आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./ F.No. V.47/15-12/OA/2017

आदेश की तारीख़/Date of Order:- 17.10.2017

जारी करने की तारीख़/Date of Issue :- 20.10.2017

द्वारा पारित/Passed by:- जी. सी. जैन *IG. C. Jain*

अपर आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 05/JC/2017/GCJ

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क़ टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषयः -कारण बताओ सूचना/Show Cause Notice **F.No. V.47/15-12/OA/2017 dated 31.05.2017 issued to M/s. Paras Wcbcoat Pvt. Ltd., 29, Shri Ambica Industrial Estate, Vill: Iyava, Sanand, Ahmedabad, State : Gujarat.**

Brief facts of the Case:

M/s Paras Webcoat Pvt. Ltd., 29, Shri Ambica Industrial Estate, Vill: Iyava, Sanand, Ahmedabad, Stale: Gujarat (for the sake of brevity herein after referred to as the said assessee), is engaged in the manufacture of Poly Coated Poster Paper Plain/ Printed falling under Chapter Heading No.47 of the First Schedule to the Central Excise Tariff Act, 1985 for which they are holding Central Excise Registration No.AAACP8848EXM002 and are availing the benefits of CENVAT credit of inputs and input services as stipulated under Cenvat Credit Rules, 2004.

2. During the course of EA-2000 Audit conducted by the department at the factory premises of the said assessee, it was observed that the said assessee was manufacturing dutiable goods as well as doing job work for ITC Ltd. during F.Y. 2012-13, 2013-14 & 2014-15; that the said assessee was not taking any credit on inputs supplied by principal manufacturer nor using his inputs for job work (exempted service) but was availing service tax credit. It is also noticed that the said assessee had taken Cenvat Credit on common input services during F.Y. 2012-13, 2013-14 & 2014-15. As per Notification No. 12/2012-ST dated 17.03.2012, Job-work is an exempted service, hence provisions of Rule 6(2) of Cenvat Credit Rules, 2004 will be applicable for manufacturing dutiable goods as well as providing exempted service. Further, as per Rule 6(2)(b) of Cenvat Credit Rules, 2004, the assessee is liable to take Cenvat credit of input services which were used exclusively for providing taxable services or manufacturing dutiable goods only and reverse the remaining input service credit. The audit has observed that in this case the production of dutiable goods is very low and major portion of input services are used by the said assessee for providing the exempted services. Hence, the Audit Commissionerate vide *Final Audit Report No. 152/2015-16 dated 14.08.2015 (Revenue Para No.2)* incorporated this objection and asked for reversal of Cenvat credit of Rs.78,34,760/- availed by the assessee on the input services during the period from 2012-13, 2013-14 to 2014-15 as per below-mentioned Table-A.

Table-A

Year	Input service tax credit availed (Rs.)
2012-13	2546579
2013-14	2413711
2014-15	2874470
Total	7834760

3. The said assessee agreed to the said objection and reversed the above said common input credit, amounting to Rs.78,34,760/- vide debit entry in RG-23 C Part-II, Sr.No.2 dated 21.05.2015 and vide debit entry in RG-23 A Part-II, Sr.No.3 dated 21.05.2015. But later on, the said assessee vide letter dated 04.06.2015 has informed the range office that the reversal of input service credit amounting to Rs.78,34,760/- against the audit objection was under protest. However, they have not elaborated any reasons for reversing the Service tax credit under protest.

4. During the period from May-2012 to September-2012 the said assessee has manufactured and cleared their own excisable goods and also done job work for others

(exempted service). During the said period, the assessee has cleared excisable goods totally valued at Rs.24,81,373/- on payment of appropriate duty of Rs.3,06,697/- and from October-2012 onwards, they are doing only job work for others, which is an exempted service. It appears that though the assessee is manufacturing the excisable goods and also doing exempted service (job work), they have not maintained separate records for the exempted goods/services as required under Rule 6(2) of Cenvat Credit Rules. 2004. Thus for the period from May-2012 to September- 2012, Rule 6(3) of Cenvat Credit Rules, 2004 is applicable and from October-2012 onwards, Rule 6(2) of Cenvat Credit Rules, 2004 is applicable and accordingly, cenvat credit is required to be recovered from them alongwith interest.

5. Rule 6(2) of the Cenvat Credit Rules, 2004 provides that any assessee manufacturing dutiable goods as well as providing an exempted service has to reverse the credit availed in respect of the common inputs services used in providing the exempted service. Further, since they have not maintained separate records, as per Rule 6(3)(i) of Cenvat Credit Rules, 2004 the assessee has to reverse 6% of the value of exempted service for the period from May-2012 to September-2012.

6. The Range Superintendent vide letters dated 26/04/2017, 02/05/2017 requested the assessee to provide the details of the job work (exempted service) done during the period from May-2012 to September-2012 and the assessee vide letter dated 03/05/2017 submitted the value of the exempted services (job-work) undertaken by them, which is summarised in Table-B as under:

Table-B

Month	Service category	Value of Service (Rs.)	Amount to be reversed @ 6% as per Rule 6(3) of CCR,
May-2012	Job-work service	9316431	558986
June-2012	Job-work service	6644618	398677
July-2012	Job-work service	1047082	62825
August-2012	Job-w'ork service	1022056	61323
September-2012	Job-work service	773023	46381
Total		**18803210**	**1128192**

Thus, the amount of Rs. 11,28,192/- (i.e. @ 6% of the value of exempted service) as per Rule 6(3)(i) of Cenvat Credit Rules, 2004 for the period from May-2012 to September-2012, is required to be recovered from them alongwith interest.

7. The said assessee had not shown availment of Service Tax Credit in the ER-1 returns filed from 2013-14 onwards and was showing the same in the ST-3 returns filed by them. Therefore, the Range Superintendent vide letter dated 05/05/2017 requested the said assessee to submit details of Service tax credit availed by them/ST-3 returns filed by them for the period from April-2013 to March-2016. The assessee vide letter dated 06/05/2017 submitted that they were showing the availment of Service tax credit in the ST-3 returns filed by them. They have also produced copies of ST-3 Returns for the period from 2013-14 to 2015-16. As per the ER-I/ST-3 returns submitted for the period from October-2012 to March-2016, total service tax credit

availed by them worked out to Rs. 1,08,22,449/- as per below-mentioned Table-C.

Table-C

Period	Service tax credit availed (Rs.)	Remarks
2012-13 (From Oct-2012 to March-13)	1890827	As per ER-1
2013-14	2387387	5352459 shown in ER1/ST-3 - 2965072 shown reversal in ER-1 (transferred to ST- 3)
2014-15	2843571	Credit availed as per ST-3
2015-16	3700664	Crdit availed as per ST-3
Total	**1,08,22,449**	

Thus, as per Rule 6(2) of Cenvat Credit Rules, 2004, the credit of services of Rs. 1,08,22,449/- availed by them during the period from October-2012 to March-2016 is required to be recovered from them.

8. The said assessee has therefore contravened the provisions of Rule 3 of Cenvat Credit Rules, 2004 in as much as they have availed Cenvat Credit on input services used for providing exempted services; Rule 6 (2) of Cenvat Credit Rules, 2004 in as much as they failed to maintain separate account and/or failed to reverse the Cenvat credit on account of providing exempted services; Rule 6(3) of Cenvat Credit Rules, 2004 in as much as they failed to pay/reverse amount @ 6% of the value of exempted services; Rule 9(6) of Cenvat Credit Rules, 2004 in as much as they took Cenvat credit on input services used in exempted services and failed to discharge the burden of proof of admissibility of Cenvat credit thereon.

9. The said assessee is a an established business firm and are doing the job work for M/s ITC Limited since long and are fully aware about the provisions of Central Excise Act. 1944 and rules made thereunder, and they are strictly bound to follow the mandatory and regulatory requirements prescribed under the said rules. It is well established law that the burden for admissibility of credit shall always lie upon the person taking such credit. The said assessee is mainly doing the job work of M/s ITC Limited, which is an exempted service. Though they are doing job-work, which is an exempted service, the said assessee has availed the ineligible service tax credit. The said assessee has resorted to such *modus operandi* with intent to illegally avail the Cenvat credit. Thus, it is clear that the said assessee has purposefully contravened the provisions of Cenvat Credit Rules, 2004 and renders them liable for penalty under 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

10. Under the self-assessment procedure there is no requirement to submit the documents such as sales invoice or purchase invoice with ER-I/ER-3 filed by the registered manufacturer or service provider who shall have to report only the arithmetical data of payment of duty, CENVAT Credit of duty availed/utilised and quantity of excisable goods manufactured and cleared during the month in ER-I/ER-3. Further, it is a fact that from any point of time the said assessee has

nowhere intimated or sought for any clarification or it was brought to notice to the department about admissibility of credit on such services. Thus, the material facts of admissibility and availing such credit are deliberately suppressed by them with intent to avail and utilise the said credit. Had the department not conducted audit, the facts of availing such credit would have remained unnoticed. In the event of their deliberate failure to bring the notice to the department, it is a clear case of suppression of facts with *malafide* intention and thus the extended period is invokable in this case to disallow and recover such credit which has been availed by them on the input services used for providing the exempted services in terms of provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A(5) of Central Excise Act, 1944. They are also required to pay interest in terms of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944.

11. Therefore, a show cause notice No. V.47/15-12/OA/2017 dated 31.05.2017 is issued to M/s. Paras Wcbcoat Pvt. Ltd., 29, Shri Ambica Industrial Estate, Vill: Iyava, Sanand, Ahmedabad, State : Gujarat; asking thereunder to show cause to the Joint Commissioner of Central Excise, Ahmedabad-II, having office at Custom House, I[st] Floor, Near All India Radio, Navrangpura, Ahmedabad-380009 as to why (i) an amount of Rs. 11,28,192/- (Rupees Eleven lakh Twenty-eight thousand One hundred ninety-two only) being reversible on account of Rule 6(3) of Cenvat Credit Rules, 2004, for the period from May-2012 to September-2012 as per Annexure-A to the show cause notice, should not be recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11 A(5)/11A(4) of the Central Excise Act, 1944 as applicable at the relevant time (ii) An Amount of Rs. 1,08,22,449/- (Rupees One Crore Eight lakh Twenty-two Thousand Four hundred forty-nine only) being reversible on account of Rule 6(2) of Cenvat Credit Rules, 2004, for the period from October-2012 to March-2016 as per Annexure-B to the show cause notice, should not be recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(5)/11A(4) of the Central Excise Act, 1944 as applicable at the relevant time; (iii) Amount of Rs.78,34,760/- already paid by the said assessee under protest should not be appropriated against the demand as per (i) and (ii) above.(iv) Interest at the appropriate rates on the amount of CENVAT credit demanded in (i) & (ii) above should not be charged and recovered from them under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AB/11AA of the Central Excise Act. 1944; and (v) Penalty under the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11 AC of Central Excise Act, 1944, as applicable at the relevant time, should not be imposed on them for contravention of the provisions of the Central Excise Act, 1944 and or the Rules made there under.

12. However, in pursuance of Notification No. 12/2017 C.Ex (NT) to Notification No. 14/2017-C.Ex (NT) all dated 09.06.2017 issued by the CBEC, the said SCN is to be adjudicated by an Officer in the rank of Additional/Joint Commissioner of Central Goods and Service Tax & C.Excise of Ahmedabad-North Commissionerate and accordingly a corrigendum dated 1.8.2017 is issued to that effect.

Defence Reply:-

13. The said assessee vide letter dated 30/06/2017 filed reply to the show cause notice;

wherein, interalia, stated that their company was engaged in the manufacturing of excluder coating on paper and slitting, seating and printing of papers and paper boards; that Company produced its own production and also doing the job work for 1TC and others and providing the taxable services of seating and packing; that they has availed the cenvat credit on the various input services including manpower, telephone, courier, professional fees, security services etc., under the Cenvat Rules, 2004; that the department has not disputed that the same are not used in the manufacturing of excisable goods either for its own or on job work basis; that the company has carried out the mainly two types of job work activity over and above its own production the details of which are as under:

job Work Activity	Applicability of Service Tax as service provider
Plain Sheet Cutting	Service tax charged and paid
Coating and Cutting	Being an exciscable goods, exemption under notification

14. They stated that therefore, their company is a manufacturer and taxable service provider; that Company has availed the service tax credit on the input services, which were either used in the manufacturing of the excisable goods or in providing the taxable services which has not been disputed by the department and has been accepted. They further stated that since 2013, the company is manufacturing the goods only on job work basis for which the excise duty was paid by ITC/others as per the provisions of Central Excise Act and therefore, the goods manufactured by them on job work basis were cleared on payment of duty either by them or the principal manufacturer (on whose behalf the goods were manufactured by them)and therefore, the goods manufactured by them are excisable goods and excise duty was paid as per the relevant provisions of the Excise Act and Rules made there under at the relevant time; that not only the above they had also paid the service tax (to the extent applicable) on the job work charges under the service tax and has paid the same to the department; that therefore, since their company is engaged in the manufacturing of excisable goods and providing the taxable services and is eligible for cenvat credit on input services and accordingly has availed the same as per the relevant provisions of the Act; that they had never violated/defaulted any provisions of the Central Excise Act or any rules made there under.

15. They further stated that during audit the department has objected the cenvat credit availed by their company as the company had earned out the job work activity and of the opinion that job work activity is an exempted service and hence not eligible for the cenvat credit. They submitted that being aggrieved with the audit objection, they had written a letter dated 04.06.2015 stating that the duty of Rs. 7834760/- which was reversed during the audit as per the instructions of the audit party were under protest and not agreed with the view taken by the excise department. The said assessee had stated further that the audit department during the audit has not even issued any query letter and has not given any opportunity to explain the same and has forced them to subsequently filed the letter and intimated that the same had been reversed under protest; that subsequently to that the department has not taken/initiated the any action towards the said letter and issued the audit report on 14th August, 2015 vide Final Audit Report No. 152/2015-16 and settled the para; that being aggrieved with the same, they had written a letter dated 20/02/2017 drawing the attention of the department towards the same and requested to refund the amount as no show cause was issued by the department; that based on

their above letter dated 20/02/2017, department has initiated fresh inquiry and requested to submit certain details related to period April, 2012 to September, 2012 and, they had submitted all details as requested by the department vide its letter dated 03/05/2017; that the department has again issued the letter requesting to submit the certain details for the period 2013-14 and 2014-15 and further asked to submit the details for the period April 2015 to March 2016; that they had submitted all the details vide its letter dated 06/05/2017 to the department .

16. They continued that they had received the Pre Show Cause Notice Consultation notice dated 19/05/2017 fixing the hearing on 19/05/2017 to raise the demand of Rs. 1,19,31,202/- .against the audit para of Rs. 7834760/-.and their authorized signatory/ representative appeared before and explained the same.

17. The said assessee then submitted their detailed reply with regard to each point raised in the show cause notice that the show cause notice for point no. 12(i) for demand of Rs. 1128192/- and 12 (ii) for increase in demand from Rs. 7834760/- to Rs. 10822449/- by extended the period under section 11 A (4) is against the natural justice and beyond the scope of section 11 A(4) of the limitation period of one year; that in Para no 11 of the show cause notice an allegation is made that they had deliberately suppressed the material facts and availed and utlised the cenvat credit with the malafied intention and due to this allegation the extended period of limitation under section 11 A(4) of the Central Excise Act, 1944 was invoked; that the said allegation is baseless and wrong and same cannot be acceptable as they had filed all its records and returns as required by under the law from time to time and had not given any misleading or deliberately suppressed the material facts from the department and the department had not disputed the facts that they had submitted all its return with the department had never defaulted and submitted all its details with the department; that just stating that filling of return is just only for arithmetical data for payment of duty is totally wrong by stating the same the department has tried to escape its duty from verification of data submitted by them and the return filled by them clearly indicated that there was no production and clearance (of its own) and they had availed the credit; that the department had never asked them to provide or give the details of the same. They argued that therefore, it was not the case where it cannot be observed by verification of the return that they had availed the cenvat credit without having any production and clearance of its own and in view of the same the extend period under section 11 A(4) is not tenable and acceptable in law. They further contended that not only the above, the department had conducted the audit on 18th and 19th May, 2015 and verified the records in details based on which they have raised the objection and asked the assessee to pay the demand of Rs. 7834760/-, which clearly indicate that the department on that date has fully aware about the said as the period covered is April, 2010 to March 2015; that they had not only checked the excise records but also verified the service tax return and recorded and all other relevant details w.r.t. cenvat credit availed and utilized and therefore they had not disclosed and suppressed the facts and malafied intention to evade the tax and duties is totally. They further argued that even the department since 19th May, 2015 to 30th May 2017 (i.e. for two years) had not taken any action and had never issued any show cause notice clearly indicate that the department was aware about the above facts and therefore, the extended period of five years under the above said section is not tenable. They continued their contentions that the department had discussed the audit point in their internal audit meeting where the audit point was discussed and after discussion the audit report was issued by the Assistant Commissioner

(Audit) which has accepted the demand as suggested by the audit team based on the records verified and details taken by the department during the audit which has covered the audit period of April 2010 to March 2015 and the audit report was issued on 14th August 2015. They argued further that even from the date of Audit report issued also more than one year has passed and therefore, just by stating that the department was not aware about the facts and they had suppressed the facts and information is wrong and should be accepted. They further submitted that they during the audit had reversed Rs. 7834760/- immediately even when no query letter was issued by the department and therefore, they had no malafied intention to avail any cenvat credit which was not eligible for the same; that the department should appreciate that the assessee had written the letter dated 20th February, 2017 and drawn the attention of the department regarding the mistake in the Audit Report based on which department has restarted inquiring about the said issue and therefore, they are fully cooperative with the department and there was no malafied intention on the part of them.

18. They stated that in view of the above point, they believe that there was no information which had been suppressed and department was fully aware about the facts and having all the information and they requested that the extended period of limitation of five year cannot be invoked and tenable and to drop the SCN on the ground of limitation.

19. They further stated that if their first request is not acceptable, their detailed submission are that there is no dispute about the fact that they had carried out the manufacturing activity for its own and on job work basis during the period May 2012 to September, 2012 and manufacturing the goods on behalf of principal manufacturer on job work basis during the period October, 2012 to March, 2016; that the department has accepted that the goods manufactured by them on job work basis were excisable goods and the duty has been duly paid by the principal manufacturer at the time of removal of goods and none of the goods had been cleared without payment of duty and the department has not disputed the fact and accepted the same; that the department has stated that as per the notification no 12/2012 ST dated 10.03.2012 Job work is an exempted service and therefore applied the Rule 6(2) has denied the cenvat credit of the input credit; that as per the Mega Exemption Notification no. 25/2012 item no. 30, which exempts certain job work activities from the scope of service tax and hence job work are not treated as exempted services means thereby that the job work activity is an taxable service but by way of the mega exemption notification few job workers were exempted from the collection and payment of the service tax and the relevant portion of the notification is as that - "*30 (c) any goods on which appropriate duty is payable by the principal manufacturer;*". They argued that, therefore, by way of the notification, no service tax is payable under the service tax in case the goods are excisable and excise duty was payable by principal manufacturer at the time of removal of goods or otherwise and therefore, the job work activity is a taxable activity; that in their case , it is undisputed fact that goods manufactured are excisable and duty was paid by the principal manufacturer as per the provisions of the Central Excise and therefore, they had provided the taxable services, which is not an exempt service as argued by the department, where as the service tax was not payable as the exemption has been given by the department vide mega exemption notification as stated above.

20. Therefore, it was argued that, they are eligible for the cenvat credit for the services availed as input for used in the job work activity which is a taxable activity. They stated further

that since their company is neither manufacturing any exempted goods nor providing any exempted services, they are eligible for cenvat credit under Rule 6(1) and Rule 6 (2) will not be applicable to them and therefore there is no need to reverse any cenvat credit as per Rule 6 (3) of the Cenvat Credit Rules, 2004.

21. They further stated that the contention that the job work service is an exempted service and hence the cenvat credit related to the same will not be allowable and attract the provisions of Rule 6(2) of the Cenvat credit Rules, 2004 is not applicable in their case as the department's opinion that they had carried out the tax free service is wrong; that the department has not verified the service tax return carefully and ignored that they had charged the service tax from the parties and had paid the service tax to the department either by challan or availing the cenvat credit , which was clearly indicated in the service tax return; that the department has relied upon the service tax return and ignored the service tax paid by them in the service tax return; that simply denied the service tax cenvat credit on the ground that they are engaged in the exempted service of the job work, whereas they has charged the service tax on job work (to the extend applicable) and has paid the service tax on the same is not acceptable; that therefore, department has wrongly applied the Rule 6(2) instead of Rule 6(1) where they are eligible for the service tax credit as they are engaged in the manufacturing and providing of taxable service for which assessee has paid the service tax and therefore, they has rightly availed the cenvat credit under the Rule 6(1) of the Cenvat Credit Rule, 2004.The said assessee has relied upon the following Judgments: (1) JBF Industries Vs. CCE & ST Appeal No.: E/1353/2011-DB AIT 2014-82-CESTAT Ahmedabad CESTAT (2) Sterlite Industries (I) Limited Vs. C.C.E. Pune [2005 (68) RLT (CESTAT-LB (3) Jalan Dying and Bleaching Vs. CCE Mumbai (CESTAT- Mumbai Appeal No. E/403/10 (4) Polycab Industries Vs. CCE - [2010 (19) S I R 585 (Tri. Ahmd.)]. (5) Laakoonaa Reactions Vs. CCE, Ahmedabad-I - [Final Order No. *A/* 497-498/WBZ/ AHD/2010 dated 13.05.2010].(6) Poly fab Industries Vs. Commissioner of Central Excise and Customs, Daman, Vapi - [Final Order No. A/ 302/ WBZ/ AHD/ 2009 dated 22.01.2009 & S/258/ WBZ/ AHD/ 2009 dated 22.01.2009].

22. The said assessee has further stated in their letter that the Audit Party has reversed the whole credit availed by them during the period April 2012 to March 2015 irrespective of the goods manufactured of them over and above on the job work basis and therefore has denied the benefit of the credit considering the same to be negligible amount. They then given the breakup of Rs. 7834760/-, the amount of cenvat credit debited at the time of audit.

23. They stated that the department's contention that during the period of April 2012 to September, 2012, they had carried out the exempted service of job work and therefore assessee has to pay the duty @ 6% amounting to Rs. 1128192/- of the exempted service (Job Work) on Rs. 18803210/- is totally against the law of natural justice as the duty payable of Rs. 1128192- is more than the cenvat credit availed by them and mainly when whole cenvat credit availed during 2012-13 (during April 2012 to March 2013) were already been reversed by the department and the said demand of Rs. 1128192/- was totally against the intention of the law and natural justice and department cannot ask the same amount twice. They, therefore, stated that the said demand of Rs. 1128192/- has to be dropped and removed. They further also stated that if the demand is sustained in the law, they had no objection on the adjustment of Rs. 7834760/- paid by them under protest.

24. They then stated that they had already paid the full amount of Rs.7834760/- by reversing the cenvat credit against the demand raised by the department, no interest is to be charged as they had sufficient balance lying in the cenvat account and had not utlised the same; that as per the various judgment, if the balance is outstanding in the Cenvat Account no interest is to be charged and payable by the assessee; that the department in its audit report has not levied any interest since, there was sufficient credit was available in the cenvat credit and therefore, since at the initial stage department has not raised any interest, subsequently department has no right to charge any interest, mainly when they themselves approach for the natural justice to get the amount refund from the department which has been paid under protest.

25. They then submitted about the proposal of charging of penalty, and argued that they had not hide any facts of the case and taken the credit with disclosing proper facts of the case and intimation to the department and hence, there is no malafide intention and suppression of facts in their case; that the proposal for imposition of penalty invoking the provisions of Rule 15 of the Cenvat Credit Rule 2004 also deserved to be vacated as there is no justification in demand of duly leveled against them' that there is no cogent and reliable evidence in support of the charges leveled in the show cause notice and therefore, no penalty would be justified on the basis of charges so leveled, merely on assumption and presumptions; that penalty is quasi-criminal in nature and therefore, it cannot be imposed on mere assumptions and presumptions or hearsay; that neither the facts of the case justify or warrant imposition of any penalty, nor a specific allegation are made in the show cause notice for imposing penalty on them ; that they have not acted dishonestly or contumaciously and therefore, not even a token penalty would be justified; that they their case is not a case where they had committed contravention of any of the Rules with intent to evade payment of duty; that there is no violation of any nature committed by them; that they have also not committed breach of any Rules with intent to evade payment of duty; that they have specifically informed the Range and jurisdictional officer about the duty paid by them under protest and they need to get refund of the same as no SCN has been raised by the department ,the question of imposing penalty on this amount would also not arise and in that view of the matter, no penalty or interest could be justifiably imposed on them in law; that further in the audit report finalized by the department no penalty was imposed by the department and demand paid by the assessee was acceptable and para has been settled; that in view of the same now when the assessee on bonafied belief has approached the department, department has not only raised the demand but also proposed the penalty is not justifiable and should not be levied.

26. The said assessee concluded their reply by submitting that the proposals leveled in the show cause notice are incorrect and unsustainable in facts as well as in law, and therefore, they requested to withdraw the show cause notice along with the proposals leveled there under. They also made request for a personal hearing in this matter.

Personal Hearing:-

27. Personal hearing was held on 22/09/2017 when Shri. Pradeep G. Tulsiani, Chartered Accountant, appeared on behalf of M/s.Paras Webcoat Pvt.Ltd, who reiterated the contents of the written submissions dated 30.06.2017 and also submitted contents of written submissions and requested to drop the SCN.

Discussion and Findings:-

28. I have carefully gone through the SCN, written submissions of the said assessee and materials available on records. Also given due consideration to the submissions made by their authorised representative during the course of hearing.

29. The issue before me to decide is whether input service tax credit taken by the said assessee in or in relation to the processing of goods on job work basis on behalf of their principal manufacturer is available to them or otherwise.

30. Apart from manufacturing own products, the said assessee is also carrying out intermediate production process on job work basis on behalf of principal manufacturer. The activity of said job work is exempted from service tax as appropriate duty of excise was paid by the principal manufacturer on the goods cleared from the factory of assessee after job work. Audit's observation was that the said assessee had availed input service tax credit but not utilized for the job work activity carried out by them and provisions of Rule 6(2) of Cenvat Credit Rules, 2004 would be applicable to them who manufactures dutiable goods and providing exempted service i.e. job work activity. Although Rule 6(2)(b) of Cenvat Credit Rules, 2004 provides for taking of cenvat credit only on input services used in or in relation to the manufacture of dutiable final products excluding exempted goods and for the provision of output services excluding exempted services, Audit is found to have observed that as production of dutiable goods of the said assessee was very low and major portion of input services was used by them for providing the exempted service i.e. job work activity, the entire common input service tax credit taken from 2012-13 to 2014-15 was to be reversed by them and accordingly the entire common input service tax credit taken during the said period, amounting to Rs. 78,34,760/ was reversed by them through their cenvat credit account. The audit point raised on the matter was initially found to have been finalized on the basis of the payment/reversal of the disputed cenvat credit on 21.5.2015. But, later on, the said assessee through a letter dated 4.6.2015 filed before the Range Officer informing thereunder that the said reversal/ payment of the input service tax credit, amounting to Rs. 78,34,760/, was under protest; consequent upon which the present proceedings was initiated to conclude the dispute.

31. As per Rule 2 (n) of Cenvat Credit Rules, 2004, "job work" means processing or working upon raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly. Taxability of such job work activity under Service Tax is firstly to be examined.

32. Period involved in the present case is May, 2012 to March, 2016. Notification No. 12/2012-ST dated 17.3.2012 and Notification No. 25/2012-ST dated 20.6.2012 granted exemption from service tax on specified taxable services from the whole of the service tax leviable thereon under section 66 B of the said Finance Act,1994. As per the Sl.No. 30(c) of Notification No. 12/2012-ST, carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is

exempted from service tax. Notification No. 12/2012-ST was superseded vide Notification No. 25/2012-ST dated 20.06.2012 but the exemption to the charges in respect of carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is continued at Sl.No. 30 of Notification No. 25/2012-ST dated 20.6.2012.

33. In the present case, the said assessee doing job work on the inputs supplied by their principal manufacturer and returning back the processed goods to the principal manufacturer for use in relation to the manufacture of the goods of them on which appropriate duty of excise was payable by the principal manufacturer. Thus it is seen that as per the above said service tax notifications, exemption from payment of service tax on the job work charges received by the said assessee is available to the job worker i.e. the said assessee. It is therefore seen that the said job work activity carried out by the said assessee is exempted from service tax.

It is not disputed that apart from manufacturing of own dutiable excisable goods, the said assessee was also doing job work activities for M/s. ITC Ltd, the principal manufacturer. It is also an undisputed fact that the processed goods after job work is returned to the principal manufacturer who cleared the same after further process on payment of appropriate duty of excise leviable thereon. Hence, the goods cleared from the factory of the said assessee after job work process are to be treated as dutiable goods.

34. Notice alleges that as per provisions of Rule 6(2) of Cenvat Credit Rules, 2004 the said assessee had to maintain separate accounts for receipt and usage of common input services used in both dutiable/taxable and exempted goods and services and to reverse the portion of cenvat credit availed in respect of common input services used in providing the exempted service i.e. job work activity.

35. This point is found to have been rebutted by the said assessee by stating in their written submissions that it is undisputed fact that goods manufactured are excisable and duty was paid by the principal manufacturer as per the provisions of central excise and therefore they provided the taxable services, which is not an exempt service as argued by the department. Another contention of them is that they are neither manufacturing exempted goods nor providing any exempted service and hence they are eligible for cenvat credit and provisions of Rule 6(1) and Rule 6(2) will not be applicable to them and therefore no need to reverse any credit under Rule 6(3) of Cenvat Credit Rules, 2004.

36. The provisions of Rule 6(3) of Cenvat Credit Rules, 2004 apply to a manufacturer who clears the dutiable goods and exempted goods or providing of taxable output services and exempted output services. As per Rule 2(d) of Cenvat Credit Rules, 2004, ' exempted goods' means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to nil rate of duty. Similarly 'exempted service' means a taxable service which is exempt from the whole of the service tax leviable thereon or service on which no service tax is leviable under Section 66B of the Finance Act or taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken. It is undisputed in the present case that the goods cleared after job work are further used in the products of the principal manufacturer

who cleared the goods on discharging the appropriate duty leviable thereon. Thus it is evident that duty on the goods on which job work process was undertaken was ultimately gets discharged at the end of the principal manufacturer. Thus, it is seen that in the instant case, the goods manufactured/processed on job work basis and cleared by the said assessee to the principal manufacturer, are further cleared on payment of duty by the principal manufacturer. Thus the said goods should be considered as dutiable goods. Thus, I find that, the said goods cleared by the said assessee for further manufacture and clearance by the principal manufacturer on payment of duty cannot be treated as exempted goods for the purpose of application of Rule 6 of Cenvat Credit Rules, 2004. This view is also endorsed in the following decisions of Hon'ble Tribunals and Courts.

37. Larger Bench of Tribunal, Mumbai in the case of M/s. Sterlite (India) Limited Vs. CCE, Pune, reported at 2005(183) ELT 353, which has attained finality by way of upholding of the said decision by Hon'ble High Court of Mumbai, has held that modvat credit of duty paid on inputs used in the manufacture of final products cleared without payment of duty for further utilization in the manufacture of final product, which are cleared on payment of duty by the principal manufacturer, would not be hit by the provisions of Rule 57 C (present Rule 6 of Cenvat Credit Rules, 2004). This decision of Hon'ble Larger Bench of Mumbai Tribunal has been followed by Hon'ble High Courts in the case of M/s. TATA Motors Ltd Vs. UOI reported at 2009 (244) ELT 377 (Bom.) and M/s. Happy Forgings Limited, reported at 2011 (265) ELT 197 (P & H).

38. Hon'ble Tribunal, Mumbai in the case of MPI Paper Private Ltd Vs. CCE, Mumbai-I, reported at 2016 (336) ELT. 86, held that Tribunal's order in the case of Sterlite Industries (I) Ltd. [2005 (183) E.L.T. 353 (Tri.-LB)] delivered in respect of erstwhile Modvat credit scheme has been upheld by High Court [2009 (244) E.L.T. A89 (Bom.)], equally applicable to Cenvat Credit Rules, 2004.

39. I find that the decision of Hon'ble Tribunal, Ahmedabad in the case of JBF Industries Vs. CCE, Vapi, reported at 2014(34) STR 345 (Tri-Ahm.) is heavily relied upon by the said assessee in order to substantiate their argument that they are not manufacturing any exempted goods nor providing any exempted services. On perusal of the said decision of the Tribunal it is seen that the appellant, M/s. JBF Industries, Valsad, apart from manufacturing their own Polyester Chips, also manufactured Polyester Chips on job work basis out of raw materials received from their sister factory, located at Athola, Silvasa and sent back the same to their Athola factory without payment of Central Excise duty in terms of Notf. No. 214/86-C.E., dated 25-3-1986. The Department entertained a view that the Cenvat credit of Service Tax paid on input services, used by M/s. JBF Industries, Valsad in the manufacture of goods on job work basis, exempted under Notf. No. 214/86-C.E., was not admissible to them in terms of the provisions of Rule 6(1) of the Cenvat Credit Rules, 2004. Department also viewed that M/s. JBF Industries, Valsad had rendered 'Business Auxiliary Service' which is exempted under Notifaction. No. 8/2005-S.T., dated 1-3-2005 to its own factory M/s. JBF Industries Limited, Athola in as much as the appellant undertook 'production or processing of goods' (working

upon raw material supplied by the client) on behalf of the client as mentioned in sub-clause (v) of clause (19) of Section 65 of the Finance Act, 1994, and hence Cenvat credit of Service Tax paid on input services used in providing exempted 'Business Auxiliary Service' was not admissible to them in terms of the provisions of Rule 6(1) of the Cenvat Credit Rules, 2004. On an appeal against the said decision of the department, Hon'ble Tribunal held that the job work activity of the appellant is amounting to manufacture and is not one of providing any 'service'. The appellant factory cannot be both a 'manufacturer' and a 'service provider' at the same time in relation to a particular activity; that it is settled proposition in Central Excise matters that a job worker is a 'manufacturer' and hence the appellant factory cannot be treated as a service provider rendering exempted/non-taxable service for the manufacturing activity. Therefore, Tribunal held that there is no force in the Revenue's contention that the appellant had rendered exempted/non-taxable service to its sister concern located at Athola and appeal filed by the appellant is allowed by setting aside the order of the adjudicating authority. **It is learnt that the tribunal order has been accepted by the department.**

40. I also find that facts of the present case are similar to the facts of the above case which is decided by the Tribunal, Ahmedabad by holding that Rule 6 of Cenvat Credit Rules, 2004 cannot be invoked for denying credit of input services used by job worker for manufacture of job work goods which are dutiable and hence ratio of the said decision is squarely applied in the case at hand. Accordingly, no force is found in the proposal made in the present show cause notice for invoking the provisions contained in Rule 6 of Cenvat Credit Rules, 2004 for denying cenvat credit taken towards service tax paid on common input services by the said assessee.

41. Also find that Tribunal, Mumbai in the case of Aurangabad Auto Engg. Pvt.Ltd Vs. CCE, Aurangabad, reported at 2015 (40) STR.776 (Tri-Mum), since, principal manufacturer further used job work goods in manufacture of final product which was cleared on payment of duty, credit of Service Tax paid on input services not to be denied to the job worker - Rule 3 of Cenvat Credit Rules, 2004.

42. Principal Bench of Hon'ble Tribunal, New Delhi in the case of Uflex Limited Vs CCE, Indore, reported at 2017 (52) STR. 54 (Tri-Del.) by relying upon the decisions of Tribunal in the case of Sterlite Industries (India) Limited (2005(183) ELT 153) and JBF Industries (2014(34) STR 345 (Tri-Ahm.) held that there is no difference between the inputs and input services credit and the issue being the same i.e. clearance of goods for job work in terms of notification number 214/86-C.E., the denial of credit, whether it be on inputs or on input services, cannot be upheld.

43. It would be evident from above facts and various decisions of Hon'ble Tribunals and Courts that the said assessee is eligible to take cenvat credit on inputs and input services used in or in relation to the job work activity, on which ultimate duty burden is discharged by the principal manufacturer. Allegation of the notice is that the said assessee availed ineligible input service tax credit used in providing of the exempted service i.e job work. Only ground for

denying credit on such input services is the usage of such common input services in providing the exempted job work. It is an accepted fact that the job work goods are returned to principal manufacturer who ultimately discharged appropriate duty of excise on the goods when it is cleared by him. It is thus obvious that the cost of input services incurred by the job worker while processing the goods on job work basis, naturally formed a part of the assessable value of the final products on which appropriate duty of excise was paid by the principal manufacturer. It is therefore seen that no part of any input service on which credit was taken by the said assessee is used in any exempted product or service. Thumb Rule to avail cenvat Credit is that it can be availed on those eligible Inputs, Capital goods or Input Services which have been utilized for providing taxable services or manufacturing dutiable goods except the cases where it is restricted under any notification. In the instant case, I find that the input services in dispute were utilised in processing of goods on job work basis which were returned to the principal manufacturer who used the same in further manufacture of final products which were ultimately cleared by the principal manufacturer on payment of duty of excise. Thus provisions of Rule 6 of Cenvat Credit Rules, 2004 would not attract in the present case.

44. It is also seen from the copy of ST3 returns filed for the period 2013-14 to 2015-16 submitted by the said assessee before the Range Superintendent, which are placed on records, that they providing Storage and Warehousing services, Business Auxiliary service, Maintenance or repair service, Renting of immovable property service, Manpower recruitment/supply agency service on which service tax is being paid. Hence it is also established that the disputed common input services are totally utilised in manufacturing of dutiable final goods.

45. It is thus to conclude that since the finally processed goods were cleared by the principal manufacturer on payment of duty, the said assessee should be eligible to claim cenvat credit of the inputs and input services used by them in or in relation to the processing of the goods. Hence, demanding reversal of input service tax credit under Rule 6(2) & 6(3) of Cenvat Credit Rules, 2004 would defeat the very purpose of removing the cascading effect.

46. As the demand is unsustainable on merit, I don't find the need to examine the contention of the said assessee that the SCN to be dropped on the ground of limitation.

47. Since the case of demand for reversing the input service tax credit is not sustainable, therefore the question of imposing penalty and recovery of interest, as proposed in the subject notice, does not arise.

48. In view of the above, I pass following Order.

ORDER

I hereby drop the proceedings initiated against M/s. Paras Webcoat Pvt. Ltd., 29, Shri Ambica Industrial Estate, Vill: Iyava, Sanand, Ahmedabad, State: Gujarat under the Show cause notice No. V.47/15-12/OA/2017 dated 31.05.2017.

(G.C. Jain)
Joint Commissioner
Central Goods and Service Tax
Ahmedabad North

FNo. V.47/15-12/OA/2017

Dated : 17.10.2017

To

Paras Webcoat Pvt. Ltd.,
29, Shri Ambica Industrial Estate,
Vill: Iyava, Sanand,
Ahmedabad, Stale: Gujarat

Copy to:

1. The Commissioner, CGST & Central Excise, Ahmedabad-North. (Attn- RRA)
2. The Assistant Commissioner, CGST & Central Excise, Div-III, Ahmedabad-North.
3. The Superintendent, CGST & Central Excise, AR-III, Div-III, Ahmedabad-North.
4. Guard File.