



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



सत्यमेव जयते

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

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230264SX0000000D71

क	अपील / फाइल संख्या/ Appeal / File No. V2/70/RAJ/2022	मूल आदेश सं / OIO No. 02 TO 05/2021-22	दिनांक / Date 08-03-2022
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-005-2023**

आदेश का दिनांक / Date of Order:	<b>25.01.2023</b>	जारी करने की तारीख / Date of issue:	<b>01.02.2023</b>
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, 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. Fitwell Technologies Pvt. Ltd., Yogheswar Main Road, Opp. Nagbai Ind. Atika, Dhebar Road(South), Rajkot.**

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- ३८००१६ को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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) 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 मांग, ब्याज की मांग 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 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 (स्टै 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 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 नियमावली, 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, 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 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 (स्टै 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto 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/-.

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- (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 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 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 जर्माना विवादित है, या जर्माना, जब केवल जर्माना 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 अर्जी एवं अपील को लागू नहीं होगा। /  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 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 outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट क्रेडिट 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 समायाविधि 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 O.I.O. 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 पत्री 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 numbers 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 filed 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 रूपये 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 बर्णित 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.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in)



## अपील आदेश / ORDER-IN-APPEAL

M/s Fitwell Technologies Pvt Ltd, Yogeshwar Main Road, Atika, Dhebar Road South, Rajkot-360 have filed Appeal No. V2/70/RAJ/2022 against Order-in-Original No. 02 to 05/2021-22 dated 08.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Rajkot-I (hereinafter referred to as 'adjudicating authority').

2.1 Brief facts of the case are that Appellant was engaged in manufacturing of goods falling under chapter 94 of the central Excise Tariff Act, 1985 on job work basis for M/s Kich Marketing private Limited, now renamed as Kich Architectural Pvt. Ltd (hereinafter referred to as the Principal Manufacturer"). The appellant at the time of clearance of job worked goods paid the duty on cost construction method on the principle laid down by the Hon'ble Supreme Court in the case of *Ujagar Prints-1989 (39) ELT.493* i.e raw material cost plus job charges. The goods were cleared to the principal manufacturer and the same were sold in open market by the principal manufacturer after carrying out certain process such as affixing the brand name, polishing, putting up screws and such necessary exercise with manufactured goods and activity of packing.

2.2 The department contended that since the goods manufactured on job work basis by the appellants were sold by the principal manufacturer, the valuation under Rule 10A(ii) of Central Excise Valuation Rules, 2000, effective from 01.04.2007 shall apply. Accordingly, the duty was found payable on the transaction value of the principal manufacturer when the goods were sold from the premises of the principal manufacturer. The appellant paid the differential duty thereafter and decided not to collect the differential duty from the principal manufacturer. The appellant, thereafter, filed refund claim of differential duty paid by them for different periods during October 2007 to April 2016. The refund claims were rejected by the adjudicating authority. Being aggrieved the appellant filed appeal before the Commissioner (Appeals), who set aside the order-in-original and remanded the matter back to the adjudicating authority for verification of correctness of the valuation adopted by the appellant holding that Rule 10A(ii) will not be applicable in the case of appellant, relying upon the judgment in the case of *Advance Surfactants (I) Ltd-2011 (274) ELT.261*.

2.3 Hon'ble Tribunal, vide Final Order No.A/12067-12072/2018 dated 03.10.2018 remanded back the matter to the original adjudicating authority with direction to verify the nature of activity carried out by the principal manufacturer whether such activity brought a substantial change in the product so that the identity of the product is changed. The Tribunal observed that this is a vital issue



*[Signature]*

to be verified before going to the conclusion that whether the goods manufactured and cleared by job worker and sold by the principal manufacturer fell under the term 'said goods; then only the obligation of Rule 10A(ii) can be decided.

2.4 In the remand proceeding, the adjudicating authority, vide the impugned order, has rejected the refund claims.

3. Being aggrieved, the appellant filed the present appeals wherein they, in the grounds of appeal, contended as under:

- (i) The adjudicating authority has erred in rejecting refund claims on the ground as mentioned in paragraph 20 to 29 of the order. The observation of the adjudicating authority, that the decision of Hon'ble CESTAT, Ahmedabad in the case of M/s Rolestar Pvt. Ltd as also other decisions do not apply, is bad in law and is liable to be set aside.
- (ii) The adjudicating authority has also erred in rejecting the refund claim on the ground that the provisions of Rule 10A(ii) of the Central Excise Valuation Rules are applicable to the facts of the case and hence the refund as claimed is not allowable.
- (iii) The adjudicating authority has also erred in rejecting refund claim on the ground that the word 'said goods' referred in Rule 10A(ii) would exclude the goods if there is change in character of the goods as observed by the Hon'ble Tribunal in its order. It is settled law that no authority is authorized to add or subtract anything in the provisions of the Act and hence the observation is bad in law and is liable to be set aside. In any case it is proved beyond doubt that the product as such when removed to the principle manufacturer was not marketable but after the necessary process done by the principal manufacturer had become marketable and hence the provisions of Rule 10A (ii) is not applicable and hence the said observation is liable to be set aside and the refund as claimed is liable to be sanctioned along with interest.
- (iv) The adjudicating authority has also erred in rejecting refund claim ignoring the fact that the principal manufacturer after receipt of the goods undertakes some activity i.e hand polishing, branding and packing with standard accessories and hence it is established beyond doubt that the goods under consideration even after transferring to the principal manufacturer are not sold in as is condition and hence the provisions of Rule 10A(ii) of Central Excise Valuation Rules would not be applicable and hence applying the formula declared by the Hon'ble Supreme Court in the case of Ujagar Prints and as clarified by the Hon'ble CESTAT, Ahmedabad would be applicable and hence the assessable value would



*Handwritten signature*

be raw material cost plus job charges only and the duty paid in excess of such valuation would be refundable to the appellant along with interest.

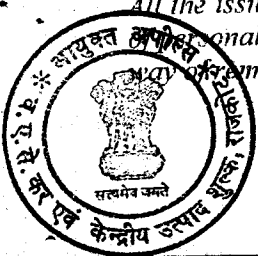
- (v) The adjudicating authority has also erred in rejecting refund claim on the facts and circumstances of the case. Since the refund is not sanctioned within the time prescribed under the law the same is liable to be refunded along with interest at the applicable rate.

4. Advocate Paresh Sheth appeared for personal hearing on 11.01.2023 and reiterated the submissions in the appeal. He submitted that Rule 10A(ii) was not applicable in the present case as the goods were removed from the premises of the job worker and returned to the principal manufacturer to carry out certain processes incidental or ancillary to manufacturing such as polishing, branding, putting screws and accessories and packing prior to sale of the goods. Therefore, the goods sold by principal manufacturer were not same as those cleared from appellant's premises and the sale value cannot be taken for assessment of duty under Rule 10A(ii). He submitted that in this case value has to be determined under Rule 11 on cost of materials plus job work labour charges basis. In this regard he referred to various case laws relied upon by them in the appeal. Based on the same he requested to set aside the impugned order and allow these appeals.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The matter to be decided is whether the impugned order rejecting the refund claim of the appellant is proper and legal.

6.1 I find that, in the first round of litigation, the refund was rejected by the adjudicating authority, but the said order was set aside by the Commissioner (Appeals) and the matter was remanded back to the adjudicating authority. However, the department filed appeal before CESTAT and Hon'ble Tribunal vide Final Order No.A/12067-12072/2018 dated 03.10.2018 has remanded back the matter to the original adjudicating authority with the following observation/direction.

*"4. .... The only point involved in the present case is that whether the activity carried out by the principal has changed the nature of goods cleared from the job workers' premises. If there is no substantial change in the product then the goods cleared from the job workers premises will remain the 'said goods' which is subsequently sold by the principal. However, we observed that the adjudicating authority has not properly verified the nature of activity carried out by the principal that whether such activity brought a substantial change in the product so that the identity of the product is changed. This a vital issued to be verified before going to the conclusion that whether the goods manufactured and cleared by job worker and the same was sold by the principal falls under the term of 'said goods; then only the obligation of Rule 10A(ii) can be decided. We are, therefore, of the view that the matter needs to be re-considered by the adjudicating authority. Therefore, we set aside the impugned order and remand the matter to the adjudicating authority for deciding the matter afresh. All the issues are kept open. Needless to say that the respondent may be given sufficient opportunity for personal hearing before de-novo adjudicating of the entire matter. The appeals are disposed of by remand to the adjudicating authority."*



*A-1*

6.2 From the perusal of the above order of Tribunal, it is evident that the matter has been remanded back to the adjudicating authority to verify a vital issue before making any conclusions. The vital issue, as per the observation of the Hon'ble Tribunal, was to verify the nature of activity carried out by the principal manufacturer and whether such activity brought a substantial change in the product so that the identity of the product is changed. The adjudicating authority, though correctly formulated the issue to be decided at paragraph 23 of the impugned order, has failed to verify the same in a proper way and has not given any findings in this regard on the lame excuse that the appellant did not place any material before him. The adjudicating authority has made the following observation at paragraph 24.1 of the order:

*"24.1 I find that it is the contention of the said claimants that the principal had carried out activities like affixing of brand name, polishing, putting up screws which rendered the goods marketable and therefore, the goods cleared by them didn't remain the 'said goods' as cleared by the job-workers. I find it pertinent to mention that the claimants have based their contention on the point that the processes undertaken by the principal were necessary to make the said goods marketable, however, they didn't place before me any material to show that the said processes brought about any substantial changes in the product to give it a different or a new identity. I find that even though certain activities have been carried out by the principal on the goods cleared by the job-workers, it has not been shown that the goods have experienced any such change to give them a distinct identity. There is nothing before me to establish that the goods cleared by the job workers and that sold by the principal from his premises were different. Thus the goods cleared by the principal after carrying out the said processes would continue to remain the 'said goods' as cleared by the job workers...."*

7. From the above observations, it is evident that the adjudicating authority has not taken serious efforts to follow the direction contained in the order of Hon'ble Tribunal, where it is categorically mentioned that this a vital issue to be verified before making any conclusion. The adjudicating authority ought to have taken sincere efforts to verify the activities carried out by the principal manufacturer by calling for the details from the appellants and also from the principal manufacturer before deciding the issue. The adjudicating authority appears to have presumed that it was for the appellants to prove that the identity of the goods has changed and the goods no longer remained the same goods. The adjudicating authority seems to be oblivious of the cardinal principle of jurisprudence that the one who alleges has to prove. In the present case since the adjudicating authority from the revenue department has made allegation to cast tax obligation on the appellant, the onus to prove the allegation was on the department. Even the Tribunal had specifically directed so, but the adjudicating authority has simply brushed aside his responsibility. As the appellants have detailed out the process carried by the principal manufacturer, it was duty of the adjudicating authority to verify the same and analyse the effect of these processes on identity and valuation of the goods. Any process which has effect on valuation of the goods changes identity of the goods. The unpolished goods cleared from the premises of job worker cannot be said to be the same goods as those sold from principal manufacturer's premises after polishing, branding and packing with screws and other accessories.



*Amr*


Obviously, these processes will have an effect of increasing value of these goods. Therefore, this subsequent value of goods sold from principal manufacturer's premises cannot be adopted for valuation of goods cleared from job worker's premises for the purpose of assessment of tax or duty. It appears that the adjudicating authority had nothing to contradict the claims of the appellants regarding process carried out subsequent to clearance from the premises and prior to being sold out from the premises of the principal manufacturers, despite an opportunity and direction having been given by the Hon'ble Tribunal. Due to this reason the adjudicating authority has tried to shift the responsibility to the appellant by stating that the appellant did not produce any material evidence before him to show that the said processes brought about any substantial changes in the product. It is clear that the adjudicating authority while accepting the processes carried out and effect/ change brought in the products is only short of being convinced about these changes being substantial changes. As the adjudicating authority appears predetermined to negate the claims of the appellant without any verification at his end, it would not be in the fineness of things if the matter is repeatedly remanded back to the adjudicating authority. As the claim of the appellant regarding subsequent processes carried out by the principal manufacturer is not disputed by the department, it stands out that the goods no longer remained "the same goods" and I hold so.

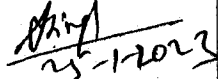
8. In view of above, I set aside the impugned order and allow the appeal.

9. अपीलकरता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित / Attested

  
Superintendent  
Central GST (Appeals)  
Rajkot

  
(शिव प्रताप सिंह/ SHIV PRATAP SINGH)  
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

फिट वेल टेक्नोलोजीस योगेश्वर मईन रोड अतिका, देबर रोड साऊथ राजकोट-360 002	M/s Fitwell Technologies Pvt Ltd, Yogeshwar Main Road, Atika, Dhebar Road South, Rajkot-360 002.
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-1।
- 4) गार्ड फाइल।



