



: : आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करऔरकेन्द्रीय 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



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20220464SX0000217947

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/43//BVR/2021	DC/JND/19/2021-22	09-07-2021

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

BHV-EXCUS-000-APP-018-2021-22

आदेश का दिनांक / Date of Order:	31.03.2022	जारी करने की तारीख / Date of issue:	01.04.2022
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श्री अखिलेश 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 एवं सेवाकर, 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. Aditya Birla Nuvo Ltd., (Unit- Indian Rayon), Now M/s Grasim Industries Ltd., Junagadh-Veraval Road, Veraval Dist. Gir Somnath, 362266

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 निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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/- रुपये 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 duty demand/interest/penalty/refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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/- रुपये 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 is more than five lakhs or less, Rs.5000/- 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, 1994 की 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 प्रतियों 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 Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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) सेनबेट जमा की ली गई गलत राशि
(iii) सेनबेट 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 स्वयंन अर्जी एवं अपील को लागू नहीं होगी।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणवाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर 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 छुट (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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट केडिट 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 तरीक अथवा समावाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 Chiallan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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-1 के अनुसार मूल आदेश एवं स्वयंन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-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 संबंधित 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.
(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

M/s. Aditya Birla Nuvo Limited (Unit: Indian Rayon) now M/s Grasim Industries Ltd., Junagadh-Veraval Road, Veraval-362 266 (District - Gir-Somnath) (hereinafter referred to as "the Appellant") has filed Appeal No. V2/43/BVR/2021 against Order-in-Original No. DC/JND/19/2021-22 dated 09.07.2021 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central GST, Division: Junagadh (hereinafter referred to as "the adjudicating authority").

2. The facts of the case, in brief, are that the Appellant were issued a Show Cause Notice No. V/15-104/Dem-ST/HQ/2009 dated 29.01.2010 for nonpayment of service tax amount of Rs. 46,13,585/- under category of Scientific & Technical Consultancy Service received from abroad and payment for which was made in foreign currency to the service provider situated abroad. The period involved in the SCN was from 01.01.2005 to F.Y.2007-08. The said SCN dated 29.01.2010 was adjudicated by the Assistant Commissioner, erstwhile Central Excise & Service Tax, LTU, Mumbai vide Order-in-Original No. 27/AC(VR)/LTU/MUM/CX/GLT-6/ABNL/2016-17 dated 31.01.2017 wherein the Service Tax demand of Rs. 10,40,790/- was dropped for the period from 01.01.2005 to 17.04.2006. The 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 read with Rule 6 of Service Tax Rules, 1994 along with interest under Section 75 of the Act ibid. Penalty under Section 76, 77, & 78 of the Act ibid and Rule 7 (c) (iii) of the Service Tax Rules, 1994, was also imposed on the appellant.

3. Aggrieved with the aforesaid Order-in-Original, the Appellant preferred an appeal before the Commissioner (Appeals) GST & Central Excise, Rajkot. The Commissioner (Appeals) Rajkot, vide Order-in-Appeal No. BHV-EXCUS-000-APP-220-2018-19 dated 21.08.2018, had set aside the order and remanded the matter back to the jurisdictional Divisional Assistant/Deputy Commissioner to verify all invoices/ debit notes raised and copies of agreements and come to a correct conclusion keeping in mind that reimbursable expenses are not to be added to the taxable value of the services as discussed in Para 8 and 8.1 of the above OIA. In the remand proceedings, the jurisdictional Assistant Commissioner, Central GST, Junagadh vide Order-in-Original No. AC/JND/01/2020-21 dated 30.04.2020 confirmed the demand of Rs. 19,27,696/- on the grounds that the Appellant failed to sufficiently explain that the demand of service tax was in respect of reimbursement of expenses incurred during course of rendering of service, which was required to be excluded in light of the directions of the Commissioner (Appeals) vide above mentioned Order-in-Appeal, which had attained finality.

4. Aggrieved with the Order-in-Original No. AC/JND/01/2020-21 dated 30.04.2020, the Appellant again preferred an appeal before the Commissioner (Appeals) CGST and Central Excise Rajkot, who vide Order-in-Appeal No. BHV-EXCUS-000-APP-048-2020 dated 01/08.10.2020 again remanded the matter back to the adjudicating authority with direction to follow the instructions as mentioned in Para 7.2, 7.3, 7.4 & 7.5 and 8 and 9 of the above OIA. In

the de-novo decision, the adjudicating authority vide impugned order confirmed the demand of Rs. 15,22,142/-, ordered for recovery of interest and imposed penalty of Rs. 15,22,142/- after allowing the benefit of Rs. 04,05,554/- being reimbursement expenses out of total demand of service tax to the tune of Rs. 19,27,696/-.

5. Being aggrieved by the impugned order, the Appellant preferred appeal on various grounds, *inter alia*, contending that:-

(i) The adjudicating authority has not given finding on the submission of the Appellant and has mechanically rejected the submission made by them.

(ii) The OIO fails to provide the very basis of the calculation based on which the department has arrived at the demand of Rs. 15,22,142/- and has merely raised the demand based on tabular calculations which itself is incorrect.

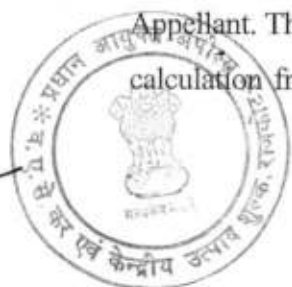
(iii) The impugned order is issued assuming that no service tax is paid on the value of Rs. 2,58,76,153/- which is not correct. The Appellant had mentioned the facts in the letter dated 20.01.2015 and had sought the working from the department based on which the said demand was arrived. Since the Appellant heard nothing from the department, the Appellant submitted the detailed statement showing the total Service Tax paid by them on services availed from foreign parties. The adjudicating authority has failed to address their contention in the impugned order.

(iv) The impugned order is non speaking order as the adjudicating authority has mechanically confirmed the demand and no details or reasoning are available in impugned order. The reliance is placed upon the case of Cyril Lasrado (Dead) V/s Juliana Maria Lasarado 2004 (7) SCC 421 held that non speaking order is unsustainable.

(v) The service tax liability on services received by the Appellant has been discharged by them and there is no further liability payable. The adjudicating authority has not considered the service tax details/ challans on payment made to Glanzstoff and other parties. The service tax was liable to be paid and has been discharged by the Appellant on reverse charge basis and has submitted details of service tax paid on payment made to Glanzstoff and payment made to other parties. Then adjudicating authority has demanded service tax of Rs. 15,22,142/- despite the same is paid earlier.

(vi) The adjudicating authority has held that in absence of any explanation forth coming from the Appellant he is disinclined to drop the remaining demand of service tax of Rs. 15,22,142/-. However, as per the directions of Commissioner vide OIA dated 08.10.2020, Appellant has submitted documents vide their letter dated 31.10.2020 which Adjudicating Authority has not taken into consideration.

(vii) The calculation of the service tax not paid amount of Rs. 2,91,87,362/- based on which the demand is confirmed vide impugned order is not correct and are not comprehensible to the Appellant. This fact was mentioned in their letter dated 20.01.2015 and asked for the working and calculation from the department of the service tax not paid amount of Rs. 2,91,87,362/-. Since



nothing was heard from the department, they submitted the detail statement showing the total service tax paid on services availed from foreign parties along with copies of TR.6 challan.

(viii) The amount mentioned as "service tax not paid amount" represents the reimbursement of expenses reimbursed to the foreign technical experts who were deputed to work in India. The said reimbursement identifiable from the service tax charges from the supporting bills submitted by Ms. Glanvstoff. Service tax is chargeable on the gross value of taxable service excluding the reimbursement of various expenses. The reliance is placed upon the case of Plantech Consultants Pvt. Ltd. Vs CCE Pune-I {2016 (41STR 850) Trib. Mum.}.

(ix) That no penalty or interest can be imposed on the Appellant as the adjudicating authority has not given any findings for imposition of penalty.

6. Personal Hearing in the matter was held on 30.12.2021 in virtual mode through video conferencing. Shri Ashok Herma, Assistant General Manager, appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum.

7. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and oral submissions made by the Appellant. The issue to be decided in the case 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.

8. From the facts available on records, I find that the adjudicating authority has given benefit of Rs. 4,05,554/- being reimbursement of expenses out of the demand of Rs.19,27,696/-. The Appellant has not agreed with the decision and argued that the adjudicating authority has failed to provide the very basis of the calculations based on which they have arrived at the demand of Rs. 15,22,142/- and argued that the impugned order has been issued assuming that no service tax was paid on the value of Rs. 2,91,87,362/- which was initially stated in their letter dated 20.01.2015.

9. I further find from the records that three times adjudicating authority has issued the Orders-in Original and two times my predecessor has passed Orders-in-Appeal. But still the issue is not settled. Earlier, vide Order-in-Appeal No. BHV-EXCUS-000-APP-048-2020 dated 01/08.10.2020, it was held that reimbursement of expenses is not includible in assessable value for the purpose of service tax in light of decision of Hon'ble Supreme Court in the case of UOI vs. Intercontinental Consultants and Technocrats Pvt. Ltd reported at 2018 (10) G.S.T.L. 401 (S.C.) where in it is held that prior to 14.05.2015, reimbursement of expenses incurred were not includible in the value for the purpose of charging service tax. On the said grounds, the matter was remanded back to the adjudicating authority, and now, in the impugned order, the adjudicating authority based on the evidences produced by the Appellant has allowed the benefit of reimbursement of expenses incurred and deducted the leviable service tax, which is reflected in the said impugned order at Para 9.6.2.

10. In the present appeal, the Appellant has argued that in the impugned order, the adjudicating authority has on assumption, decided that no service tax was paid on the value of

Rs. 2,91,87,362/-. They argued that the calculation based on which the demand is raised is not correct. They relied upon their letter dated 20.01.2015, wherein they had sought the working from the Department based on which the said demand was arrived. I also find that the Appellant had given their own calculations with supporting documents to the Adjudicating Authority (para 5 of impugned order), however, from findings recorded in the impugned order, I find that the adjudicating authority has not recorded any findings in this regard and hence the order is non-speaking on this aspect.

11. I have gone through the letter dated 20.01.2015 of the Appellant addressed to the Additional Commissioner of erstwhile Central Excise & Service Tax, Large Tax Payer Unit, Mumbai. In the said letter they sought following clarification:

"Further we would like to humbly submit that the SCN demands service tax of Rs. 46,13,585/- as per Annexure-A to the SCN. The said sum is calculated on "ST not paid on amount" which totals to Rs. 2,91,87,862/- for FY 2006-07 & FY 2007-08. However, the working of above sum is not provided to us and we are unable to ascertain how the same has been arrived at. Thus the above demand is not based on the actual factual position and hence the SCN is vague and liable to be dropped forthwith."

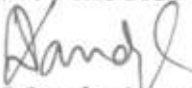
This point has been raised by the Appellant in their appeal memorandum and at the time of personal hearing also. However, the adjudicating authority has also not recorded any findings in this regard.

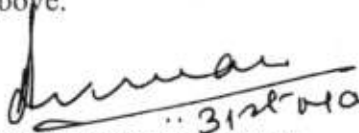
12. In view of above, I set aside the impugned order and remand the matter back to the jurisdictional Divisional Deputy/Assistant Commissioner to carry out suitable verifications as per the findings recorded at para 10 and 11 above. The Appellant is directed to produce all the evidence as desired by the adjudicating authority and cooperate in the adjudication process.

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

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

सत्यापित / Attested


दिलिप जे. पंड्या
Dillip J. Pandya
अधीक्षक (अपील)
Superintendent (Appeal)


31st March, 2021.
(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

1. M/s. Aditya Birla Nuvo Limited (Unit: Indian Rayon) Now M/s Grasim Industries Ltd., Junagadh-Veraval Road, Veraval-362 266 (Dist. Gir-Somnath)	मेसर्स अदित्या बिरला नुवो लिमिटेड (यूनिट इंडियन रयोन) मेसर्स ग्रासिम इंडस्ट्रीज लिमिटेड जूनागढ़ वेरावल रोड वेरावल 362266 (जिलो गिर सोमनाथ)
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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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) उपायुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, डिवीजन जूनागढ़, जूनागढ़ को आवश्यक कार्यवाही हेतु।

4) गार्ड फाइल।

