that the services rendered by Appellant No. 1 to Appellant No. 2 cannot be classified under the taxable category of 'Manpower Recruitment or Supply Agency'.

8.2 In this regard, I rely on an order passed by the Hon'ble CESTAT in the case of Ganesh Dutt reported as 2017(4) GSTL 323 (Tri. Del.), wherein it has been held that demand of Service Tax under "Manpower Recruitment or Supply Agency Service" is not sustainable in absence of evidence of supply of manpower with details of number and nature of manpower, duration and other conditionalties for such supply. The relevant portion of the order is reproduced as under:

> "6. ... ... The arrangement is to pay at the labour rates for completion of job undertaken towards packing of finished goods and cutting of footwear components. The documents submitted by the appellant indicate a lump sum charge for the work undertaken by them. There is no evidence of supply of manpower with details of number and nature of manpower, duration and other conditionalties for such supply. In absence of such evidence, the simple and such amount should be taxed under "Manpower Recruitment and Supply Agency Service" is not sustainable."

8.3 I also rely on the order passed by the Hon'ble CESTAT in the case of K. Damodarareddy reported as 2010 (19) STR 593 (Tri-Bang), wherein it has been held that,

> "6. We have heard both sides. We find that the appellant had carried out the activities of loading of cement bags into wagons, spillage cleaning, stenciling, wagon door opening/closing, wagon cleaning etc., for M/s. India Cements Ltd., during the material period. We find that the appellants were compensated for the various items of work at separate rates prescribed under the contract. The appellants did not supply manpower charging for the labour provided on man-day basis or man-hour basis. The appellants carried out the work as a contractor employing its own labour. Such an activity is not classifiable as "manpower recruitment or supply agency."

8.4 I also rely on the order passed by the Hon'ble CESTAT in the case of Divya Enterprises reported as 2010(19) STR 370 (Tri-Bang), wherein it has been held that,

> "9. On a careful consideration of the above reproduced letter and facts from the entire case papers, we find that the contract which has been given to the appellants is for the execution of the work of loading, unloading, bagging, stacking destacking etc., In the entire records, we find that there is no whisper of supply manpower to the said M/s. Aspin Wall & Co. or any other recipient of the services in both these appeals. As can be seen from the reproduced *contracts* and the invoices issued by the appellant that the entire essence of the contract was an execution of work as understood by the appellant and the recipient of services. We find that the Hon'ble Supreme Court in the case of *Super Poly Fabriks Ltd.* v. *CCE, Punjab* (supra) in paragraph 8 has laid down the ratio which is as under :
>
> > "There cannot be any *doubt* whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive. "
>
> An identical view was taken by Hon'ble Supreme Court in the case of *State of AP* v. *Kone Elevators (India) Ltd.* (supra) and *UOI* v. *Mahindra and Mahindra* (supra) in a similar issue. The ratio of all the three judgments of the Hon'ble Supreme Court, is that the tenor of agreement between the parties has to be understood and

interpreted on the basis that the said agreement reflected the role and understanding of the parties. The said ratio applies to the current case in hand. We find that the entire tenor of the agreement and the purchase orders issued by the appellants' service recipient clearly indicates the execution of a lump-sum work. In our opinion this lump-sum work would not fall under the category of providing of service of supply of manpower temporarily or otherwise either directly or indirectly."

8.5 I also rely on the Order passed by the Hon'ble CESTAT, Mumbai in the case of Bhagyashree Enterprises reported as 2017 (3) G.S.T.L. 515 (Tri. - Mumbai), wherein it has been held that,

"6.3 As regards the service tax liability under the category of manpower recruitment or supply agency service, for the services rendered to KLL, we find that the adjudicating authority has misconstrued the provisions and misdirected the findings to hold that the services would fall under the category of 'manpower recruitment or supply agency services'. On perusal of the agreement entered by the appellants with KLL, we find that the said agreement specifically indicates about the consideration to be paid to the appellants based upon the number of units produced in the factory premises of KLL and there is no restriction as to the specific number of employees to be brought for such purposes; and work force employed by the appellant was on the role of the appellant only and is supervised by the appellant. In our considered view this contract cannot be considered as a contract for supply of manpower to KLL. This, in our considered view is nothing but lumpsum work awarded to appellants by KLL. We find strong force in the contentions put forth by the learned Counsel that the issue is covered by the decision of Divya Enterprises (supra) and Ritesh Enterprises (supra)."

8.6 I also rely on the clarification issued by the Board vide Circular No. 190/9/2015-S.T. dated 15-12-2015 issued from F. No. 354/153/2014-TRU, wherein it is clarified that,

"2. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The *essential characteristics of manpower supply service* are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service providers accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle."

8.7. By respectfully following the above case laws and Board's Circular, I hold that the services rendered by the Appellant No. 1 to Appellant No. 2 are not covered under the category of "Manpower Recruitment or Supply Agency". Consequently, confirmation of Service Tax demand of Rs. 13,91,823/- upon Appellant No. 1 for the period from November, 2010 to June, 2012 is not legally sustainable and the same is required to be set aside and I do so. When Service Tax demand is set aside, recovery of interest and imposition of penalty under

Sections 70, 77 & 78 of the Act upon Appellant No. 1 are also set aside.

9. Now coming to second issue. Appellant No. 1 continued to provide said services to Appellant No. 2 and raised labour charges bills on monthly basis during the period from July, 2012 to September, 2014. Two Show Cause Notices were issued to Appellant No. 1 and Appellant No. 2 on the grounds that the service rendered by Appellant No. 1 to Appellant No. 2 were not covered under negative list under Section 66D of the Act nor exempted by way of any exemption notification. The adjudicating authority confirmed service tax demand totally amounting to Rs. 4,47,349/- upon Appellant No. 1, being 25% of total service tax demand, and Rs. 13,42,050/- upon Appellant No. 2 being recipient of service in terms of Notification No. 30/2012-ST dated 20.6.2012, as amended.

9.1 The Appellants have contended that process undertaken by Appellant No. 1 of converting brass billets into brass rods / sections etc. amounted to 'manufacture' and specifically included in negative list of services under clause (f) of Section 66D of the Act and hence, they were not liable to pay service tax.

9.2 I find that with effect from 1.7.2012, service tax was levied in terms of Section 66B of the Act at the rate of fourteen percent on value of all services other than those services specified in the negative list under Section 66D of the Act. Thus, with effect from 1.7.2012, classification of taxable services under specific category was done away with and service tax was levied on any service, if the activity was covered within the definition of 'service' in terms of Section 65B(44) of the Act and the same was not covered under negative list as specified under Section 66D of the Act or not exempted under any exemption notification. Since, period involved in this issue is from July, 2012 to September, 2014, provisions as contained in Section 66B shall be applicable. The clause (f) of Section 66D of the Act relied upon by Appellants reads as under:

"(f) any process amounting to manufacture or production of goods"

9.2.1 The Appellant No. 1 carried out of process of converting brass billets provided by Appellant No. 2 into brass rods / sections etc., as per agreement between Appellants. The said process is covered under the term 'manufacture' defined under Section 2(f) of the Central Excise Act, 1944, since new item is emerging from process carried out on raw material brass billets. As the service rendered by Appellant No. 1 is covered under negative list of services in terms of clause (f) of Section 66D of the Act, the same is not liable to service tax.

10. It is also observed that the Appellant has contended that the adjudicating authority erred in not following the judicial discipline as same dispute for prior period was decided in their favour by the Commissioner (Appeals), Rajkot and therefore, the adjudicating authority was bound to follow the said decision rendered by the Commissioner (Appeals). I find that the Appellant had relied upon Order-in-Appeal dated 6.11.2012 passed in their own case for previous period during adjudication proceedings. However, the adjudicating authority discarded their contention by observing at Para 22 of the impugned orders that Department had challenged the said Order-in-Appeal before the Hon'ble CESTAT, Ahmedabad but the same was rejected by the Tribunal on monetary grounds and that no order on merit was passed by the CESTAT.

10.1 I do not agree with the findings of the adjudicating authority. Once the Departmental appeal was rejected by the Hon'ble CESTAT, the Order-in-Appeal dated 6.11.2012 attained finality. Even though the appeal was rejected by the Hon'ble CESTAT on monetary limit, fact remains that the said Order-in-Appeal has not been reversed or stayed by higher appellate authority and consequently was binding upon the adjudicating authority. The judicial discipline required the adjudicating authority to have followed the said Order-in-Appeal in letter and spirit. It is pertinent to mention that when any appeal is rejected on monetary limit, the Department may agitate the issue in appropriate case in other appeal proceedings, but it is not open for the adjudicating authority to pass order on merit disregarding binding precedent. The adjudicating authority may distinguish relied upon decision, if there is change in facts or change in legal position. However, the adjudicating authority has not brought on record as to how said relied upon Order-in-Appeal is not applicable to the facts of the present case. It is therefore apparent that the adjudicating authority has committed judicial indiscipline in not following the orders passed by the Commissioner (Appeals) in the case of appellants for the earlier period.

10.2 I rely on the judgement rendered by the Hon'ble Supreme Court in the case of Kamlakshi Finance Corporation Ltd reported as 1991 (55) E.L.T. 433 (S.C.), wherein it has been held that,

> "6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of

these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."

10.3. I rely on the Order passed by the Hon'ble CESTAT, New Delhi in the case of RGL Converters reported as 2015 (315) E.L.T. 309 (Tri. - Del.), wherein it has been held that,

"10. It is axiomatic that judgments of this Tribunal have precedential authority and are binding on all quasi-judicial authorities (Primary or Appellate), administering the provisions of the Act, 1944. If an adjudicating authority is unaware of this basic principle, the authority must be inferred to be inadequately equipped to deliver the quasi-judicial functions entrusted to his case. If the authority is aware of the hierarchical judicial discipline (of precedents) but chooses to transgress the discipline, the conduct amounts to judicial misconduct, liable in appropriate cases for disciplinary action.

11. It is a trite principle that a final order of this Tribunal, enunciating a ratio decidendi, is an operative judgment per se; not contingent on ratification by any higher forum, for its vitality or precedential authority. The fact that Revenue's appeal against the judgment of this Tribunal was rejected only on the ground of bar of limitation and not in affirmation of the conclusions recorded on merits, does not derogate from the principle that a judgment of this Tribunal is per se of binding precedential vitality qua adjudicating authorities lower in the hierarchy, such as a primary adjudicating authority or a Commissioner (Appeals). This is too well settled to justify elaborate analyses and exposition, of this protean principle.

12. Nevertheless, the primary and the lower appellate authorities in this case, despite adverting to the judgment of this Tribunal and without concluding that the judgment had suffered either a temporal or plenary eclipse (on account of suspension or reversal of its ratio by any higher judicial authority), have chosen to ignore judicial discipline and have recorded conclusions diametrically contrary to the judgment of this Tribunal. This is either illustrative of gross incompetence or clear irresponsible conduct and a serious transgression of quasi-judicial norms by the primary and the lower appellate authorities, in this case. Such perverse orders further clog the appellate docket of this Tribunal, already burdened with a huge pendency, apart from accentuating the faith deficit of the citizen/assessee, in departmental adjudication."

10.4 I rely on the decision rendered by the Hon'ble Gujarat High Court in the case of Claris Lifesciences Ltd. reported as 2013 (298) E.L.T. 45 (Guj.), wherein it has been held that,

"8. The adjudicating officer acts as a quasi judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction. If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944.

9. Counsel for the petitioners brought to our notice the decision of the Apex Court in the case of *Union of India* v. *Kamlakshi Finance Corporation Ltd.* reported in 1991 (55) E.L.T. 433 (S.C.) in which while approving the criticism of the High Court of the Revenue Authorities not following the binding precedent, the Apex Court observed that :-

"6...It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The more fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35D confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs (Direct Taxes) comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

10.5 In view of the above discussion, I hold that confirmation of service tax demand totally amounting to Rs. 18,39,172/- and Rs. 13,42,050/- upon Appellant No. 1 and Appellant No. 2, respectively, is not legally sustainable and is required to be set aside and I do so. Since, demand is set aside, recovery of interest under Section 75 and imposition of penalty under Sections 70, 77 and 78 of the Act upon Appellant No. 1 and Appellant No. 2 are also set aside.

11. In view of above, I set aside the impugned orders and allow appeals filed by Appellant No. 1 and Appellant No. 2.

12. अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है ।

12. The appeals filed by the Appellants are disposed off as above.

विपुल शाह

28th February 2021

(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To,	सेवा में,
1. M/s Gigaram Mangalaramji, Raj Chamber, Khodiyar Colony, Jamnagar.	मेसर्स गिगाराम मंगलरामजी, राज चैंबर, खोडियार कॉलोनी, जामनगर।
2. M/s Rajhans Metals Pvt. Ltd., Plot No. 21/3, GIDC, Shankar Tekri, Jamnagar.	मेसर्स राजहंस मेटल्स प्रा। लिमिटेड, प्लॉट नंबर 21/3, जीआईडीसी, शंकर टेकरी, जामनगर।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जामनगर-1 मंडल, जामनगर को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।