
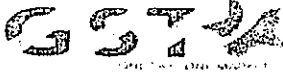


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निवन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. V.85/15-24/OA/2013

आदेश की तारीख/Date of Order: - 28.06.2021
जारी करने की तारीख/Date of Issue :- 29.06.2021

DIN-20210664WT000000B9D1

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 11/JC/MT/2021-22

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 विरुद्ध 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 रु .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 अपील करने के लिए आयुक्त(अपील) के समक्ष नियमानुसार पूर्व जमा की धनराशि का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules .

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।

(89) उक्त अपील की प्रति।

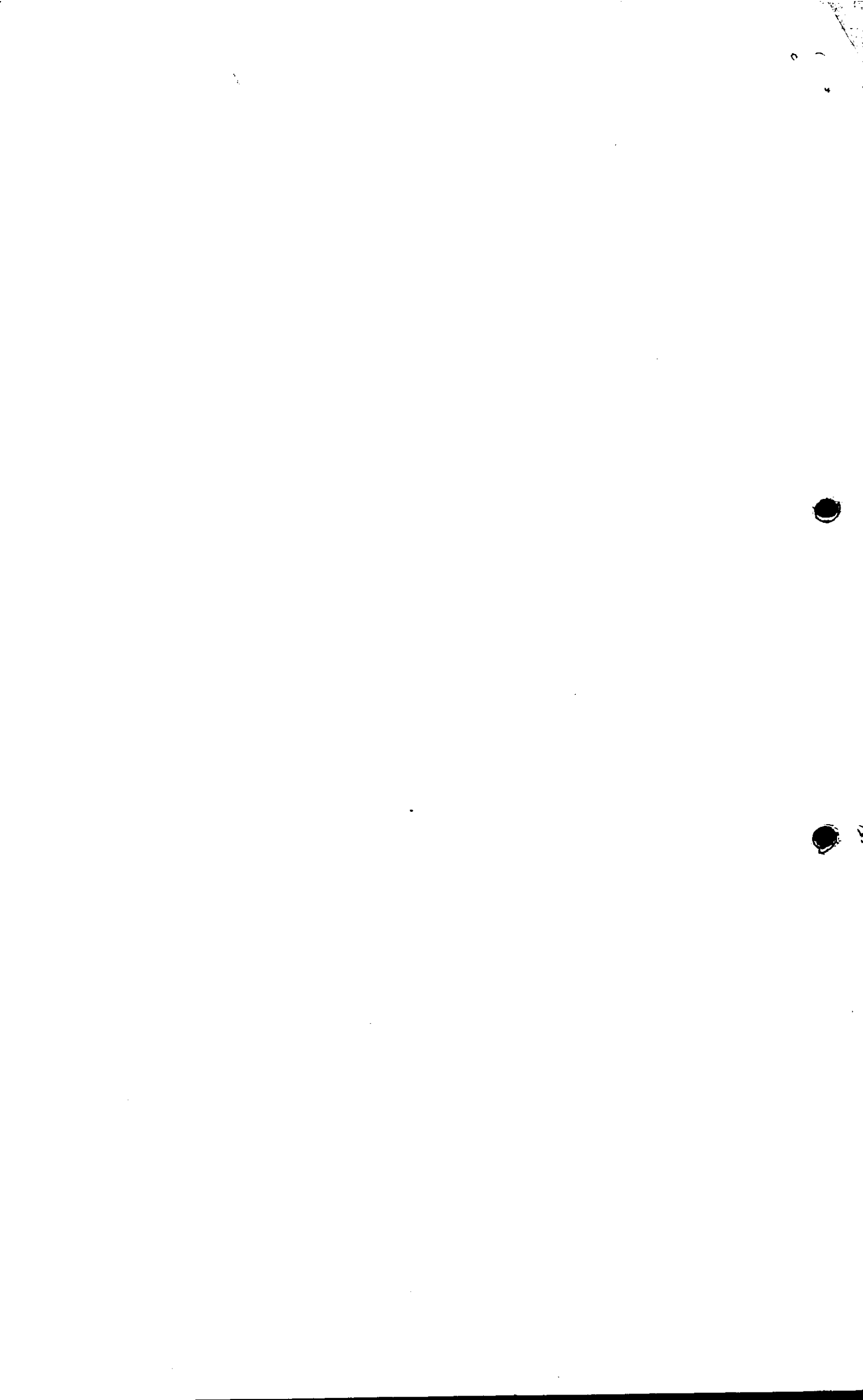
(90) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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:

(89) Copy of accompanied Appeal.

(90) 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.

विषय:- कारण बताओ सूचना/ The Show Cause Notice No. V.85/15-24/OA/2013 dated 20.05.2013 issued to M/s. Ansaldo STS Transportation Systems India Pvt. Ltd., (now known as Hitachi Rail STS India Pvt. Ltd), SLV Complex, AVS Compound, # 35, 80 Feet Road, 4" Block, Koramangala, Bangalore - 560 034 & M/s. Ansaldo STS Transportation Systems India Pvt. Ltd Sabarmati Railway Station/Chandlodia Railway Station Ahmedabad.



Brief facts of the case:

M/s. Ansaldo STS Transportation Systems India Pvt. Ltd., (now known as Hitachi Rail STS India Pvt. Ltd), SLV Complex, AVS Compound, # 35, 80 Feet Road, 4" Block, Koramangala, Bangalore - 560 034, formerly known as 'M/s. Union Switch and Signal' (herein after referred as 'the noticee') were engaged in the Design, Manufacture, Supply, Installation and Commission of Solid State Electronic Interlocking System. Electronic Interlocking Signaling Systems falling under Chapter 8530 of Central Excise Tariff Act, 1985 which were used in the Railway Signaling System for Indian Railways and Metro Rail Corporations in India. On the basis of intelligence gathered by the officers of Central Excise Bangalore-I Commissionerate, that the noticee engaged in manufacture of Electrical Signaling Systems for Railways without obtaining Central Excise registration and without payment of Central Excise duty and accordingly their premises at Koramangala, Bangalore was searched on 06.01.2011 by the officers of Central Excise, Bangalore-I Commissionerate as recorded in the mahazar dated 06.01.2011 drawn at the said premises. Shri Manoj R. Jain, Deputy Manager, Indirect Taxation & payroll of the noticee had informed the officers during the mahazar proceedings, inter alia, that their company was a 100% subsidiary of M/s. Ansaldo STS PTY, Australia, engaged in the manufacture and supply of Electronic Interlocking (indoor) system which is a railway signaling system for Indian Railways and Metro Rail Corporations in India; that their company, after getting contract for supply of said Railway Signaling Systems, purchases the required components viz., micro process equipment, interface equipment, relays, interconnecting cables, maintenance terminal with accessories, power supply equipment, rack fixtures, computer systems, control panels/video display units etc., from various vendors and thereafter they conduct testing of application logic of Microlok systems and the PCBs in presence of railway representatives as per approved circuits of Indian Railways; that all these components, thereafter were transferred to the place of installation where they are installed and commissioned as Railway Signaling System by their engineers in the presence of railway officials, interfacing their system with that of outdoor gears of particular Railway Station; that they were occupying two buildings adjacent to each other at No. 35 at the above address and one building just opposite across the road at No. 94/4, 72/7 (Sangam building). During the mahazar proceedings it was noticed that the said premises was being used as administrative office and planning and design centers. Wherein the engineers were engaged in designing drawings/plans for railway traffic signal system and developing application software for the same; that other building was found to be used for storing raw materials, inputs, testing equipments and for training and testing. Shri Manoj R. Jain had informed the officers that the noticee were not registered with the Central Excise Department and were neither paying any Central Excise duty on the goods supplied by them nor following any Central Excise procedures for clearing the goods. During the mahazar proceedings it was noticed that the items required for assembling of railway signaling system were stored in the said premises, which were undergoing inward inspection for quality and the second floor of the building was being used as Testing Room and Research Design & Standard Organisation (RDSO) Inspection room. The said Testing Room was equipped with Microlok Rack and Rely rack and console for undertaking tests, that monitors were also used for conducting the test. On enquiry, it was informed that the said Testing Room was meant for testing the application software developed by them for accuracy and reliability for interlocking at the particular station before clearing the software for loading into PCB modules for commissioning at the station and for the said purpose, they had simulated site conditions in the said test bench. Shri Manoj R. Jain had informed that the application software was station specific and developed by the noticee, in-house, taking into account various parameters as per the purchase orders and site requirement and interlocking plan approved by the Railways.

2. In a statement dated 06.01.2011 recorded under the provisions of Section 14 of the Central Excise Act, 1944, Shri. G. Perumalsamy, Senior Manager Engineering Standard of the noticee had stated, inter alia, that their company was engaged in providing Electronic Interlocking System for various zonal Railways; that the Electronic Interlocking systems were used in Railway station to safely operate the train movements; that in India, railway stations have different interlocking types such as Electromechanical Interlocking, Panel Interlocking, and Route Relay Interlocking; that the product i.e. Electronic Interlocking System supplied by them was Microlok based Electronics Interlocking system which was a technologically advanced and superior version; that the Microlok II interlocking system was a multipurpose monitoring and control system for way side interlocking equipment and the general application & functions were Direct control of way side signals Control and monitoring of Point Machine Control and monitoring of track circuits and detecting broken rail and faulty insulation joints through-the rails communications to adjacent stations vital communication to other compatible interlocking system and Cab signaling; that Microlok II Equipment consists of i) Card file ii) CPU PCB (iii) Power Supply

PCB (iv) Vital Output PCB (v) Vital Input PCB (vi) Non-vital Input/Output PCB (v) VCOR - Vital Cut Off Relay (vi) Wiring hardware (vii) Video Display Unit (viii) Desktop PC; that each card file consists of 20 Slots to accommodate various PCBs that were used in a system and Slot Nos. 1 to 15 and 20 were used to accommodate Non-vital or Vital I/O PCBs. Slot No. 16 & 17 were used to accommodate power supply PCB. Slot No. 18 & 19 were used to accommodate CPU PCB a mother board connecting all the 20 slots and suitable to mount on a 19" rack; that they developed executive software for monitoring all Vital and Non-vital cards, Processing inputs, decision making and issuing commands, continuous internal and external diagnostics management of serial data ports and execution of application software; that on award of contract for design, manufacture and supply of Electronic Interlocking Systems, the technical section of their company located at SLV Complex, AVS Compound, #35, 80 Feet Road, 4th Block, Koramangala, Bangalore - 560 034 first received signaling plan along with control table prepared by railways that gives them the geographical position of various field gear involved in stations to operate the traffic movement, that the control table provides the interlocking condition for various route movements and based on the above inputs their engineers prepared Bit Chart (for gathering information from Front Plate Drawing i.e. Number of push button controls and key controls, Number of indications, counters, buzzers, bells etc.) Relay Rack arrangement, Indoor & Outdoor interfacing circuits; that based on the above details, they generate the BOM (Bill of Materials) and transferred the BOM (Bill of Materials) and transferred the BOM to their procurement department where the procurement department procured various inputs; that some of the major items were:

- i. Card file - To house the I/O boards.
- ii. CPU PCB - Having Executive & Application Software.
- iii. Power Supply PCB - Purpose to supply to all boards including CPU.
- iv. Vital Output PCB - To send the output signal to drive the field gears
- v. Vital Input PCB- To receive the field status input for processing.
- vi. Non-vital Input/Out put PCB- To interface with panel & Microlok.
- vii. VCOR - Vital Cut Off Relay-To monitor health of the system.
- viii. Control Panel - To operate the train movement.
- ix. Wiring hardware - Connecting wires.
- x. Video Display Unit & Desktop PC- To display visually station layout to operate the station.

He had further stated that the inputs, materials so procured as per BOM were received in their stores & the items underwent inward inspection & were tested for quality purpose & stored in their store; that depending upon the progress of the work at site, the items from their stores would be moved to the site according to the priority and thereafter, they provide the required application program for the station to make it to the interlocking requirements; that at their technical section, they would develop application software in-house suiting the station requirements for loading on to CPU PCB and the in-house developed application software was tested in their test facility in the premises by loading the same on to test rack CPU PCB; that the accuracy of the application software of the particular station interlocking was tested by using the simulation setup; that once the desired results were achieved, the application software was through and the same was copied in pen drive/burnt on a CD and sent to the particular Station for site testing and further commissioning of that Station interlocking; that at site, assembling of Electronic Interlocking Systems, as per the design took place under the supervision of their field engineers by way of staking of Microlok Card files into racks, interconnecting them by wiring, then linking them to external interfaces; that thereafter, the station specific application software developed by them was loaded in the Microlock CPU PCB using laptop or PC by simple copy & paste method; that their scope of the works included integrating the field gears with the Electronic Interlocking System supplied by them and testing the same jointly with Railway for station functionalities. It, therefore, appeared that the product Electronic Interlocking System under the brand 'MICROLOK' supplied by the noticee was Electronic Interlocking system which was a technologically advanced and superior version employed for multipurpose monitoring and control system for wayside interlocking system and the same were excisable products classifiable under chapter heading 8530 of CETA, 1985 that came into existence at the Railway stations, manufactured by the noticee. It also appeared that the noticee was not eligible for the value based SSI exemption as the value of clearance exceeded Rs.400 lakhs in the preceding financial year.

3. During the course of investigation, the noticee vide letter dated 14.03.2011 had submitted the details of the projects undertaken by them station-wise where the Electronic Interlocking Systems were assembled by them. On perusal of the documents submitted by M/s. Ansaldo and the documents seized

vide Mahazar dated 06.01.2011 it had been observed that two of the Railway Stations where the noticee had undertaken the manufacture of 'Electronic Interlocking (EI) System' were Sabarmati Railway Station & Chandlodiya Railway station which fall under the jurisdiction of Central Excise, Ahmedabad-II Commissionerate. Accordingly further investigation with regards to the goods at Sabarmati Railway Station & Chandlodnya Railway station was taken up by the officers of Central Excise, Ahmedabad-II Commissionerate.

4. A statement of Shri Dinesh Kumar Rajput, Senior Section Engineer (Signal), Western Railway, Ahmedabad was recorded under Section 14 of the Central Excise Act, 1944 on 21.08.2012 wherein he had deposed that M/s. Ansaldo STS Transportation Systems India Pvt. Ltd., Bangalore had installed Signaling system at Sabarmati 'A' cabin; that the components mentioned in Annexure A/1 and Annexure A/2 of the contract agreement for Tender No. DY. CSTE/C/ADI/330/2008-09 dated 19.03.2009 had been used in Electronic Interlocking Signaling system installed at Sabarmati station; that contract for Design, Manufacture, Supply, Installation, Testing & Commissioning of Electronic Interlocking (EI) system (Indoor & outdoor) by original equipment of manufacturer conforming to the signaling plan attached with the contract and Research, Design & Standard Organization (RDSO) specification for Electronic Interlocking No. RDSO/SPN/192/2005 with latest amendments at Sabarmati 'A' panel on Ahmedabad-Palanpur/Gandhidham section of Ahmedabad Division of Western Railway was awarded to the noticee vide contract agreement for Tender No. DY.CSTE/C/ADI/330/08-09 on 19.03.2009. He had also stated that after getting confirmation of contract, the manufacturer/contractor procure the material from some other firms or by themselves and before dispatching the material, the contractor called ROSO for the material inspection in the premises of the manufacturer and get the inspection certificate from the ROSO officer and then manufacturer dispatched the material to consignee depot at Western Railway, Ahmedabad; that Selection table and locking table prepared in the software and hardware at the premises of the manufacturer at Bangalore and got tested in presence of the Railway Engineer Shri Balbindar Singh, Senior Section Engineer (Signal - Construction), Western Railway, Ahmedabad and of Shri Kartik by maintenance department, ESM/Sabarmati with the help of PC at their premises; that SSE/Signal Construction, Ahmedabad (store) received the material and after taking the materials on the records and the same was issued to the site for erection; that the materials recovered at site were installed as per signaling plan by the said manufacturer; that different types of testing such as cable maggering, correspondence test from operating panel to the field gears, simulation test, locking table, selection table, square sheet were to be done before commissioning of the equipments at the station to the full satisfaction of Railways. He also stated that after receipt of materials and after going through aforesaid tests, the entire system had been commissioned through cables and wirings. On specific query with regard to Microlock-11, he had stated that Microlock-11 was a Micro Processing Device used in the Indian Railway to achieve the interlocking between signaling gears; that Microlock-11 consisting of the input-output card, power supply cards, power supply arrangements, Vital Cut. Off Relay and terminals etc. were assembled together and the entire unit was called as Microlock-II.

5. Statement of Shri C. Raghavendra, Project Manager of the noticee was recorded under Section 14 of the Central Excise Act, 1944 on 14.09.2012, wherein he had stated, inter alia, that he had perused the contract agreement dated 19.03.2009 and subsidiary first contract agreement dated 20.01.2010 executed between Western Railway, Ahmedabad and M/s. Ansaldo STS Transportation Systems India Pvt. Ltd., Bangalore for scope of work viz. Design, Manufacture, Supply, Installation, Testing & Commissioning of "Electronic Interlocking (EI) system (Indoor & outdoor)" as per signaling plan at Sabarmati 'A' panel on Ahmedabad/ Palanpur/Gandhidham section on Ahmedabad Division of Western Railway and also copy of contract dated 25.10.2007 executed between Western Railway, Mumbai and M/s. Pravesh Construction, 13, Ground Floor, Sukhsagar, C.H.S. Ltd., Akurli Cross Road No. 1, opposite Kandivali Railway Station, Kandivali (East), Mumbai - 400 001; that he had also perused the statement dated 06.01.2011 of Shri G. Perumalsamy, Senior Manager, Engineering Standard of his company and submitted that he agreed with the contents mentioned in the said statement about signaling system based on Electronic Interlocking technology. He had also perused the statement dated 21.08.2012 of Shri Dinesh Kumar Rajput, Sr. Section Engineer/Signal Office, working in Signal & Telecom Office, Western Railway, Ahmedabad and stated that he agreed with the contents mentioned in the said statement. He also stated that he looked after complete project management which included execution of the project; payment receivables from the client and co-ordination with the client related to the project. He stated that after getting the signaling inputs from Indian Railways and providing the same to their Engineers for designing selection table, application logic and control panel; that these inputs designed by their engineers and submitted to Indian Railways for approval and after getting the approval, the same designed inputs are provided at the site for

site installation after ROSO inspection; that their company was not registered with Central Excise department. He had also stated that one signaling system was installed at Sabarmati 'A' cabin and two signaling systems were installed at Chandlodiya 'A' & 'B' cabin through M/s. Pravesh Constructions by M/s. Ansaldo STS Transportation Systems India Pvt. Ltd., Bangalore. He produced the copy of purchase order dated 20.9.2007 placed by M/s. Pravesh Construction, Mumbai for indoor supply and Statement of Shri C. Raghavendra, Project Manager of the noticee was recorded under Section 14 of the Central Excise Act, 1944 on 14.09.2012, wherein he had stated, inter alia, that he had perused the contract agreement dated 19.03.2009 and subsidiary first contract agreement dated 20.01.2010 executed between Western Railway, Ahmedabad and M/s. Ansaldo STS Transportation Systems India Pvt. Ltd., Bangalore for scope of work viz. Design, Manufacture, Supply, Installation, Testing & Commissioning of "Electronic Interlocking (EI) system (Indoor & outdoor)" as per signaling plan at Sabarmati 'A' panel on Ahmedabad/Palanpur/Gandhidham section on Ahmedabad Division of Western Railway and also copy of contract dated 25.10.2007 executed between Western Railway, Mumbai and M/s. Pravesh Construction, 13, Ground Floor, Sukhsagar, C.H.S. Ltd., Akurli Cross Road No. 1, opposite Kandivali Railway Station, Kandivali (East), Mumbai - 400 001; that he had also perused the statement dated 06.01.2011 of Shri G. Perumalsamy, Senior Manager, Engineering Standard of his company and submitted that he agreed with the contents mentioned in the said statement about signaling system based on Electronic Interlocking technology. He had also perused the statement dated 21.08.2012 of Shri Dinesh Kumar Rajput, Sr. Section Engineer/Signal Office, working in Signal & Telecom Office, Western Railway, Ahmedabad and stated that he agreed with the contents mentioned in the said statement. He also stated that he looked after complete project management which included execution of the project; payment receivables from the client and co-ordination with the client related to the project. He stated that after getting the signaling inputs from Indian Railways and providing the same to their Engineers for designing selection table, application logic and control panel; that these inputs designed by their engineers and submitted to Indian Railways for approval and after getting the approval, the same designed inputs are provided at the site for site installation after ROSO inspection; that their company was not registered with Central Excise department. He had also stated that one signaling system was installed at Sabarmati 'A' cabin and two signaling systems were installed at Chandlodiya 'A' & 'B' cabin through M/s. Pravesh Constructions by M/s. Ansaldo STS Transportation Systems India Pvt. Ltd., Bangalore. He produced the copy of purchase order dated 20.9.2007 placed by M/s. Pravesh Construction, Mumbai for indoor supply and execution of EI system at Chandlodiya 'A' & 'B' cabin as well as the copy of letter of acceptance dated 20.12.2008 issued by the Western Railway, Ahmedabad for design, manufacture, supply, installation, testing & commissioning of EI system (Indoor and Outdoor). On being asked specifically about how the signaling system was manufactured, Shri C.Raghavendra had stated that entire procedure had been explained by Shri G.Perumalsamy, Senior Manager, Engineering Standard in his statement dated 06.01.2011 and he agreed with the procedure as stated by him. On being asked specifically about the components used in Electronic Interlocking Signalling System he had stated that details of components used in Electronic Interlocking Signalling System has been explained by Shri G. Perumalsamy, Senior Manager, Engineering Standard under his statement dated 06.01.2011 and he agreed with the same. He had also produced the copy of invoices raised by their company against execution of the projects.

6. The Office of the Deputy Chief Signal & Telecom Engineer (works), Western Railway, Rajkot vide their letter No. Dy./SG/Misc/12-13 dated 19.04.2012 submitted a copy of contract agreement for Tender No. WR/S&T/W/14 dated 03.10.2006 and copy of contract agreement for Tender No. WR/ST/W/17 dated 25.10.2007 for design, manufacture, installation, testing & commissioning of Electronic Interlocking (EI) system at Sabarmati 'E' station and Chandlodiya station in Ahmedabad-Virangam section of Western Railway Ahmedabad. They vide their letter No. WR/ST/W/12-13/1(Store) dated 07.12.2012 had informed that the Solid State (Electronic) Interlocking system at Chandlodiya station in Ahmedabad-Virangam section of Ahmedabad Division of Western Railway had been commissioned on 30.05.2010. Similarly, the Office of the Deputy Chief Signal & Telecom Engineer (construction), Western Railway, Ahmedabad vide their letter No. Dy./SG/W/118/430 dated 11.05.2012 had submitted copies of contract agreement for Tender No. DY.CSTE/C/ADI/330/08-09 dated 19.03.2009 and subsidiary first contract agreement dated 20.01.2010 for design, manufacture, installation, testing & commissioning of Electronic Interlocking (EI) system at Sabarmati 'A' panel in Ahmedabad Palanpur/Gandhidham section of Ahmedabad Division of Western Railway Ahmedabad. They had also informed vide their letter No. DY/SG/W/118/430 dated 06.11.2012 that the Solid State (Electronic) Interlocking system at Sabarmati 'A' panel in Ahmedabad-Palanpur/Gandhidham section of Ahmedabad Division of Western Railway had been commissioned on 02.07.2010.

7. On the basis of investigations and the statements of responsible persons, it appeared that the Solid State Interlocking System was a micro processor based electronic interlocking system for safety operations of railway; that the system which ensures signals allow safe passage of trains into sections of track ahead of it known as Interlocking in parlance of Railway Signaling; that the Interlocking was achieved using technologies known as Solid State Interlocking System; that the system of interlocking can be divided into four parts - a) The outdoor equipments which control or monitor the state of the Railway Track consist of Signal Units which show various position or colors indicating trains to move ahead or stop moving, Point Machines which sets routes moving portions of the Railway tracks, Track Circuits which monitor the occupation of Railway Track and Point detectors which detects the direction to which the track is set at diverging points of the track; b) the indoor arrangement which maintains logic for safe operation of trains c) the medium connecting the indoor to the out-door equipment and d) the interfacing arrangement at the indoor equipment and the outdoor equipment and for matching the medium.

8. *Section Note 6 of Section XVI provides that "in respect of goods covered by this section, conversion of an article which is incomplete or un-finished but having the essential character of the complete or finished article (including 'blank', that is an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into a finished article or a part) into complete or finished article shall amount to 'manufacture'".*

Further, Section XVI Chapter 85 – Tariff item 8530 of the Central Excise Tariff Act, 1985 reads:

85.30 ELECTRICAL SIGNALING, SAFETY OR TRAFFIC CONTROL EQUIPMENT FOR RAILWAYS, TRAMWAYS, ROADS, INLAND WATERWAYS, PARKING FACILITIES, PORT INSTALLATIONS OR AIRFILEDS (OTHER THAN THOSE OF HEADING No. 86.08)

8530.10 - *Equipment for railways or tramways*

8530 10 10 - For Railways

8530 10 20 - For tramways

8530 80 00 - Other equipments

8530 90 00 - Parts

Explanatory Notes Section XVI-85.30.

A. *Railway or Tram ways equipments (including equipment for underground mine railways) and hover train transport system equipment this falls in two groups;*

1. *Signaling or Safety equipment. This consists of the actual signals (usually number of colored lights, or moving arms or discs mounted on the post or in a frameworks of some sort), the actuating equipment and the control equipment (whether hand-operated or automatic)*

Signaling equipment of this kind is used for control of traffic at stations, junctions level crossing etc., or for controlling the passage of a number of trains over the same sections of line. The latter type includes automatic section signaling equipment, the passage of train from one section of track to the next automatically operating the necessary signals.

The heading cover also covers equipment for signaling to stations or to signal boxes (either by means of a warning bell or visual indicator) the position or approach of trains, or the position taken up by points, signals etc.....

9. From the above it appeared that the Solid State Interlocking Systems installed and commissioned by the noticee at Sabarmati and Chandlodiya Railway station was the Electrical Signaling, Safety Or Traffic Control Equipment for Railways and classifiable under Tariff Item 8530 10 10 i.e. Safety or Traffic Control Equipment for Railways. The Solid State Interlocking Systems had come into existence in the Sabarmati and Chandlodiya Railway station, manufactured by the noticee by systematically assembling all the components viz. Microlok-11, Card files, input output PCBs, Power supply PCB Relays, Relay Racks, cables/wires and other hardware in the Racks in pre-designed manner. The entire activity to bring an excisable commodity i.e. SSI viz., Railway Signaling System with a distinct character

and function has come into existence at the Sabarmati and Chandlodiya Railway Station, Ahmedabad, which were the "place of manufacture" for the noticee. As per the letters received from concerned Railway officers and documents produced by Shri C.Raghavendra as well as by the noticee vide their letter dated 24.01.2003, it appeared that the work of design, manufacture, supply, installation and commissioning of Solid State Interlocking System at Sabarmati 'A' panel on Ahmedabad-Palanpur/Gandhidham section had been awarded to the noticee for total contract amount of Rs.3,74,47,725/- and the noticee had procured required inputs such as Microlok Card files, CPU PCBs, Power Supplies PCB, VCOR Relays, other Relays and Fuses and other electrical and electronic components from various suppliers and after specific test conducted by the RDSO and by the Railways Officials these materials were sent to Railways store under the cover of Invoices. It also appeared that the contract awarded to the noticee was a composite contract and as per the contract they had undertaken the activity of design, manufacture, supply, installation and commissioning of Solid State Interlocking System at Sabarmati and Chandlodiya Railway Station of Ahmedabad and had raised invoices for the same. Further it also appeared that excisable goods had been manufactured on 02.07.2010 at Sabarmati Railway Station and on 30.05.2010 at Chandlodiya Railway station as could be seen from the letter issued by the Signal & Telecom Engineer of Western Railways, Ahmedabad and Rajkot. Accordingly duty was payable on the Electronic Interlocking System at the rate applicable as on the date of commissioning of the system, i.e. duty @ 10%, Ed. Cess @2% of Duty and Sec. & Hr. Ed. Cess @ 1% of duty. Accordingly it appeared that the noticee was liable to pay duty of Rs. 48,15,737/-, Ed. Cess of Rs.96,314/- and Secondary and Higher Education Cess of Rs.48,158/ on the assessable value of Rs.4,81,57,363/-, which they had failed to do. By their acts of clearing excisable goods without payment of duty and without following procedures the noticee appeared to have rendered themselves liable for penalty under Rule 25 of CER, 2002. Further it appeared that the noticee had suppressed facts relating to the activities of manufacture of Electronic Interlocking System with intent to evade payment of Duty as at no point of time had they brought to the notice of the department the details of their activity that amounted to manufacture of Electronic Interlocking System. It appeared that the noticee had suppressed the facts of manufacture and clearance of excisable goods to Western Railways without payment of duty and contravening the relevant provisions of CEA, 1944 and CER, 2002 with an intent to evade payment of duty. Therefore, it appeared that the duty was required to be demanded from the noticee invoking extended period in terms of Section 11A(4) of the Central Excise Act, 1944 (erstwhile proviso to Section 11A(1) of the CEA, 1944) along with interest under Section 11AA ibid (erstwhile Section 11AB). It also appears that on the above grounds of suppression of facts with intent to evade payment of duty had rendered the noticee liable for penalty under Section 11AC/11AC(1)(a) of the CEA, 1944. Therefore, a show cause notice F.No.V.85/15-24/OA/2013 dated 20.05.2013 was issued to the noticee proposing the classification of Solid State Interlocking System under Tariff item No.85301010 of CEA, 1985; demanding central excise duty of Rs.49,60,209/- under Section 11A(4) of CEA, 1944; demanding interest under Section 11AAQ of CEA, 1944 and proposing imposition of penalty on the noticee under Section 11AC of the CEA, 1944.

10. The noticee has submitted their defence reply to the show cause notice on 16.10.2013. In their written submissions, it has been elucidated, inter alia, that they were formerly known as M/s Union Switch and Signal; that they are engaged in providing technology-based signaling and transport solutions for the Ministry of Railways and Metro Rail Corporation in India; that they are 100% subsidiary of M/s Ansaldo, STS PTY, Australia; that they started their activity in India in January, 1997 and were engaged in the designing, supply, installation, testing and commissioning of the solid state interlocking systems for various railway project; that they participate in the tender process for various railway projects across India and bid for design, manufacture, supply, installation and commissioning of solid state (electronic) interlocking systems and other railway signaling systems such as panel interlocking. The noticee has stated that Indian Railways invites tenders on a periodic basis for the 'signaling' work consisting of installation and erection of centralized electronic interlocking system and the noticee provides a quotation/offer for undertaking the said work; that on acceptance of the offer by Indian railways, they commence the activity of installation of the centralized electronic interlocking system; that the said contract with Indian railways, emblematically covers the activities of preparation, submission and approval of station specific interface design, supply of goods and installation, testing and commissioning activity; that the first stage involves 'preparation of interface design'; that the Indian Railways provide the noticee with the room/site in which the proposed centralized electronic interlocking system was to be installed; that then the noticee examines this site and prepares the interface design for installing the interlocking system with respect to the number of tracks, signal, switches and number of movements at



the specified location and such design extends to the panel room, equipment room and power room. The noticee has explained that the panel room is where a display is set up where the train dispatcher can directly see the location of the trains and accurately locate their movements by displaying signals and controlling switches; that the equipment room contains a panel interface unit, a processing unit, interface relay units and cable termination unit; that the panel interface unit receives commands given by the station master in the panel room and transmits the same to the processing unit; that the processing unit is the intelligent part which gives effect to or disregards any operation it receives based on the data fed to it; that the interface unit is the electro-magnetic unit which acts as an interface between the processing unit and the cable transmission unit; that the cable transmission unit is also called the 'feeding terminal outgoing terminal' (FTOT) and connects the internal functions to external gears (signal, switches, tracks etc) through cables and that the power room provides requisite power to the equipment room and the panel room. Explaining the fashion in which the mechanism functions, it has been submitted that the commands given by the train dispatcher from the station master's panel room are transmitted by wires through the panel interface unit located in the equipment room to the processing unit, where the excitability of the command is examined; that if the command given is consistent to data in the processing unit, it is carried to the interface relay unit from where the commands are transmitted to the cable termination unit for being conveyed to the signal located adjacent to the tracks through cables; that thus the command given by the train dispatcher is transmitted to the signals outside; that in case of the second possibility that the command given by the station master is contrary to the logic of the processing unit, the command is ignored; that this design developed by the noticee is provided to the railways for approval; that once approved, the noticee places orders for procuring various components like racks, relays, terminals and so on, for use in the installation of the centralized electronic interlocking system. The noticee has further submitted that the second stage of the contract was the supply of goods; that the orders for racks, relays and terminals are required to be placed with the supplier approved by the Indian Railways and testing of most of the components is undertaken BY Indian Railways at the factory of the supplier and the remaining components are tested by Indian Railways nominated certification agency at the noticee's warehouse; that the noticee procures the equipment from the supplier on payment of applicable excise duty and sales tax which is levied by the noticee from Indian Railways. In the said submissions it has been explained that the final stage of the contract was the 'installation activity' which involved the installation of equipments by the noticee whereby initially the base of the rack is placed on the ground as per the room floor plan and the corner holes are marked with powder chalks and marker; that the racks are shifted to a storage place close by and the marked place is drilled with concrete cutter to measure 12 mm diameter and 4.5" depth exactly for the four corners of the rack; that electric blowers are used to clean the holes and then the bottom side expansion bolt is placed above the rack holes and a wooden plank is placed between the concrete bedding and the rack to prevent electric shock; that thereafter, the racks are kept exactly fitting all the four corners placing the holes and hammer pins in the middle of the nut; that finally the threaded nut is fastened clock-wise to hold the racks firmly; that these racks are further supported with scaffolding and ladder arrangements for the routing or connecting cables and interconnected cables as required in the floor plan room layout diagram; that the next step entails wiring and interconnections which are established between terminals and relays in the rack, between the racks inter se and between the units of the system; that this wiring occurs simultaneously within the individual racks and between all the racks; that the wiring is very extensive and labor intensive as individual terminals require not only interconnection but also connection to the house racking and to the cable termination unit relaying the command to the railway signals/switches which is crucial to transmit the data or signal from the display in the panel room to the processing unit and if compatible with the data contained in the unit, for its ultimate transmission to the signals and that thus these are the nuanced and intricate stages of the contract undertaken by the noticee.

In the defence submissions, the noticee has contested the grounds in the show cause notice by stating, inter alia, that the impugned notice was issued without appreciating the factual and legal position in the proper perspective and the same deserved to be set aside on this ground alone; that the electronic interlocking signaling system or the solid state interlocking system is an apparatus that ensures the safety of railway operations and is employed by most railway departments across the world; that the safety of railway operations in areas where several lines meet or diverge is, maintained, by signals which ensure that when any train is allowed to go into an area it is protected by at least one signal at its rear; that trains are required to follow the signals given to ensure safety; that for signaling, color light signals are used and they have multicolored lights which are turned on or off depending on the state of the state of the occupation of the railway track ahead; that in addition to occupation of tracks by other trains, the

availability of a signal also implies that the routes maintained by the tracts are correct; that this required because trains should not be allowed to traverse along tracts which are not connected properly; that the system which ensures signals allow safe passage of trains into sections of track ahead of it known as interlocking in parlance of railway signaling. It has been contended in the written submissions that the noticee had procured all materials like microlock card, racks, relays, relay racks, control cum indicator panels etc which are inputs used in the manufacture of electronic interlocking system and had undertaken the manufacture of electronic interlocking system by integrating/assembling various components into a system; that the process of installation was merely a process of unpacking, connecting various items and checking the functionality with no activity undertaken on the equipments/inputs; that the activity which was incidental and ancillary should be in relation to a principal product; that when there was no manufacture of any principal item, the process incidental and ancillary cannot be attributed to the installation process alone. The noticee has relied on the decisions in the cases of CCE vs POPULAR COTTON COVERING WORKS - 1989 (43) ELT 742 (Tri) and CCE vs POPULAR COTTON COVERING WORKS - 1989 (73) ELT 264(SC). The noticee has further stated that as per Section 3, excise duty is levied on the goods manufactured and produced in India and the definition of manufacture provide under Section 2(f); the mere supply of duty paid goods to the site for where assembly of goods happens does not amount to manufacture; that the Hon'ble High Court of Andhra Pradesh in the case of XL Telecom Ltd Vs Superintendent of Central Excise, Hyderabad - 1999(105) ELT 263 (AP) had held that putting together different duty paid items in a kit does not amount to manufacture, that this decision had been upheld by Hon'ble Supreme Court as reported in 1999 (107) ELT 185 (SC); that in the case of Dalmia Industries Ltd Vs CCE, Jaipur - 1999 (112) ELT 305, Tribunal has held that buying various articles and selling them in a combined pack would not amount to manufacture; that similarly in the case of TI DIAMOND CHAIN LIMITED vs CCE, CHENNAI-II - 2009 (126) ELT 790, Tribunal had held that putting together duty paid manufactured automotive chains and connecting links along with sprockets procured from various independent manufacturers in pilfer proof, skin board packing does not being into existence any new product/article known to the market and as such the said activity did not amount to manufacture; that this decision had been affirmed by Apex Court reported in COMMISSIONER vs T.I. DIAMOND CHAIN LTD., - 2001 (130) ELT A259 (SC). The noticee has further cited a catena of decisions stating that Tribunal had taken a similar view in all these decisions.

12. Furthering their defence arguments, the noticee has contended that in their written submissions that as per note 6 of Section XVI in respect of goods covered by this section, conversion of an article which is incomplete or unfinished but having essential character of the complete or finished article shall amount to manufacture; that this required that conversion of an incomplete or unfinished article into complete or finished article alone can amount to manufacture as there had to be a process undertaken on the incomplete machines; that note 6 of Section XVI indicates that it covers only those articles which are incomplete or unfinished but having the character of complete or finished articles; that on the contrary, if the sold state interlocking system was complete in itself and assessed as such at the time of removal from the factory, though cleared in modules for the purpose of ease of transportation, the same would not attract the vice of note 6 to section XVI of the tariff and such activity of connection to various modules can not be said to be amounting to manufacture in terms of note 6 to section XVI. It has also been contended that the invoice was raised for the complete machines and not for the parts; thus the machines albeit in modular form are complete machines and no process was carried out by the noticee to make the machines complete which in fact were already complete and hence note of Section XVI was not attracted.

13. The noticee has further averred in the written submissions that they rely on rule 2(a) of the Rules of Interpretation of the Central Excise Tariff; that in view of the said rules, assuming without admitting that the noticee had assembled the disassembled parts/machines, those disassembled parts/machines were also complete machines within the meaning of rule 2(a); that comparing rule 2(a) with note 6 of Section XVI, it would reveal that while rule 2(a) refers to incomplete or unfinished articles even if presented unassembled or disassembled, whereas note 6 refers to incomplete or unfinished goods including blanks; that thus the phrase 'presented unassembled or disassembled' is missing in note 6; that therefore, in view of rule 2(a) providing classification of the goods under the same heading even if presented unassembled or disassembled suggests that no further activity of manufacture is contemplated; that further, the fact that only the first portion of rule 2(a) of the Interpretative Rules had been borrowed in note 6 of section XVI indicate that in terms of note 6, it is the conversion of an unfinished or incomplete article (for e.g. Blanks) into a finished article that would alone amount to manufacture; that on the other hand, the second portion of rule 2(a) of the Interpretative Rules which considers only simple

assembly operations to be undertaken, there would not amount to conversion of an unfinished or incomplete article into a finished article for the reason that the article in question was already in a finished state but in a disassembled or unassembled state; that the mere nomenclature used by the noticee in the invoices raised on the Indian Railways cannot be a basis for classification of the goods under the said chapter heading and that classification of goods was irrelevant when the activity of the noticee itself 873 not amount to manufacture of goods. The noticee has further contended that electronic interlocking system was not capable of being bought and sold for consideration and hence was not marketable and it was not an 'excisable commodity'; that it had been admitted by the department that the noticee, after getting the contract from Indian Railways for the supply of electronic interlocking system, purchased required components from various vendors and after conducting tests for the logic of the microlok system, transferred the goods to the place of installation; that based on a contract, the noticee procured components for use in the assembling of electronic interlocking systems from suppliers on payment of applicable excise duty and sales tax and sold the said components to the Railways; that as per the requirement of Railways, the noticee drew the components so sold from the Railways warehouse after furnishing indemnity bond and utilized the components in the assembly of the interlocking system; that thus with respect to the railways, the noticee sold the components separately and undertook the assembly of the components as a service; that upon initialization of the system no marketable goods with a distinct name, character and use emerge and thus marketability of goods to constitute manufacture of goods was not satisfied in the instant case. The noticee has also argued that in terms of explanation to Section 2(d) of CCEA, 1944, 'goods' include any article, material or substance which is capable of being brought and sold for a consideration and such goods shall be deemed to be marketable; that the term 'immovable property' was defined in section 3(26) of the General Clauses Act as "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth; that the solid state interlocking system could not be dismantled without damage to its structure and parts which go into the erection of the solid state interlocking system; that there is clear distinction between a solid state interlocking system and its components and parts; that if duty was to be levied on the 'solid state interlocking system' then the 'solid state interlocking system' as such would be movable; that the Hon'ble Supreme Court in the case of MUNICIPAL CORPORATION OF GREATER BOMBAY & OTHERS vs INDIAN OIL CORPORATION - 1999 SUPP (2) SCC 18 on considering the issue as to whether petroleum tank is a movable or immovable property had held that if the chattel was movable to another place of use in the same position then it was a movable property and if it was liable to be dismantled and re-erected at the latter place then it was attached to the ground; that solid state interlocking system was an immovable property since it emerged only after the erection of the components at the site and in order to move the same to another place; that in the case of T.T.G. Industries Ltd Vs CCE, Raipur - 2004 (167) ELT 501 (SC), the Hon'ble Supreme Court relying on its own decisions had held that if an item cannot be moved without first dismantling it and then re-erecting it at some other place, such an item would be an immovable property not liable to excise duty; that the Hon'ble Supreme Court in the case of TRIVENI ENGINEERING & INDUSTRIES vs CCE - 2000 (120) ELT 273 (SC) had overturned the decision of Tribunal and held that steam turbine and alternator being component parts of turbo alternator and turbo alternator was functional only when fixed to a platform and hence it could not be treated as marketable; that installed solid state interlocking system when removed, damages occur to the inter connection cables and wires when unfastened from the wooden planks, there would be damage to the parts removed; that one unbolted, it would no longer remain as 'solid state interlocking system' but can be known only by the individual components retrieved there from; that in the case of QUALITY STEEL TUBES PVT. LTD. vs CCE - 1995 (75) ELT 17, the department sought to levy duty on tube mill or the welding head which was erected and installed by means of embedding the same in the earth which was negated by the Apex Court. The noticee has also relied upon the case law in MITTAL ENGINEERING WORKS PVT.LTD Vs CCE - 1996 (88) ELT 622 where it was held that duty was not leviable on mono vertical crystallizer that was assembled at site by the appellant and the case law CCE, Mumbai Vs Josts Engineering Co.Ltd - 2002(146) ELT (SC) where the apex court had held that spray paint booth was not excisable goods.

14. The noticee has also referred to C.B.E.C. circular No.58/1/2002-CX dated 15.1.2002 clarifying that for goods manufactured at site to be dutiable they should have a new identity character and use distinct from the inputs/components that have gone into its production and such goods should not be immovable. In this regard the noticee has stated that it has been further clarified in the said circular that if the change of identity takes place in the course of construction or erection of a structure which is an immovable property, then there would be no manufacture of 'goods' involved and no levy of duty; that in

clause (vi) of the circular Board has specifically clarified that if the goods are incapable of being sold, shifted and marketed without first being dismantled into component parts, the goods would be considered as immovable and therefore not liable to duty.

15. The noticee has also submitted that they are registered with the Service Tax department as providers of Erection, commissioning or Installation / Business Auxiliary services, consulting services, scientific or technical consultant, manpower recruitment agency, management consultant services and have been paying Service Tax for the activities undertaken for erecting the electronic signaling system and therefore the entire transaction is treated as service and service tax had been discharged and hence the question of payment of excise duty on the same activities would not arise. The noticee has further contested the quantification of demand of duty in the show cause notice. They have cited the Apex Court decision in the case of COMMISSIONER OF CUSTOMS & CENTRAL EXCISE Vs TEXTILE CORPORATION MARATHWADA LTD - 2008 (231) ELT 195 (SC) and contended that all the components were duty paid and they eligible of CENVAT credit of duty paid on inputs and hence the entire exercise was revenue neutral. The noticee has further stated in the defence reply that they were under the bona fide belief that the activity undertaken by them was only in the nature of assembly of components which did not amount to manufacture and hence extended period of limitation was not invocable in their case. They have cited the Apex Court decision in the matter of CONTINENTAL JT. VENTURE FOUNDATION vs CCE - 2007 (216) ELT 177 (SC) where it had been held that the expression 'suppression' has to be construed strictly and viewed in the factual matrix in which dispute had arisen and mere omission to supply correct information cannot lead to the invocation of extended period. The noticee has further submitted that in any case duty was being demanded after the clearance of the goods in question, the same is to be considered as cum-duty and duty element has to be excluded for computing the actual duty liability. The noticee has further pleaded that they had not contravened any of the Central Excise provisions and hence no penalty can be imposed under section 11AC of CEA, 1944 or rule 25 of CER, 2002.

15. Personal Hearing

Personal hearing in the case was held on 22.10.2013 attended by Shri Anupam Bhattacharya, Head of Accounts Administration and Shri Anand Nainawati, Advocate. Shri Nainawati submitted his vakalatnama and written submissions along with case laws. My attention was brought to the order of Additional Commissioner, Bangalore where the dispute primarily originated. The basic contention of the notice is that the goods on which duty of excise was demanded comes into existence only when affixed to the earth and on being dismantled would lose the character of excisable goods. It was requested that the impugned notice be dropped.

16. On studying the show cause notice as well as the defence submissions made by the noticee, I find that the disputed issue is whether 'Solid State Interlocking System' (hereinafter referred to as 'SSIS') installed at Sabarmati Railway station and Chandlodiya Railway station are excisable goods manufactured by the noticee or otherwise. The original intelligence was gathered by the officers of Central Excise Bangalore-I who conducted investigations in connection with the Solid State Interlocking System installed in Railway stations within their jurisdiction. On noticing that SSIS were also installed by the noticee at Sabarmati Railway station and Chandlodiya Railway station, the intelligence was passed on to the officers of Central Excise Ahmedabad-II who conducted further investigations culminating in the issuance of the instant show cause notice.

Section 2(d) of the Central Excise Act, 1944 (CEA, 1944) defines excisable goods as

follows:

(d) "excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;

Explanation - For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and *such goods shall be deemed to be marketable.*

Further, the definition of 'manufacture' is provided under Section 2(f) of CEA, 1944 as follows:

(f) "manufacture" includes any process,

- i) incidental or ancillary to the completion of a manufactured product;
- ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or
- iii) which, 'in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

17. What is required to be decided in the present case is whether SSIS falls within the definition of 'excisable goods' under Section 2(d) of the CEA, 1944 and whether the process of installation of SSIS by the notice amounts to manufacture under section 2(f) of CEA, 1944. The principal grounds in the present show cause notice holding SSIS to be excisable goods are that these goods are Electronic Interlocking systems being capable of being bought and sold in the market that find mention as Signalling and Safety Equipments for Railways under chapter heading 8530 10 10 of the first schedule to the Central Excise Tariff Act, 1985 (CETA, 1985) and that SSIS gets manufactured and comes into existence at the Railway stations. The issues relating to both the definitions of 'excisable goods' as well as 'manufacture' are not *res integra* and therefore, I proceed to examine the same on the basis of the pronouncements by Courts and Tribunals.

18. The description of SSIS installed at the Railway Stations of Sabarmati and Chandlodiya, as concluded by the investigation is given in paragraph 10 of the show cause notice. The same is reproduced below for the correct perspective:

"10. The Solid State Interlocking System is a Micro-Process based electronic interlocking system for safety operations of railway. The system which ensures signals allow safe passage of trains into sections of track ahead of it is known as Interlocking parlance of Railway signaling. Interlocking is achieved using technologies known as Solid State Interlocking System.

The system of interlocking can be divided into four parts

- a) *The outdoor equipments which are control or which monitor the state of the Railway Track as:*
 - *Signal Units - which show various position or colors indicating trains to move ahead or stop moving.*
 - *Point Machines- which sets routes moving portions of the Railway tracks*
 - *Track Circuits - which monitor the occupation of Railway Track*
 - *Point detectors - which detects the direction to which the track is set at diverging points of the track*
- b) *The indoor arrangement which maintains logic for safe operation of trains*
- c) *The medium connecting the indoor to the outdoor equipments*
- d) *The interfacing arrangement at the indoor equipment and the outdoor equipment end for matching the medium"*

19. Further, in the same paragraph, referring to the statement of Shri G. Perumalsamy, Senior Manager Engineering Standard for M/s. Ansaldo as well as statement of Shri Dinesh Kumar Rajput, Senior Section Engineer (Signal), Western Railway, Ahmedabad, it has been stated in the show cause notice that the 'indoor unit' of SSIS consists of :

- a. Microlok Rack containing (i) Card File (ii) VCOR (iii) Power Supply systems (iv) Interconnecting wire terminations. The card file consists of twenty slots to accommodate Vital Input PCB, Non- Vital Input PCB, Power supply PCB and CPU PCBs.
- b. Relay Racks- Relay racks consists of Relays and Relay jacks for interfacing ground functions with the Microlok System.
- c. FTOT Termination Racks for terminating the various cables connecting field gears in the relay racks.

d. Power Supply equipments comprising of Batteries and Battery Charges.

c. Control cum indication Panel for operating signals and points."

20. The investigation has concluded that using the above equipment the relationship between various functions like signal points, track circuits and level crossing gates are logically established in a pre-designed order based on the signaling plan provided by Railways for safe operation of train movements using a software programme: Accordingly, classification of SSIS has been sought to be made under chapter heading 8530 10 10 of CETA, 1985 relying on the explanatory notes as follows:

"Explanatory Notes Section XVI- 85.30

B. *Railway or Tram ways equipments (including equipment for underground mine railways) and hover train transport system equipment this falls in two groups;*

2. *Signaling or Safety equipment. This consists of the actual signals (usually number of colored lights, or moving arms or discs mounted on the post or in a frameworks of some sort), the actuating equipment and the control equipment (whether hand-operated or automatic)*

Signaling equipment of this kind is used for control of traffic at stations, junctions level crossing etc., or for controlling the passage of a number of trains over the same sections of line. The latter type includes automatic section signaling equipment, the passage of train from one section of track to the next automatically operating the necessary signals."

21. The pertinent aspect herein is that only the indoor unit of SSIS has been sought to be classified under chapter heading 8530 1010 of CEA, 1985, whereas as per the show cause notice itself, as reproduced above, SSIS consist of a) Outdoor equipments such as Signal Units, Point Machines, Track Circuits and Point detectors which control or monitor the state of the Railway Track, b) the indoor arrangement which maintains logic for safe operation of trains; c) the medium connecting the indoor to the outdoor equipments and d) the interfacing arrangement at the indoor equipment and the outdoor equipment end for machine medium. Therefore, the impugned classification of SSIS proposed in the show cause does not cover the entire SSIS but only the assembly of components that are covered under the indoor arrangement which maintains logic for safe operation of trains. This proposal for classification falls in as much as there is no validation in the show cause notice for applying explanatory notes XVI of chapter heading 8530 of CEA, 1985 to the outdoor equipments such as Signal Units, Point Machines, Track Circuits and Point detectors which control or monitor the state of the Railway Track as well as to the medium connecting the indoor to the outdoor equipments and the interfacing arrangement at the indoor equipment and the outdoor equipment end for matching medium.

22. Further, in paragraph 12 of the show cause notice, it has been very clearly brought out as follows:

"Further from the statement dated 21.08.2012 of Shri Dinesh Kumar Rajput, Senior Section Engineer (Signal), Western Railways, Ahmedabad and statement dated 06.01.2011 of Shri. G. Perumalsamy, Senior Manager of M/s. Ansaldo STS Transportation Systems formerly known as 'M/s. Union Switch and Signal' SLV Complex, AVS Compound, 4th Block, Koramangala, Bangalore-560 034 and statement dated 14.09.2012 of Shri C. Raghavendra, Project Manager of the noticee, it appears that the Electronic Interlocking System can be moved from its present location any other location without causing any damage to the system. Further, it also appears that the fastening of the Electronic Interlocking System to the wooden plank with bolts and nuts is to avoid the likely damage to the system caused by vibration due to train movement; that the fastening to the wooden plank would not affect in any way the removing of components of the system to other locations whenever required."

23. During the visit of the officers to the Sabarmati Railway station, Shri Dinesh Kumar Rajput, Senior Section Engineer (Signal), Western Railway had explained the fastening of the equipments to the wooden planks in the following terms that finds mention in paragraph 6.6 of the show cause notice as follows-

"6.6 Shri Dinesh Kumar Raj put also informed the officers that the racks detailed above were not affixed to the earth permanently but were fastened to wooden plank by nuts and bolts only; that the floor of the Relay Room and that part of the Station Master's room were made hollow to facilitate movement of wires/conduit pipes to make connections."

24. The above deposition is clearly in connection with the relay room as well as the station master's room which is part of the indoor arrangement which maintains logic for safe operation of trains and cannot be applied to the entire SSIS. The indoor arrangement being only a part of the SSIS, the same cannot be applied to the entire SSIS. There is no evidence in the show cause notice to show that the other component parts of the SSIS such as 'the outdoor equipments such as Signal Units, Point Machines, Track Circuits and Point detectors which control or monitor the state of the Railway Track' as well as 'the medium connecting the indoor to the outdoor equipments' and 'the interfacing arrangement at the indoor equipment and the outdoor equipment end for matching medium are not embedded in the earth or how these systems can be moved from its place of installation to another place without causing any damage to the system. It is settled law that the onus to show that the item is excisable lies with Revenue. In the case of UNION OF INDIA VS AHMEDABAD ELECTRICITY CO.LTD – 2003 (156) ELT 3(SC), it has been ruled by the Hon'ble Supreme Court as follows:

"33. The onus to show that particular goods on which excise duty is sought to be levied have gone through the process of manufacture in India is on the revenue. They have done nothing to discharge this onus. For this reason alone they must fail"

25. As per the ratio of the above decision, it is required to show that the entire SSIS system including all the four parts as enumerated by the investigation in paragraph 10 of the present show cause notice viz. a) Outdoor equipments such as Signal Units, Point Machines, Track Circuits and Point detectors which control or monitor the state of the Railway Track; b) the indoor arrangement which maintains logic or safe operation of trains; c) the medium connecting the indoor to the outdoor equipments and d) the interfacing arrangement at the indoor equipment and the outdoor equipment end for matching medium comprises of a distinct commodity manufactured by the noticee, known as such in the common parlance or to the commercial community for the purpose of buying and selling. The present show cause notice relies upon the statement dated 06.01.2011 of Shri G. Perumalsamy, Senior Manager, Engineering Standard for the noticee recorded under section 14 of the Central Excise Act, 1944. The relevant portion, as appearing in paragraphs 3.1 of the statement is reproduced below, which clearly shows that the SSIS systems are specifically designed and installed for a particular railway station;

"that on award of contract for design, manufacture and supply of Electronic Interlocking Systems, the technical section of their company located at SLV Complex, AVS Compound, #35, 80 Feet Road, 4th Block, Koramangala, Bangalore - 560 034 first received signaling plan along with control table prepared by railways and signaling plan gives them the geographical position of various field gear involved in stations to operate the traffic movement; that the control table provides the interlocking condition for the various route movements and based on the above inputs their engineers prepared Bit Chart (for gathering information from Front Plate Drawing i.e. Number of push button controls and key controls, Number of indications, counters, buzzers, bells etc.) Relay Rack arrangement, Indoor & Outdoor interfacing circuits; that based on the above details, they generate the BOM (Bill of Materials) and transferred the BOM to their procurement department where the procurement department procured various inputs"

26. From the above deposition it is clear that the Design, manufacture, supply, installation & commissioning of Solid State (Electronic) Interlocking system is subject to the geographical position of various field gear involved in stations to operate the traffic movement. Therefore, the removal and installation of an SSIS from one railway station to another railway station is practically feasible only if the geographical parameters involved in the installation process are identical. This means that for the SSIS system to be removed safely from one railway station and to be installed at another railway station, the location of the relay room, the place where the control panel is installed and the places where various ground gear equipment are installed must be identically situated all these locations must be at equal distance from each other at both the railway stations. For instance, if the SSIS installed at Sabarmati Railway station has to be removed and installed at Chandlodiya railway station, the geographical parameters of both the stations have to be identical as explained above. The railway stations located at

various places are not identical in its geographical parameters and hence the SSIS for each station is designed, manufactured, supplied as well as installed & commissioned exclusively for each railway station in accordance with the geographical parameters of that particular railway station. Therefore, it cannot be said that SSIS is a commodity distinctly recognizable and saleable in the market. It is not a standardized item or goods known and generally dealt with in the market. In other words, SSIS fails the test of marketability which is a pre-requisite for the levy of Central Excise duty. The fact that SSIS has been sought to be classified under chapter heading 85301010 of CETA, 1985 in the show cause notice has to be supported by evidence regarding the marketability of the product in order to make it exigible to Central Excise duty. I rely on the decision of Hon'ble High Court of Gujarat in the case of LUPIN LIMITED Vs UNION of INDIA – 2013(293)ELT 354 (Guj), where relying on various Apex Court decisions, it has been ruled for the Department to levy excise duty on the product in question, it would have to be established that the product itself is marketable. The relevant portion of this citation, squarely applicable to the facts of the present case is reproduced below:-

"25. The test to be applied in ascertaining whether a product would be exigible to excise duty, one of the important aspects is its marketability . What is to be ascertained is not merely that a product is manufactured, but that it is also marketable. on- this point, there is clearly no dispute. Several decisions cited before us of the Apex Court bring about such a legal proposition. It is also well settled that merely because the product is mentioned in one of the entries in the Central Excise Tariff Act or finds place in the notification issued for the purpose of claiming duty drawback Linder the customs law, by itself would not be conclusive of the fact that such produce is either marketable or that, therefore, it is exigible to excise duty".

27. In the case of Bata India Ltd Vs Commissioner of Central Excise, New Delhi (supra), the Apex Court observed as under:-

"18. Revenue in this case has not succeeded in establishing that the product in question was either marketed or was capable of being marketed. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. No evidence has been produced by the Revenue to show the product unvulcanized sandwiched fabric as such as is capable of being marketed, without further processing. The question is not whether there is an hypothetical possibility of a purchase and sale of the commodity but whether there is sufficient proof that the product is commercially known. The mere fact that the product in question was entrusted outside for some job work such as stitching is not an indication to show that the product is commercially distinct or marketable product. Without proof of marketability the intermediate product would not be goods much less excisable goods. Such a product is excisable only if it is a complete product having commercial identity capable of being sold to a consumer which has to be established by the Revenue".

The Apex Court, thus, was of the opinion that mere hypothetical possibility of a purchase and sale of the commodity is not sufficient proof that the product is commercially known.

28. In the case of Union of India and Others Vs Sonic Electrotherm (P) Ltd and Another, reported in (2002) 7 SCC 433 = 2002 (145) ELT 274 (SC), the Supreme Court observed as under:

"8. We do not consider it necessary to discuss the cases on the question of marketability, as this Court has dealt with all relevant cases in A.P. SEB case. In that case, the question was whether electric poles manufactured with cement and steel for the appellant Board were marketable. After considering various cases on the question of marketability of goods, Jeevan Reddy, J., speaking for the Court, summed up the position thus:

" 10. It would be evident from the facts and ratio of the above decisions that the goods in each case were found to be not marketable. Whether it is refined oil (non-deodorised) concerned in Union of India v. Delhi Cloth and General Mills Co. Ltd. or kiln gas in South Bihar Sugar Mills Ltd. v. Union of India or aluminium cans with rough uneven surface in Union Carbide India Ltd. v. Union of India or PVT films in Bhor Industries Ltd. v. CCE or hydrolysate in CCE v. Ambalal Sarabhai Enterprises (P) Ltd., the finding in each case on the basis of the material before the court was that the articles in question were not marketable and were not known to the market as such. The 'marketability' is thus essentially a

question of fact to be decided on the facts of each case. There can be no generalization. The fact that the goods are not in fact marketed is of no relevance."

9. *It may be noticed that in the cases referred to in the passage, quoted above, the reasons for holding the articles "not marketable" are different, however, they are not exhaustive. It is difficult to lay down a precise test to determine marketability of articles. Marketability of goods has certain attributes. The essence of marketability is neither in the form nor in the shape or condition in which the manufactured articles are to be found, it is the commercial identity of the articles known to the market for being bought and sold. The fact that the product in question is generally not being bought and sold or has no demand in the market would be irrelevant. The plastic body of EMR does not satisfy the aforementioned criteria. There are some competing manufacturers of EMR. Each is having a different plastic body to suit its design and requirement. If one goes to the market to purchase the plastic body of EMR of the respondents either for replacement or otherwise one cannot get it in the market because at present it is not a commercially known product. For these reasons, the plastic body, which is a part of EMR of the respondents, is not "goods" so as to be liable to duty as parts of EMR under para S(f) of the said exemption notification."*

29. In the case of Cadila Laboratories Pvt.Ltd Vs Commissioner of Central Excise, Vadodara (supra), the Apex Court referred to several decisions and observed as under:

9. *Thus, the law is that in order to be excisable, not only goods must be manufactured i.e. some new product brought into existence, but the goods must be marketable. By marketable it does not mean that the goods must be actually bought and sold in the market. But the goods must be capable of being bought or sold in the market. The law also is that goods which are in the crude or unstable form and which require a further processing before they can, be marketed, cannot be considered to be marketable goods merely because they fall within the Schedule to the Excise Act."*

30. In the case of Ladli Construction Company Pvt.Ltd Vs Punjab Police Housing Corporation Ltd and Others, reported in (2012) 5 SCC 609, the Supreme Court observed as under:-

"29. *Except raising the vague and general objections that the arbitrator was biased and had predisposition to decide against the contractor, no materials, much less cogent materials, have been placed by the contractors to show bias of the arbitrator. No sufficient reason appears on record as to why the arbitrator should not have proceeded with the arbitral proceedings. The test of reasonable apprehension of bias in the mind of a reasonable man is not satisfied in the factual situation."*

31. *The law on the point, therefore, is sufficiently clear i.e. for the Department to levy excise duty on the product in question, it would have to establish that the product itself is marketable. It is equally settled that while doing so, the chemical being stable would not be conclusive, but only one of the aspects. In case of Cadila Laboratories Pt. Ltd. (supra), the Supreme Court while accepting that this new product may be stable, refused to uphold the Department's stand that it is marketable without any other evidence on record.*

31. Applying the ratio of the above decision by Hon'ble Gujarat High Court as well in the spirit of all the Apex Court decisions relied upon therein, I find that SSIS system being specifically unique for each railway station in its design, production, installation and commissioning, it cannot be said that the SSIS can be bought and sold in the market or recognized in the commercial parlance as 'SSIS for railway stations'. The various components may be sold after dismantling, but such sale of dismantled parts cannot be construed as sale of SSIS. The Apex Court has held in the case of COLLECTOR OF CENTRAL EXCISE, PATNA vs TATA IRON & STEEL CO. LTD. - 2004 (165) ELT 386 (SC) that *"everything, however, which is sold is not necessarily a marketable commodity as known to commerce and which, it may be worthwhile to trade in."* Therefore, the impugned goods i.e. SSIS installed at Sabarmati Railway station and Chandlodiya Railway station fails the test of marketability and hence can not be treated as goods liable to Central Excise duty.

32. When considering the definition of manufacture under section 2(f) of the CEA, 1944, it is necessary to conjointly apply the test of marketability as appearing in the definition of excisable goods under section 2(d) of CEA, 1944. The significance of relating manufacture with marketability has been very clearly laid down in the Apex Court decision in the case of MOTI LAMINATES PVT.LTD Vs. COLLECTOR OF CENTRAL EXCISE, AHMEDABAD - 1995 (76) ELT 241 (SC) in the following

terms:

6. *The duty of excise is leviable under Entry 84 of List I of the VI Ith Schedule on goods manufactured, or produced. That is why the charge under Section 3 of the Act is on all, 'Excisable goods', 'produced or manufactured'. The expression 'excisable goods' has been defined by clause (d) of Section 2 to mean, 'goods' specified in the Schedule. The scheme in the Schedule is to divide the goods in two broad categories - one, for which rates are mentioned under different entry and other the residuary. By this method all goods are excisable either under the specific or the residuary entry. The word 'goods' has not been defined in the Act. But it has to be understood in the sense it has been used in Entry 84 of the Schedule. That is why Section 3 levies duty on all excisable goods mentioned in the Schedule provided they are produced and manufactured. Therefore, where the goods are specified in the Schedule they are excisable goods but whether such goods can be subjected to duty would depend on whether they were produced' or- manufactured by the person on whom duty is proposed to be levied . The expression 'produced or manufactured' has further been explained by this Court to mean that the goods so produced must satisfy the test of marketability. Consequently it is always open to an assessee to prove that even though the goods in which he was carrying on business were excisable goods being mentioned in the Schedule but they could not be subjected to duty as they were not goods either because they were not produced or manufactured by it or if they had been produced or manufactured they were not marketed or capable of being marketed".*

7. *The duty of excise being on production and manufacture which means bringing out a new commodity, it is implicit that such goods must be useable, moveable, saleable and marketable. The duty is on manufacture or production but the production or manufacture is carried on for taking such goods to the market for sale. The obvious rationale for levying excise duty linking it with production or manufacture is that the goods so produced must be a distinct commodity known as such in common parlance or to the commercial community for purposes of buying and selling. Since the solution that was produced could not be used as such without any further processing or application of heat or pressure, it could not be considered as goods on which any excise duty could be levied.*

33. In view of the above decision, SSIS installed at Sabarmati Railway station and Chandlodiya Railway station by the noticee can be considered as manufactured excisable goods only if these systems can be moved to the market for sale. However, as explained in the above paragraph, SSIS being uniquely specific to the geographical parameters of a particular railways station for which it is designed and installed, the same cannot be considered as goods for sale in the market. Thus applying the ratio of the above cited Apex Court decision also SSIS does not stand the test of manufacture as defined under Section 2(f) of CEA, 1944 and can not be treated as excisable goods under Section 2(d) of CEA, 1944.

34. The noticee have submitted in their defence reply dated 16.10.2013 that they ar registered with Service Tax department as providers. of services such as Erection, commissioning or Installation/ Business Auxiliary services, consulting services, scientific or technical consultant, manpower recruitment agency and management consultant services. The noticee has submitted that they are paying Service Tax under commission and installation services in respect of their impugned activities. In view of the fact that SSIS cannot be treated as excisable goods manufactured by the noticee, the levy of Service Tax on the activities relating to the installation and commissioning of SSIS is correct and legal. Once Service Tax is levied on the impugned activities, the demand for Central Excise duty on the same impugned activities does not survive. I rely on the decision of CESTAT, SZB, Bangalore in the case of OSNAR CHEMICALS PVT.LTD Vs. COMMISSIONER OF CENTRAL EXCISE, BANGALORE-II - 2009 (240) ELT 115 (Tri-Bang) where it was held as follows:

"Further, the point that the appellants pay Service Tax on the process is also very relevant. It is not proper on the Department to levy Service Tax and Excise Duty on the same process simultaneously. Once the appellant pays Service Tax on the said process and the Department has not objected to it, then there is no question of treating the process as amounting to manufacture and levying the same to the Central Excise duty."

35. In the present case also, there seems to be no objection on the part of the department to the fact that the noticee is paying Service Tax on the activities of installation and commissioning of SSIS in respect of their impugned activities. Therefore, the demand for Central Excise duty is not sustainable on this ground also. As demand for Central Excise duty is not sustainable, the demand for interest under Section 11AA of CEA, 1944 is also not legally sustainable. Thus the show cause notice is not sustainable

on merits. As the show cause notice is not sustainable on merits, there is not need to discuss the dispute relating to extended period of demand. Similarly, I find no need to discuss the issues of cum-duty price or revenue neutrality raised by the noticee in their defence submissions.

36. In view of the above discussion and finding, I quash the proceedings initiated against the noticees in the show cause notice F.No.V.85/15-24/OA/2013 dated 20.05.2013.

37. The order No.45/ADC/2013/MRM dated 11.11.2013 passed by the Additional Commissioner, Central Excise, Ahmedabad II was not accepted by the Department and an appeal was filed by the Department before Commissioner(Appeals-II) Central Excise, Ahmedabad. The Commissioner (Appeals-II), Central Excise, Ahmedabad, vide Order-in-Appeal No. AHM-EXCUS-002-APP-200-14-15 dated 20.03.2015/24.03.2015 remanded back the matter to the adjudicating authority. In para 19 of the aforesaid Order-in-Appeal, the Commissioner(Appeals) held that –

“19. In view of facts and discussions mentioned in the preceding pars and since I find the activities undertaken amounts to manufacture, duty is correctly leviable and since the adjudicating authority has set aside the Show Cause Notice, the quantification of correct Central Excise duty is yet to be done and also Service Tax paid or yet to be paid needs to be examined. Since the appellant himself has requested for remanding back the matter, I find it to be a fit case to allow the appeal by way of remand besides setting aside the impugned order for readjudication to quantify the assessable value of manufactured excisable goods, the value of taxable services provided and the value of brought out items i.e. spares, tools etc, if any supplied as such to the Railways as per contracts, so as to arrive correct amount of Central Excise liability, out of the total amount of the contract”.

38. As the matter is pending since long for adjudication, personal hearing was fixed on 06.08.2020 and communication to this effect was sent to the assessee vide this office letter dated 18.06.2020. The assessee, in reply to the said communication, vide their letter dated 01.07.2020 informed that they have filed appeal against the Order-in-Appeal No.AHM-EXCUS-002-APP-200-2014-15 dated 20.03.2015 before CESTAT, Ahmedabad bearing Appeal No.E/11362/2015 and the said appeal is pending for decision.

39. Further, this office vide letter dated 07.10.2020 requested the assessee to provide details for quantification of Central Excise duties as per the direction contained in para 19 of the Commissioner (Appeals) order. Vide letter dated 20.10.2020 the assessee submitted that-

40. The Solid State (Electronic) Interlocking System installed by Ansaldo at Sabarmati Railway Station and Chandlodia Railway Station in Ahmedabad as a part of signalling system of the Indian Railways amounts to manufacture in terms of Section 2(f) of the Central Excise Act, 1944 and whether the same can be considered clearance of Excisable Goods in terms of Section 2(d) of the Central Excise Act, 1944 is to be decided by the CESTAT.

41. The SCN dated 20.05.2013 issued to them demanding Rs.49,60,209/- with interest and penalty on the clearance of Solid (Electronic) Interlocking System during the period May 2010 and July 2010 based on the allegations that they had alleged manufactured and cleared the Solid State (Electronic) Interlocking System worth Rs.4,81,57,363/- at Sabarmati and Chandlodia stations of Ahmedabad without obtaining Central Excise Registration and without payment of Central Excise duty.

42. The demand in the aforesaid SCN dropped by the Additional Commissioner vide OIO No.45/ADC/2013MRM dated 01.11.2013 after observing that the Solid State (Electronic) Interlocking System does not satisfy the test of being marketable goods as it is prepared after taking into consideration of the geographical parameters and field gears at each station. The Additional Commissioner also observed that Ansaldo has already discharged Service Tax on the consideration received after treating the same as Erection, Commissioning and Installation service and once the transaction has already been subjected to Service Tax, there is no question of levying Central Excise duty on the same.

43. The Department had filed appeal before Commissioner(Appeals). The Commissioner (Appeal) vide the subject OIA allowed the appeal by way of setting aside the OIO and remanding the matter to the adjudicating authority and observed in per para 19 of the OIA that the activity undertaken by Ansaldo amounts to manufacture and Excise duty is leviable on the same. Since the adjudicating authority had dropped the demand in the show cause notice, the matters was remanded to quantify the assessable value

of the goods manufactured, the value of taxable services provided and the value of brought out items supplied to the Indian Railways under the contract, to determine the correct amount of Central Excise liability out of the total amount of the contract.

44. Being aggrieved by the OIA, No.AHM-EXCUS-002-APP-14-15 dated 20.03.2015 issued on 24.03.2015, they preferred an appeal before the Hon'ble CESTAT, Ahmedabad vide Appeal No.E/11362/2015 challenging the findings of the Commissioner(A) on the issue whether the activity of installing Solid State (Electronic) Interlocking System amounts to manufacture in terms of Section 2(f) of Central Excise Act, 1944 and whether the same can be considered as excisable goods in terms of Section 2(d) of the Central Excise Act, 1944. The Appeal is pending for hearing before CESTAT, Ahmedabad.

45. They further submitted that since Ansaldo is engaged in similar activity for Indian Railways and other clients across India, demand of Central Excise duty on identical grounds were raised against the company in other jurisdictions outside Ahmedabad also. In the matter of appeal filed against similar demand raised on Ansaldo, the Hon'ble CESTAT New Delhi vide its order reported in Ansaldo STS Transportation Systems India Pvt.Ltd Vs CCE, Indore – 2019(4)TMI 744 CESTAT, New Delhi has held that the Solid State Electronic Interlocking System can not be considered a marketable commodity and the installation of the same at the premises of the Railways can not be considered an activity amounting to manufacture in terms of Central Excise Act, 1944.

46. On identical grounds, demand was also raised on the company in Bangalore which was dropped by the Additional Commissioner of Central Excise, Bangalore – 1 vide OIO No.79/2013 dated 30.09.2013. The Additional Commissioner observed that the activity of installation undertaken by Ansaldo does not satisfy the conditions of marketability and the goods are immovable once assembled at a particular and even if they are removed by dismantling, the same can not be used elsewhere as the design as station-specific. Further, in response to an RTI query filed by their authorised representative it has been informed to them that the said OIO has been accepted in review by the appropriate Committee of the Central Excise department with the remarks "The order appears to be proper and merits acceptance". They submitted a copy of the office note containing review memo in response to the RTI query.

47. In view of the above, they submitted that the issue whether the installation of Solid State (Electronic) Interlocking System at the premise of Railways amounts to manufacture and whether the equipment installed at the premises can be considered as clearance of excisable goods, is settled in favour of the company and the same has been held to be not excisable. The said view stands accepted by the Central Excise Department in their own case by the Bangalore Commissionerate.

48. In view of the Developments cited above, they submitted that the excise of quantifying or determining any Central Excise duty on the activity undertaken by Ansaldo at Sabarmati and Chandlodia railway stations would be premature and a futile exercise, contrary to the findings of Hon'ble CESTAT, New Delhi and Central Excise, Bangalore in their own case. Therefore, they requested that in the interest of justice to keep the matter in abeyance till the disposal of Appeal by CESTAT. They also requested to grant them personal hearing.

Personal Hearing:

49. Accordingly, personal hearings were fixed on 27.01.2021, 08.03.2021 and 22.03.2021. Shri Ishan Bhatt, Advocate appeared for virtual hearing on 24.01.2021 on behalf of M/s. Ansaldo STS Transportation Systems India Pvt.Ltd (now known as Hitachi Ril STS India Pvt.Ltd). He referred to their written submission dated 20.10.2020 and stated that it was the case of the Department in the SCN that the Solid State Electronic Interlocking Systems installed at Sabarmati and Chandlodia Railway Stations as part of the signalling system of Indian Railways amounts to manufacture of excisable goods in terms of Section 2(f) of the Central Excise Act, 1944. The adjudicating authority vide OIO No.45/ADC/2013 MRM dated 01.11.2013 dropped the proceedings on the ground that the Solid State Electronic Interlocking System does not satisfy the test of being marketable goods. However, the Department filed appeal before Commissioner(A) who remanded the case vide order dated 20.03.2015. Against the order of the Commissioner(A), they have filed an appeal before CESTAT, Ahmedabad vide Appeal No.E/11362/2015. He requested to keep the proceedings in abeyance till the disposal of their appeal and stated that in the matter of appeal filed against similar demand raised on them in other jurisdictions outside Ahmedabad, the Hon'ble CESTAT, New Delhi vide order reported at Ansaldo STS Transportation Systems India Pvt.Ltd Vs CCE & ST Indore (2009(4) TMI 744-CESTAT, New Delhi

decided in their favour. He submitted a written submission stating all the above details enclosing copy of CESTAT New Delhi's order, copy of reply received by them against RTI application filed by them at the office of Central Excise, Bangalore in their own case.

50. Subsequently, the assessee submitted a copy of the appeal filed by them before CESTAT, Ahmedabad against the Order-in-Appeal No.AHM-EXCUS-002-APP-200-14-15 dated 2013 stating the grounds of CESTAT New Delhi's order in their own case and also the reply received by them on their RTI application filed at Central Excise, Bangalore on the status of OIO No.79/2013 dated 30.09.2013 and the reply received by them stating that the OIO has been accepted.

Discussion and findings:

51. I have carefully gone through three records of the case, remand back order (OIA No.AHM-EXCUS-002-APP-200-14-15 dated 20.03.2015/24.03.2015) passed by the Commissioner(Appeals) and the original adjudication order. I have also gone through the submission made before by the Advocate during the personal hearing held on 24.03.2021 and the written submission made thereof.

52. I find that in the present case, Show Cause Notice was issued to M/s.Ansaldo STS Transportaion India Pvt.Ltd (presently known as Hitachi Rail STS India Pvt.Ltd) demanding Central Excise duty on the Solid State Interlocking System viz, Electronic Interlocking Signalling System and its classification under Tariff item No.85301010 of Central Excise Tariff Act, 1985 for aggregate amount of Central Excise duty of Rs.49,60,209/-.

53. I find that the original adjudicating authority dropped the proceedings initiated in the Show Cause Notice No.V.85/15-24/OA/2013 dated 20.05.2013 on the ground that SSIS can not be treated as excisable goods manufactured by the notice, the levy of Service Tax on the activity relating to the installation and commissioning of SSIS is correct and legal. Once Service Tax is levied on the impugned activities, demand for Central Excise duty on the same impugned activities does not survive. The adjudicating authority relied the case of CESTAT, SZB, Bangalore in the case of OSNAAR CHEMICAL PVT.LTD Vs. COMMISSIONER OF CENTRAL EXCISE, BANGALORE-II – 2009(240) ELT 115 (Tri-Bang) and dropped the proceedings initiated in the aforesaid SCN.

54. The Department had not accepted the order passed by the Additional Commissioner, Central Excise, Ahmedabad and filed Appeal before Commissioner (Appeals), Ahmedabad. The Commissioner (A) vide OIA No. AHM – EXCUS – 002 – APP – 200 – 14 – 15 dated 20.03.2015/24.03.2015 remanded the case for fresh adjudication to quantify the assessable value of the manufactured excisable goods, the value of taxable services provided and the value of bought out items i.e. spares, tools, etc, if any supplied on such to the Railways as per Contracts so as to arrive correct amount of Central Excise Duty liability, out of the total amount of the Contract. The Commissioner (A) held "that the activities undertaken by the assessee amounts to manufacture, duty is correctly leviable and since the adjudicating authority has set aside the SCN, the quantification of correct Central Excise duty is yet to be done and also Service Tax paid of yet to be paid needs to be examined. Since the Appellant (Department) has requested for remanding back the matter, I find it a fit case to allow the appeal by way of remand".

55. Since the entire data was not available with this office, this office had requested the assessee to provide the details such as assessable value of Excisable goods, value of service provided and also value of brought out items. But they have not submitted the details instead submitted that in their own case, on similar show cause notices issued outside Ahmedabad such as Bangalore and Indore, the decisions were in their favour and doing fresh quantification of Central Excise duty would be a futile exercise. They stated that in the matter of appeal filed against similar demand raised on them, the Hon'ble Tribunal, New Delhi vide order reported in Ansaldo STS Transportation Systems India Pvt.Ltd Vs CCE & ST, Indore – 2009(4)TMI-CESTAT, New Delhi, ruled in their favour. Further, vide OIO No.79/2013 dated 30.09.2013, the Additional Commissioner, Central Excise, Bangalore, dropped the SCN on similar matter. In both the cases, it was held that the assessee has not undertaken manufacturing activity and no Central Excise duty can be demanded on it. They also submitted copy of the CESTAT order No. 50394/2019 in Appeal No.E/54051/2014-DB dated 09.01.2019 passed by the CESTAT, New Delhi. They also produced copy of the OIO passed by the Additional Commissioner, Central Excise, Bangalore wherein the proceedings have been dropped against them on similar issues. They also stated the aforesaid order of the Additional Commissioner has been accepted by the Department and produced copy of RTI reply received by them as evidence of acceptance. They also stated that aggrieved with the order of the

Commissioner(A), Ahmedabad, they filed appeal before CESTAT, Ahmedabad vide Appeal No.E/11362/2015.

56. On going through the Cestat order No.50394/2019 dated 09.01.2019 in Appeal No.E/54051/2014-DB, relied by the assessee, I find that the Hon'ble CESTAT, New Delhi in the case of Ansaldo STS Transportation Systems India Pvt Ltd Vs CCE & ST, Indore, on similar issues, it was held that –

“ it is an apparent fact on record that all the articles as were required by the appellant to be assembled while installing erecting or commissioning the impugned electronic interlocking signalling system were installing erecting or commissioning the impugned electronic interlocking system were purchased from the various suppliers against payment of Sales Tax/VAT. The activity done by the appellant was believed by them to be that of installation, erection and commissioning and requisite service tax had been deposited by them. There is no denial by the Department on this fact as well. From the above discussion, it has already been held that no case of levy of excise duty in the given circumstances at all arises, the activity of appellant only being in the nature of service of installation and commissioning. Resultantly, there remains no question of any evasion of duty, question of malafide intent to evade the same does not at all arises”.

57. Further, in para 13 of the aforesaid CESTAT order states that –

“13. From the contract on record also, we observe that all the articles used while assembling the electronic signaling system were initially purchased from the various suppliers and were finally installed into the shape of EIS in the premises of railways. To our opinion, nothing more than the service of installation and commissioning that has been rendered by the appellant as above. Above all, there has been a Board's Circular No.58/1/2002-CX dated 15.01.2002 regarding the excisability of plant and machinery assembled at the site after considering the several decisions of Hon'ble Apex Court, as quoted in the said circular. It was clarified that where the change of identity takes place in the course of erection of a structure which is an immovable property, then there would be no manufacture of goods involved and no levy of excise duty. It has also been clarified in the said circular that if any good installed at site are capable of being sold or shifted as such after removal from the base and without dismantling into its components, the goods would be considered to be moveable and thus excisable, else not. As already discussed above should EIS herein once dismantled will not have the character of EIS any more rather will be segregated into all the modules (as above) all were assembled while installing, erecting or commissioning the said EIS. Thus, from the department circular also, it stands clear that the EIS herein do not qualify any of the criteria i.e. either manufacture or marketability to the leviable to excise. Above all, the department itself in applicant's own case, however, the Commissionerate Bangalore, vide Order-in-Appeal No.143-144 dated 18.04.2017 has set aside the similar demand while impressing upon the aforesaid circular itself. We accordingly are of the confirmed view that the demand confirmed vide the order under challenge is absolutely not sustainable for the reasons as discussed above”.

58. The issue involved, facts and circumstances of the cases cited CESTAT Order No.50394/2019 dated 09.01.2019 passed by the Division Bench, New Delhi, in Appeal No.E/5406/2014-DB in the case of M/s.Ansaldo STS Transportation India Pvt.Ltd Vs CCE & E, Indore and the OIO No.79/2013 dated 30.09.2013 passed by the Additional Commissioner, Central Excise, Bangalore, are similar to the present case. Therefore, I find that the same are applicable to the present case. In both cases, the orders were passed in favour of the assessee. M/s.Ansaldo also produced copies of RTI replies received by them wherein it has been stated that the aforesaid OIO has been accepted by the Department.

59. From the records available, I find that the initial investigation was conducted by the Central Excise authorities at Bangalore and the present case was booked during further investigation by this Commissionerate. Also, I find that other than Ahmedabad, cases were also booked against the assessee in Karnataka and Madhya Pradesh to recover Central Excise duty on the Solid State Interlocking System installed at various Railway Stations and in all the cases, proceedings have been dropped against by them on the ground that the SSIS installed at various Railway Stations can not be treated as manufacturing. Further, it is also true that the assessee has fulfilled their Service Tax liability treating the installation of SSIS as 'service' under Installation & Commissioning. Under the circumstances, demanding Central Excise duty again on the same is not justified.

60. Further, I find that the previous adjudicating authority has looked into all aspects of the case and arrived at a conclusion that – “the Design, manufacture, supply, installation and commissioning of Solid

State (Electronic) Interlocking system is subject to the geographical position of various field gear involved in stations to operate the traffic movement. Therefore, the removal and installation of an SSIS from one railway station to another railway station is practically feasible only if the geographical parameters involved in the installation process are identical. This means that for the SSIS system to be removed safely from one railway station and to be installed at another railway station, the location of the relay room, the place where the control panel is installed and the places where various ground gear equipments are installed must be identically situated all these locations must be at equal distance from each other at both the railway stations. For instance, if the SSIS installed at Sabarmati Railway station has to be removed and installed at Chandlodia railway station, the geographical parameters of both the stations have to be identical as explained above. The railway stations located at various places are not identical in its geographical parameters and hence the SSIS for each station is designed, manufactured, supplied as well as installed and commissioned exclusively for each railway station in accordance with the geographical parameters of that particular railway station. Therefore, it can not be said that SSIS is a commodity distinctly recognizable and saleable in the market. It is not a standardized item or goods known and generally dealt with in the market. In other words, SSIS fails the test of marketability which is a pre-requisite for the levy of Central Excise duty. The fact that SSIS has been sought to be classified under Chapter 85 heading 8530 10 10 of Central Excise Tariff Act, 1985 in the show cause notice has to be supported by evidence regarding marketability of the product in order to make it exigible to Central Excise duty. I rely on the decision of Hon'ble High Court of Gujarat in the case of LUPIN LIMITED Vs UNION OF INDIA – 2013(293)ELT 354 (Guj), where relying on various Apex Court decisions, it has been ruled that for the Department to levy Excise duty on the products in question, it would have to be established that the product itself is marketable. The relevant portion of this citation, squarely applicable to the facts of the present case.

61. The earlier adjudicating authority also held that considering the definition of manufacture under Section 2(f) of the Central Excise Act, 1944, it is necessary to conjointly apply the test of marketability as appearing in the definition of excisable goods under Section 2(d) of the Central Excise Act, 1944. He also relied the case of MOTI LAMINATES PVT.LTD Vs COLLECTOR OF CENTRAL EXCISE, AHMEDABAD – 1995(76)ELT 241 (SC). On the above ground, the adjudicating authority has dropped the proceedings.

62. I find that basically, the role of the assessee is that after getting contract from the Indian Railways for the supply of electronic interlocking system, they purchased required components from various vendors and after conducting tests for the logic of the microlok system, transferred the goods to the place of installation. Based on the contract, they procured the components for use in the assembling of electronic interlocking system from suppliers on payment of applicable Excise duty and sales tax and sold the components to the railways. As per the requirement of the railways, they drew components so sold from the Railway warehouse after furnishing indemnity bond and utilized the components in the assembly of the interlocking system. The assessee sold the components separately and undertook the assembly of the components as a service and upon installation of the system, no marketable goods with a distinct name, character, and usage emerges. As there is no marketability of the goods, this can not be termed as manufactured goods and in my view, will not attract Central Excise duty. I also find that once the system is installed, it will become an immovable property and other than railways, no one can be used it. Further, at the time of acquiring the components/parts, applicable Central Excise duty/sales tax have been paid by them.

63. It is also observed that the Department has not alleged any objection to the payment of Service Tax on the above activity by the assessee. In the case of OSNAR CHEMICAL PVT.LTD vs COMMISSIONER OF CENTRAL EXCISE, BANGALORE-II reported in 2009(240) ELT 115 (Tri-Bang), the Hon'ble Tribunal has held that "it is not proper for the department to levy Service Tax and Central Excise duty on the same process simultaneously. Once the appellant pays Service Tax on the said process and the Department has not objected to it, then, there is no question of treating the process as amounting to manufacture and levying the same to the Central Excise duty".

64. I find that besides the original adjudicating authority, in the case of the same assessee, the following authorities have found that Central Excise duty can not be levied on the Solid State Interlocking System or Electrical Signal Device assembled with various components/parts at Railway Stations by the assessee.

1. Commissioner(Appeals) Central Excise, Bangalore – OIA No.143-144/2017-CE AU-1 dated 18.04.2017.
2. Additional Commissioner, Central Excise, Bangalore-1, OIO No.79/2013 dated 30.09.2013.
3. Additional Commissioner, Central Excise, Mysore, OIO No.11/2014/MYS/CE/ADC dated 15.07.2014.
4. Cestat, New Delhi – 2019 (4) TMI 744.

65. In the case of OIO No.79/2013 dated 30.09.2013 passed by the Additional Commissioner, Central Excise, Bangalore-1 (South Commissionerate), vide this office letter F.No.V.85/15-24/OA/2013 dated 07.06.2021 to the Deputy/Assistant Commissioner of Central Excise, Bangalore (South), the status of the said OIO was ascertained and the Assistant Commissioner (Review), Central Tax Commissionerate, Bangalore, vide his letter dated 23.06.2021 has informed that the said Order-in-original was accepted and no appeal has been filed.

66. In view of the above facts and circumstances discussed hereinabove, I hold that in the present case, no Central Excise duty can be demanded on the Electronic Signaling System or Solid State Electronic Interlocking System which is assembled at the site of Railways and used for Signaling System for the Indian Railways. Therefore, the show cause notice is not maintainable in law and accordingly the proceedings initiated against the assessee in the aforesaid show cause notice is liable to be dropped. Accordingly, I pass the following orders:-

ORDER

I drop the proceedings initiated against the assessee vide show cause notice No. V.85/15-24/OA/2013 dated 20.05.2013.



dc
(Manoj Tripathi)
Joint Commissioner,
Central Excise & CGST, Ahmedabad North.

F.No.V.85/15-24/OA/2013

29.06.2021.

By Regd. Post A.D

To

- 1) M/s. Ansaldo STS Transportation Systems India Pvt.Ltd
(now known as Hitachi Rail STS India Pvt. Ltd)
Sabarmati Railway Station/Chandlodia Railway Station
Ahmedabad.
- 2) M/s. Ansaldo STS Transportation Systems India Pvt.Ltd,
(now known as Hitachi Rail STS India Pvt. Ltd)
SLV Complex, AVS Compound, #35, 80 Feet Road,
4th Block, Koramangala, Bangaluru 560 034

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Assistant Commissioner (Preventive), CGST & Central Excise, Ahmedabad North.
3. The Deputy/Assistant Commissioner, Division-V, CGST & Central Excise, Ahmedabad North.
4. The Superintendent of Central Excise, AR-IV, Division-V, CGST & Central Excise, Ahmedabad North
5. Guard file.

11/07/2021

