आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

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निवन्धित पावती डाक द्वरा/By R.P.A.D DIN-20240164WT000000E978
फा.सं./F.No. V.22/15-14/OA/2019-Denovo आदेश की तारीख़/Date of Order: - 02.01.2024
जारी करने की तारीख़/Date of Issue :- 02.01.2024

द्वारा पारित/Passed by:- **लोकेश डामोर / *Lokesh Damor***
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No.59-62 /ADC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

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

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

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

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

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

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

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. V.22/15-43/OA/2015 dated 28.04.2015, No.V/16-19/DEM/Sheelpe/16-17 dated 04.04.2017, No.V/16-19/DEM/Sheelpe/16-17 dated 11.04.2017 and No.V/16-11/Sheelpe Ent/Dem/18-19 dated 24.10.2018 issued to M/s Sheelpe Enterprises Pvt. Ltd.(Earlier M/s. Sheelpe Enterprises), Survey No.316, CSD Depot Road, Off Airport Road, Hansol, Ahmedabad-382475.

BRIEF FACTS OF THE CASE

M/s Sheelpe Enterprises Pvt. Ltd. (earlier M/s. Sheelpe Enterprise), Survey No. 316, C S D Depot Road, Off Airport Road, Hansol, Ahmedabad – 382 475 (herein after referred as the "said assessee") is engaged in the manufacture of "AAVA" Brand "Mineral Water" falling under Tariff Item No. 2201 1010 of the First Schedule to the Central Excise Tariff Act, 1985 and hold Excise Control Code No.AAMCS 3376C EM001. The said assessee was also availing facility of Cenvat credit under Cenvat Credit Rules, 2004.

2.1 Audit of records maintained by the said assessee was carried out by the officers of Central Excise, Audit Section, Ahmedabad – II. Audit Team, in agreement with the assessee, visited the unit of said assessee on 17.07.2014, wherein it was *inter-alia* observed that the said assessee had cleared their finished goods after paying duty from their factory at Hansol (Ahmedabad) to their Mumbai Branch in the name of branch transfer and then final sales was done through their branch at Sheelpe Enterprises Pvt. Ltd. (Mumbai Branch). In this respect, the said assessee was asked to explain the whole sales process in detail along with related documents. Also, they were asked to give month wise details of total branch transfer, which includes product name, quantity, rate, total assessable value at which cleared from the factory and the rate and assessable value at which the same product cleared from their Mumbai Branch. The said assessee was also asked to furnish relevant documents pertaining to the said audit observation. However, the said assessee submitted some documents and sought time of few days for submitting rest of documents, since the period covered was from 2010 onwards. When the documents were not received even after lapse of 13 days, a query memo dated 30.07.2014 was issued to the said assessee and delivered to them through speed post and e-mail on e-mail id shiroymehta@gmail.com.

2.2. As the audit of the unit was not over due to non-availability/non-furnishing of documents /details, the unit was visited again by Audit Team on 20.08.2014. The assessee was requested to furnish the documents/details pertaining to the above said query memo. The assessee made oral submission that their sale was from factory and not from their Mumbai Branch and refused to provide worksheet asked for in the query memo.

2.3 On scrutiny of sample copies of invoices furnished by the said assessee, it appeared that the assessee first issues invoices in the name of M/s. Sheelpe Enterprise Pvt. Ltd. (Mumbai Branch) from their factory i.e. Sheelpe Enterprise Pvt. Ltd. (Hansol) and after transferring the product at their Mumbai Branch, they finally issue the invoice in the name of their customers as and when the sale of the products took place. In view of the said procedure followed by the said assessee, the submission made by the said assessee in respect of audit observation was not found tenable. Details of some invoices that the audit team obtained from the assessee are given below:-

Invoice from M/s. Sheelpe (Hansol) to M/s Sheelpe (Mumbai)				Invoice from M/s. Sheelpe (Mumbai) to their customers			
Date	Invoice No.	Product Details	Price per Unit (Rs.)	Date	Invoice No.	Product Details	Price Per Unit (Rs.)
21.08.10	668/10-11	200 ml.	1.9	22.08.10	3/10-11	200 ml	4.5

		1 Ltr	4.6				
03.04.11	6/11-12	200 ml.	1.9	1.04.11	06/11-12	200 ml	3.9
		1 Ltr	4.6				
2.04.12	4/12-13	500 ml	2.71	02.04.12	03/12-13	200 ml	4.15
		1 ltr	4.6	02.04.12	03/12-13	1 ltr	9.1
01.4.13	4/13-14	200 ml	1.9	1.04.13	1/13-14	200 ml	4.2
		1 ltr	4.6			1 ltr	10.65
				02.04.13	5/13-14	200 ml	4.15
						500 ml	8
						1 ltr	12.48
1.04.14	4/14-15	500 ml	2.71	1.04.14	1/14-15	200 ml	3.88
		1 ltr	4.60				

The above details were only illustrative and not exhaustive. It was also not known whether the invoices shown to have been issued from Mumbai Branch as mentioned in the above table are corresponding invoices of the invoices issued from Hansol factory. Therefore, the exact details of the invoices issued by Hansol Factory, quantity, rate, etc. vis-à-vis the corresponding invoices shown to have been issued by Mumbai branch quantity, rate, etc. were asked for from the assessee, which the assessee failed to produce. From the above table, it appeared that 200 ml. bottle was cleared from Hansol factory @ Rs.1.90 per bottle on payment of duty. However, the said bottle was sold to customers @ Rs.4.50 per bottle. Similarly, from the above table, it appeared that 500 ml bottle was cleared from Hansol factory @ Rs.2.71 per bottle on payment of duty. However, the said bottle was sold to customers @ Rs.8.00 per bottle. 1 Ltr bottle was cleared from Hansol factory @ Rs.4.6 per bottle on payment of duty, however, the said bottle was sold to customers @ Rs.10.65 per bottle.

2.4. The said assessee provided following data regarding sale of their final product:-

Sr. No.	Financial Year	Ahmedabad to Branch Sale (Rs.)	Mumbai Branch Sale (Rs.)	Difference in Sales (Rs.)
1	2010-11	3155746	5668309	2512563
2	2011-12	5976178	10513520	4537342
3	2012-13	8271523	14926087	6654564
4	2013-14	17111296	28922552	11811256

It appeared that the aforesaid data/details provided by the assessee are in respect of clearance of finished goods, after payment of duty on the value under Section 4 of CEA, 1944, from Ahmedabad (Hansol) factory to Mumbai Branch from where final sales was done to their institutional buyers/customers.

3.1. Subsequently, Range Office, vide letter F.No.AR.IV/Sheelpe/Audit /2014-15 dated 03.03.2015 addressed to the said assessee, after referring to the observation raised by the audit, brought to their attention that they had submitted Financial Year wise figures of 'Ahmedabad to Branch Sales', Mumbai Branch Sales' and 'Excluding Sales Tax Branch Sales' for the year 2010-11,

2011-12, 2012-13 and 2013-14. The said assessee was therefore requested to submit month wise details of total branch transfer, which includes product name, quantity, rate, total assessable value at which cleared from the factory and the rate and assessable value at which the same product was cleared from their Mumbai Branch for the period from April–2010 to December–2014.

3.2 The said assessee, vide their letter dated 12.03.2015 submitted that in respect of the above point, they had already replied vide their letter dated 08.09.2014, and enclosed a copy of said letter dated 08.09.2014, addressed to the Superintendent, AR-IV, Central Excise, Commissionerate, Ahmedabad–II. In the said letter dated 08.09.2014, the said assessee submitted that they cleared the goods from the factory at Ahmedabad on payment of appropriate duties and sent it to their makeshift transit godown at Mumbai; that the storage done at the Mumbai makeshift transit godown, is only temporary, and only to ensure swift and timely supply of their water bottles, to their customers at Mumbai; that the rate on which duty was paid, was fixed in the beginning of the contract with the customer and the same remains till the same was revised; that after clearance from the factory, the rate or the value of the water bottles remains the same and in no way the value changes; that since the duty was paid on the value at the factory gate, the cost of transportation and other miscellaneous expenses incurred, was not includible in the assessable value; that their customer, was in no way bothered, whether they supply it to them from Ahmedabad or from their Mumbai makeshift transit godown; that even though they were supplying the goods to their customers, at their place, the rate agreed upon with them was only at the factory gate on which duty was paid; that it was only their own arrangement, to temporarily store it at the makeshift godown at Mumbai, to ensure quicker delivery to their customers.

3.3 As the information / details sought for vide Range Office letter dated 03.03.2015 had not been submitted, Range Office, vide letter dated 12.03.2015 addressed to the said assessee, once again requested the said assessee to submit the required information / details at the earliest. However, the information / details sought for vide Range Office letter dated 03.03.2015 was not submitted by the said assessee.

4.1 As per Section 2(h) of Central Excise Act, 1944 (CEA, 1944), "sale" means any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration. It, therefore appeared that the sale of said assessee was from Mumbai (Branch) and not from factory (Hansol, Ahmedabad), when they were transferring their finished goods to their Mumbai Branch.

4.2 Section 4 of CEA, 1944, provides that –

SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise.
(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -
(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of

the goods are not related and the price is the sole consideration for the sale, be the transaction value;
(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

In this case, since the factory gate cannot be considered as the place where the sale took place, transaction value as indicated by the assessee cannot be accepted.

4.3 Rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (herein after referred to as "Valuation Rules, 2000") provides that –

RULE 7.Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

4.4 It, therefore, appeared that as per Section 4 of CEA, 1944 read with Rule 7 of Valuation Rules, 2000, the value for the purpose of Central Excise Duty in case of clearance of finished goods from the factory premises of the said assessee (Hansol, Ahmedabad) to Mumbai Branch needs to be taken as the value of finished goods cleared from Mumbai Branch to independent buyers.

5.1 As aforesaid, the assessee, in spite of repeated efforts made by Audit officers as well as Range Officers intentionally avoided submitting the requisite data for ascertaining the correct transaction value of the goods sold by them from their Mumbai branch. In absence of the said data the exact central excise duty short paid by them during the relevant period could not be calculated. The said assessee had submitted Financial Year wise figures of 'Ahmedabad to Branch Sales', Mumbai Branch Sales' and 'Excluding Sales Tax Branch Sales' for the year 2010-11, 2011-12, 2012-13 and 2013-14. Though, the said assessee was repeatedly requested to submit month wise details of total branch transfer, which include product name, quantity, rate, total assessable value at which cleared from the factory and the rate and assessable value at which the same product cleared from their Mumbai Branch for the period from April – 2010 to December – 2014, the said assessee didn't submit the required details. Therefore, considering the time constraint and failure of the assessee in furnishing the required details, based on the Financial Year wise figures of 'Ahmedabad to Branch Sales', Mumbai Branch Sales' and 'Excluding Sales Tax Branch Sales' for the year 2010-11, 2011-12, 2012-13 and 2013-14 submitted by the said assessee, Annexure – A to show cause notice was prepared showing differential assessable value and short payment of Central Excise Duty, Education Cess and Secondary & Higher Education Cess made by the said assessee. Based on the differential assessable value, the differential duty required to be paid in terms of Section 4 of CEA, 1944 read with Rule 7 of Valuation Rules, 2000 was worked out, which amounted to Rs. 30,08,516/-.

5.2 As regards the contentions of the assessee in their letter dated 12.03.2015 / 08.09.2014, the same appeared to be baseless and untrue in light of the fact that while stock transfer invoices indicated a certain price, they had raised invoices showing higher value for sale effected from their Mumbai branch and that in terms of the statutory provisions as mentioned above, the said assessee was required to pay central excise duty at the factory gate on the basis of sale price at the depot end, prevailing on or nearest to the date of clearance, in terms of Rule 7 of Valuation Rules.

6. From the above discussion, it appeared that the said assessee had contravened the following provisions of CEA, 1944 and Rules framed there under:-

(i) Section 4(1)(b) of the CEA, 1944 read with Rule 7 of Valuation Rules, 2000, in as much as they failed to correctly arrive at transaction value for the clearance of their final product to their Mumbai Branch from where the finished goods were sold to their independent buyers;

(ii) Rule 6 of Central Excise Rules, 2002 inasmuch as they have failed to determine the duty liability and assess the duty on the said finished excisable goods manufactured and cleared;

(iii) Rule 4 and Rule 8 of Central Excise Rules, 2002 in as much as they had failed to pay the appropriate Central Excise Duty on the finished excisable goods and in a manner prescribed.

(iv) Rule 11 of the CER, 2002 in as much as they failed to show correct value for the clearance of their final product to their Mumbai Branch, the invoices raised.

7. All the above omissions and commission on the part of the said assessee appeared to have been committed with a willful intent to mis-state the value of goods and in turn evade payment of Central Excise duty. The fact that the said assessee had been clearing their finished excisable goods to their Mumbai Branch from where the finished goods were sold to independent buyers has never been disclosed to the department in any manner and the same came to the knowledge of the department only during the course of Audit of the records of the said assessee. With the introduction of self-removal procedure and self assessment of excise duty, a higher responsibility was cast on the assessee to comply with all the requirements prescribed under the statue. The department cannot, nor were they expected to, find out on their own in all cases what each assessee was doing and whether discharging the correct duty liability. Had the audit of the records of the said assessee not done, the said facts of short payment of duty by way of undervaluation could not be unearthed. It further appeared that the said assessee with an intention to evade payment of duty by way of suppression of facts did not provide details of sales made from Mumbai Branch despite repeated correspondence made by the Range Office when inquiry was made in wake of the said assessee' refusal to furnish the details before the audit officers during the course of audit of their records. Thus, it appeared that the requisite ingredients of both erstwhile and new Section 11A are present in this case to validate invoking of larger period for recovery of central excise duty short paid by the said assessee. Thus, the Central Excise duty of Rs. 30,08,516/- (Central Excise Duty Rs. 29,20,889/- + Education Cess Rs. 58,418/- + Secondary & Higher Education Cess Rs.29,209/- as shown in

Annexure – A to the show cause notice) short paid by the said assessee was required to be recovered from the said assessee under Section 11A(5) [erstwhile proviso to Section 11A(1)] of CEA, 1944. The said assessee was also liable to pay interest under Section 11AA (erstwhile Section 11AB) of CEA, 1944, as applicable during the material period.

8. All the aforesaid acts of contraventions on the part of the assessee appeared to constitute offences of the nature and type as described under Rule 25(1) of CER, 2002. Therefore, the goods cleared in contravention of the provisions of CEA, 1944 and rules framed there under, as discussed above appeared to be liable for confiscation under Rule 25 of CER, 2002, however, the goods were not available for confiscation. Further, the said assessee had suppressed the facts from the Department with intent to evade the payment of Central Excise Duty. Thus, the aforesaid acts of omission and commission on the part of the said assessee appeared to have rendered them liable for penalty under Section 11AC of CEA, 1944 read with Rule 25 of CER, 2002.

9. Therefore, SCN bearing F.No.V.22/15-43/OA/2015 dated 28.04.2015 was issued to M/s. Sheelpe Enterprises Pvt. Ltd. (earlier M/s. Sheelpe Enterprise), Survey No. 316, C S D Depot Road, Off Airport Road, Hansol, Ahmedabad – 382 475 to show cause to the Additional Commissioner of Central Excise, Ahmedabad – II having his office at 1st Floor, Custom House, Navrangpura, Ahmedabad – 380 009 as to why:-

(i) The assessable value of finished goods declared by the said assessee in their invoices for clearance of finished goods from their factory premises (Hansol, Ahmedabad) to Mumbai Branch should not be rejected and the assessable value of the said finished excisable goods should not be determined under the provisions of Section 4(1)(b) of CEA, 1944 read with provisions of Rule 7 of Valuation Rules, 2000.

(ii) Central Excise Duty amounting to Rs.30,08,516/- (Rupees Thirty Lakh Eight Thousand Five Hundred Sixteen Only) as detailed in Annexure – A to this show cause notice, should not be demanded and recovered from them under Section 11A(5) [erstwhile proviso to Section 11A(1)] of Central Excise Act, 1944.

(iii) Interest under Section 11AA (erstwhile Section 11AB) of Central Excise Act, 1944, as applicable during relevant period, should not be charged and recovered from them on the above said amount of short paid Central Excise duty.

(iv) Penalty under Section 11AC of the Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 should not be imposed upon them.

(v) The goods cleared by them by short payment of central excise duty by resorting to undervaluation as discussed in foregoing para should not be held liable for confiscation in terms of provisions of Rule 25 ibid.

10. The said show cause notice bearing F.No.V.22/15-43/OA/2015 dated 28.04.2015 was adjudicated vide OIO No.22/JC/2016/GCJ dated

14.10.2016. The adjudicating authority vide above mentioned OIO :

i. Rejected the assessable value of finished goods declared by the assessee in their invoices for clearance of finished goods from their factory premises (Hansol, Ahmedabad) to Mumbai Branch and the assessable value of the said finished excisable goods is determined under the provisions of Section 4(1)(b) of CEA, 1944 read with provisions of Rule 7 of Valuation Rules, 2000

ii. In terms of Section 11A (10) of Central Excise Act, 1944, confirmed the demand of Rs.30,08,516/- [Rupees Thirty Lakhs Eight Thousands Five Hundred and Sixteen Only] under Section 11A(4) and erstwhile section 11A(5) of the Central Excise Act, 1944, as applicable to the relevant period;

iii. Ordered to recover the interest as applicable to be paid by the assessee under Section 11AB/11AA of Central Excise Act, 1944

iv. a.) Imposed penalty of Rs. 2,58,794/- (Rupees Two Lakhs Fifty Eight Thousands Seven Hundred Ninety four only) pertaining to period prior to 08.04.2011 under erstwhile Section 11AC of Central Excise Act, 1944.

b) Imposed penalty of Rs. 13,74,861/- (Rupees Thirteen Lakhs Seventy Four Thousands Eight Hundred Sixty One only) pertaining to period after 08.04.2011 under erstwhile Section 11AC(1)(b) of Central Excise Act, 1944.

c) In terms of Section 11AC(1)(e), the penalty imposed herein shall be reduced to 25% of duty determined, if duty, Interest and penalty is paid within 30 days from the date of communication of this order.

11. Being aggrieved by the above mentioned OIO No.22/JC/2016/GCJ dated 14.10.2016, the said noticee filed appeal before the Commissioner (Appeals), Central Tax, Ahmedabad. The Commissioner (Appeals) vide OIA No.AHM-EXCUS-002-APP-173-17-18 dated 21.11.2017 allowed the appeal by way of remand to enable the appellant to furnish all the required facts and figures to the department as requisitioned and to provide all the evidences it wishes to rely on in order to enable proper appreciation of its claim and contentions. The adjudicating authority may issue a reasoned order after providing the appellant sufficient opportunity to present its case, as provided in law.

12. Accordingly, the adjudicating authority vide OIO No.23/ADC/2020-21/MSC dated 22.10.2020 dropped the proceedings initiated vide show cause notice bearing F.No.V.22/15-43/OA/2015 dated 28.04.2015.

13. Being aggrieved by the above mentioned OIO No.23/ADC/2020-21/MSC dated 22.10.2020, the Department filed an appeal before the Commissioner (Appeals), Central Tax, Ahmedabad. The Commissioner (Appeals) vide OIA No.AHM-EXCUS-002-APP-45/2021-22 dated 30.11.2021 set aside the impugned order passed by the adjudicating authority and remanded back the matter to the adjudicating authority to decide it afresh after carrying out due verification of the facts and figures with the documentary evidences and examine all the relevant aspects and to arrive at the correct valuation, and if required, re-work the demand of duty, interest and penalty within four corners of SCN the

following the principles of natural justice. Accordingly, the appeal filed by the department was allowed.

15. It is observed that on the similar issue, the following three show cause notices have also been issued by the Assstt.Commissioner, C.EX., Div-I, Ahmedabad North to the said assessee for the subsequent periods. The details are as follows :-

Sr. No.	SCN No.	SCN Date	Issued by	Central Excise demand (Rs.)	Period
1	V/16-19/Dem/Sheelpe/16-17	04.04.17	AC, Div-I, A'bad-II	2840243	2014-15
2	V/16-19/Dem/Sheelpe/16-17	11.04.17	AC, Div-I, A'bad-II	4324450	2015-16 to Sept-16
3	V/16-11/Sheelpe Ent/Dem/18-19	24.10.18	AC, Div-I, A'bad North	2168262	Oct-16 to June-17

16. In view of the above, I proceed to adjudicate all the four SCNs together in view of Para 11.5 of Master Circular dated 10.03.2017 wherein it is stated that in case different SCNs have been issued on the same issue to the same assessee answerable to different adjudicating authorities, SCNs involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty. Further, in view of the directions of the Commissioner (Appeals), Central GST, Ahmedabad, the matter is being taken up for adjudication to decide the issue afresh ensuring principle of natural justice.

DEFENCE REPLY

17. The assessee submitted a written submission dated 07.03.2023, 21.03.2023, 12.09.2023, 07.12.2023 and 16.12.2023 to the above show cause notices. In their said submission they invited attention to the OIA No.AHM-EXCUS-002-APP-45/2021-22 dated 30.11.2021 wherein OIO No. 23/ADC/2020-21/MSC dated 22.10.2020 has been remanded for re-adjudication of SCN No. V.22/15-43/OA/2015 dated 28.04.2015. They further submitted that three other SCNs, on the identical issue has been issued but for subsequent period i.e. from 2014-15 till June-17. For all the SCNs a common reply was submitted by the assessee.

17.1. They submitted that they are engaged in the manufacture of "AAVA" Brand "Mineral Water" falling under Tariff Item No. 2201 1010 of the First Schedule to the Central Excise Tariff Act, 1985 and hold Excise Control Code No. AAMCS 3376C EM001. The adjudicating authority had given detailed finding from para 17 to 34 of the impugned OIO No.23/ADC/2020-21/MSC dated 22-10-2020, which was based on facts and after detailed verification of the records presented before him, and also the case laws relied upon. They reiterated

the same and prayed that the same may kindly be considered while deciding the re-adjudication of the same SCN.

17.2 During the course of audit of the records of the assessee, by the officers of Central Excise, Audit Section, Ahmedabad — II, on 17.07.2014, it was observed that the assessee were clearing their finished goods i.e. packaged drinking water in pet bottles, after paying duty from their factory at Hansol (Ahmedabad) to their Mumbai Branch in the name of branch transfer and then final sales was done through their branch at M/s. Sheelpe Enterprises Pvt. Ltd. (Mumbai Branch). In this respect, the assessees were asked to explain the whole sales process in detail along with related documents. Also, they were asked to give month wise details of total branch transfer, which includes product name, quantity, rate, total assessable value at which cleared from the factory and the rate and assessable value at which the same product cleared from their Mumbai Branch. The assessee had submitted that their sale was from factory and not from their Mumbai Branch but only the delivery was done from the Mumbai godown.

17.3 The assessee submitted that they had submitted vide letter dated 8-9-2014 and 12-3-2015, Financial Year wise figures of 'Ahmedabad to Branch Sales', Mumbai Branch Sales' and 'Excluding Sales Tax Branch Sales' for the year 2010-11, 2011-12, 2012-13 and 2013-14. Now they are further submitting the details of reconciliation worksheets and CA Certificate for the subsequent period 2014-15, 2015-16, 2016-17 (April to Sept-2016), Oct-2016 to June-2017. Of the clearances made from the factory at Ahmedabad on payment of appropriate duties and to their makeshift transit godown at Mumbai. It was submitted that the storage done at the Mumbai makeshift transit godown, was only temporary, and only to ensure swift and timely supply of their water bottles, to their customers at Mumbai.

17.4 They submitted that the rate on which duty was paid, was fixed in the beginning of the contract with the customer and the same remained till the same was revised. After clearance from the factory, the rate or the value of the water bottles remains the same and in no way the value changes. The duty was paid on the value at the factory gate, the cost of transportation and other miscellaneous expenses incurred, was not includible in the assessable value. The customer, was in no way bothered, whether they supply it to them from Ahmedabad or from their Mumbai makeshift transit godown. They submitted that even though they were supplying the goods to their customers, at their place, the rate agreed upon with them was only at the factory gate on which duty was paid. It was only their own arrangement, to temporarily store it at the makeshift godown at Mumbai, to ensure quicker delivery to their customers.

17.5 They further submitted they had time and again informed the central excise officers that their packaged drinking water bottles were consumed by premium institutional service providers, which require clearance of goods in various sizes and quantities as per the requirement of their clients and the goods were sold by them from their factory by various modes of transports depending upon the volume & need of their clients at Mumbai. After the goods were cleared from their factory to the buyers premises the only expense that was incurred by them for making arrangements to ensure that the goods cleared from their factory to the customer's premises was local transportation from make shift

office to client's destination, floor unloading charges at client doorstep, octroi, union charges, hamali charges and VAT. All the above charges keep fluctuating throughout the year and the price at which the goods were to be supplied to their various customers were fixed for a certain period, during which their company makes arrangement on behalf of their customers to ensure that the goods reach safely and within the time limit as decided by their various clients & thus, the amount considered by the department to ascertain the differential amount of duty was nothing but the cost that is incurred by them from our makeshift transfer office to make the goods available to their clients. All the institutional contracts were done in advance from factory and at its factory address. No business or orders were solicited after storing of the goods there.

17.6 They further submitted that as per Section 4(1)(a) of the Central Excise Act, 1944, the duty of excise was chargeable on any excisable goods with reference to value, then, on each removal of the goods, such value shall be in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value. Further, "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not (limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods. They submitted that the department has nowhere pointed out that they had charged as price, any amount from their buyers towards advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter and the only amount that Was charged by them was towards either transportation, hamali or octroi charges, which has been well intentionally not mentioned in the definition of transaction value; that the allegation of rejecting their assessable value in the show cause notice was therefore illogical, baseless and beyond the purview of law and as such the same was required to be set aside.

17.7 They submitted that Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, reads as under:-

> *RULE 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place') from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.*

17.8 They submitted that considering the above facts of the case, the provisions of Rule 7 can be made applicable where sales are from place other than factory gate, whereas though it appeared that they had cleared their goods to makeshift office located at Mumbai, however, the prices till the office were already accounted for in the prices at which the goods were sold from makeshift office at Mumbai. It is further submitted that the difference as appeared to the department as additional amount from their customers was nothing but amount of local transportation, unloading on different floor, octroi and hamali charges incurred by them and recovered from their buyers; that further, it was pertinent to mention that as per explanation 2 to Rule 5 of the Central Excise Valuation Rules, if factory was not the 'place of removal', cost of transportation from factory to the place of removal shall not be excluded for purpose of determining the value of excisable goods, thus implying, that the cost of transportation and handling from factory to depot will have to be added for the purpose of valuation, as the depot was considered as 'place of removal' in the instant case; that the above submissions were explained to the auditors that the price at which the goods were cleared from the factory and the price at which the goods cleared from the makeshift office was one and the same and the only differential figure that was apparent on verification of invoices cleared from our makeshift office pertains to octroi and local transportation charges, hamali, union charges, floor loading etc. from the makeshift office to the buyer's premises; that the unloading at the customer's premises may require that the goods had to be arranged to reach to the hotel premises which may not be on ground floor and some time there may be 10 deliveries at 10 different floors resulting in payment of heavy amount of labour charges i.e. hamali charges. It was also submitted that the department could also have derived the figures related to such expenses from their books of accounts and by reducing the said from the total invoice, it could have been known that the expenses would be equivalent to the cost of expenses which have been alleged to be additionally recovered by them from their buyers; that the allegation made by the audit officers was therefore required to discarded in interest of justice.

17.9 As regards, the VAT/CST registration of the makeshift godown at Mumbai, it was submitted that the registration was obtained with the Sales tax department at Mumbai, as a Non-Resident Dealer, and the principal place of business was shown as that of the factory address located in Hansol, Gujarat. Therefore, in other words, the sale having taken place at Gujarat, the VAT/CST was paid to the Maharashtra Govt, and it was legally permissible and allowed also. It is worth noting that the principal place of business for VAT/ CST registration as non-resident is of Gujarat. Copy of the VAT/ CST registration was enclosed.

17.10 They submitted the simple procedure of registration of a non-resident dealer:

(1) <u>Registration of Non Resident Dealers</u>: A "non resident dealer" means a dealer, who effects purchases or sales of any goods in the State, but who has no fixed place of business in the State.

(2) The applications for registration of the NRC dealers shall be accepted at the office of the STO(NRC) at the Vikrikar Bhavan, Mazgaon, Mumbai 400010.

(3) These applications shall not be routed through the counter but shall be accepted directly.

(4) The rest of the procedure for processing these applications remains same as the local dealer.
(5) Before processing these applications the STO(NRC) shall ensure that the applicant does not have any place of business anywhere in the State. (6) In case such a NRC dealer applies for the inclusion of the additional place of business, which is located in the State, the amendment shall be done but such dealer shall be de classified as a "NRC" dealer.
(7) The same shall apply when the dealer applies for the shifting of his principal POB from outside the State to any place within the state.

17.11 The assessee had sold the goods only on the basis of the purchase orders for quantity of bottles with specifications. Once the purchase order is finalised, then only the goods were dispatched from the factory at Gujarat. The assessable value on which duty was paid was inclusive of all the expenses upto the Mumbai makeshift godown. The detailed calculation year wise was submitted duly certified by the chartered accountant who is also the assessee's statutory auditor.

17.12 The value on which the Central Excise duty was to be computed is prescribed in Section 4 of the said Act. The relevant extracts of Section 4 was reproduced herein below for ease of reference:

(a) In a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, by the transaction value;
(b) In any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

17.13 It could be seen from Section 4(1)(a) that the assessable value is the transaction value, in a case were the goods are sold for delivery at the time and place of removal and the buyer and the assessee are not related. The dispute in the instant case was confined to the issue as to whether a transit location (branch in Mumbai) where the goods are merely stored prior to their delivery can be considered as the place of removal?.

17.14 The expression place of removal had been defined during the material period, in Section 4(3)(c), in the following terms.

(c) "place of removal" means -
  (i) a factory or any other place or premises of production or manufacture of the excisable goods;
  (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from where such goods are removed;
  (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;"

17.15 It is an undisputed fact that the transit location in question is neither the factory nor the warehouse nor is it a depot/premises of a consignment agent/any other premises, from where the excisable goods are to be sold after their clearance from the factory. It is an undisputed fact that all the sales in question have been made only at the factory and that there is no sale which is made from the said transit location. In this background, the transit location cannot be considered as a depot/premises of a consignment agent/any other premises, from where the excisable goods are to be sold after their clearance from the factory.

17.16 The Apex Court has in the case of CCE vs Ispat Industries Ltd 2015 (324) ELT 670, specifically dealt with this issue. The relevant observations of the Apex Court in this regards are extracted below:

> ***24.*** *It will thus be seen that where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be the normal value thereof. Sub-clause (b)(iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot, or the premises of a consignment agent of the manufacturer are obviously places which are referable only to the manufacturer. Even the expression "any other place or premises" refers only to a manufacturer's place or premises because such place or premises is stated to be where excisable goods "are to be sold". These are the key words of the sub-section. The place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer. If we are to accept the contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to the buyer's premises.*

17.17 As goods in the instant case are sold at the factory and not at the transit point, the later by cannot by any stretch of imagination be reckoned as the place of removal.

17.18. It was also submitted that the any cost / incurred post the principal place of business, i.e Hansol, Gujarat, cannot be added to the assessable value. Therefore, the entire demand is not at all sustainable and is liable to be set aside. The said assessee vide letter dated 07.03.2023 submitted the following documents :

(i) Chartered Accountants certificate dated 09.03.2023 for the period 2014-15 to June-17 along with separate worksheets.
(ii) Certificate of Registration dated 01.03.2014 under Maharashtra Value Added Tax Act, 2002
(iii) Certificate of Registration dated 12.10.2010 under Central Sales Tax

(Registration & Turnover) Rules, 1957

(iv) Copy of Tax invoice no.485/11-12 dated 09.01.12 and 486/11-12 dated 10.01.12

(v) Confirmation of contract for mineral water dated 01.09.12 between Sheelpe Enterprise P. Ltd and Tajsats Air Catering

(vi) Contract Agreement dated 15.03.2011 between Sheelpe Enterprise P. Ltd and Four Season Hotels Group, Mumbai

(vii) Award of contract dated 01.04.13 between Sheelpe Enterprise P. Ltd and PE Enterprise

(viii) Form F bearing sr. no.27081447088353 dated 04.08.2014

(ix) A statement showing details of expenses such as MVAT, transportation charges, unloading charges, union charges, misc. expenses etc. and landed price of the every invoice for the entire period 2014-15 to June 2017.

17.19 Further, the said assessee vide their letter dated 16.12.2023 submitted that the basic allegation in all the SCNs is that they are clearing finished goods after paying duty from the factory at Hansol(Ahmedabd) to Mumbai makeshift warehouse in the name of branch transfer and then final sales was done through their Branch M/s.Sheelpe Enterprises P.Ltd (Mumbai Branch) This is not true and not at all correct. There is no retail or institutional sale taking place at a place outside the factory premises even at the Mumbai makeshift warehouse. After clearance from the Hansol, Ahmedabad factory, the rate or the value of the water bottles remains the same and in no way the value changes. The duty was paid on the factory gate and therefore the post clearance expenses such as local transportation from make shift office to client's destination, floor unloading charges at client doorstep, octroi , union charges, hamali charges and VAT and other misc. expenses incurred was not includible in the assessable value. They have sold the goods to their institutional buyers, mainly five star hotels, and airlines only on the basis of purchase orders for quantity of bottles and specifications. Once purchase order is finalized, then only the goods are dispatched from factory at Gujarat. They have placed reliance on the judgement CCE Vs Ispat Industries Ltd 2015 (324) ELT 670 (SC) wherein it was held that:

"Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded , save and except in a case where the factory is not the place of removal" Furtehr the plac of removal has reference only to places from which gods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either at buyers premises or such other premises as the buyer may direct the manufacturer to send his goods. Thus the view taken by the revenue that freight charges must be included as the sale in the present facts took place at the buyer"s premises is incorrect. Further there cannot be extended place of removal and the factory premises or the warehouse (as mentioned in the section), alone beyond places of removal. Under no circumstances, can the buyer's premises, therefore, be the place f removal for the purpose of Section 4."

They also relied upon the following case laws in support of their claim:

- CCE Vs Ispat Industries Ltd 2015 (318) ELT 613 (SC)
- Aditya Birla Chemicals (India) Ltd Vs CCE 2021 (226) ELT 377 (Tribunal)
- Adity Birla Insulators Vs Commissioner 2208 (226) ELT 377 (Tribunal)
- India Cements Ltd Vs CCE & ST 2023 10 Centax 158 (Tri-Hyd)
- Associated Strips Ltd Vs Commissioner 2002 (143) ELT 131 (Tribunal)

- Escorts JCB Ltd Cs Commissioner 2002 (146) 31 (SC)
- And so on
-

17.20 The said assessee vide their further letter dated 21.03.2023 submitted sample copies of invoices issued for supply from Sheelpe Enterprise P. Ltd, Ahmedabad to Sheelpe Enterprise P. Ltd, Mumbai and sample copies of invoices issued for supply from Sheelpe Enterprise P. Ltd, Mumbai to various clients for the period 2014-15 to June-17. The assessee vide letter dated 21.03.2023 submitted copies of sample invoices for the period from 2014-15 to June 2017. The assessee vide their letter dated 10.10.2023 submitted supporting ledger and bill wise reconciliation along with copies relevant ledger, sample copies of invoices issued from factory, vouchers, receipts and corresponding invoices for the FY 2011-12 & 2011-12, vide letter dated 11.10.2023 for the FY 2012-13, vide letter dated 26.10.2023 for the FY 2013-14, 2014-15 and 2015-16 and vide letter dated 30.10.2023 for the FY 2016-17 and 2017-18 (upto June 2017)

PERSONAL HEARING

18. The personal hearing in the instant case was granted to the said assessee on 10.03.2023. Shri R. Subramanya, Advocate, Shri Behram Mehta, Managing Director and Shri Shiroy Mehta, Director appeared for personal hearing on 20.03.2023. He reiterated their written submission dated 09.03.2023 and requested to drop the SCN. Due to change in adjudicating authority another P.H. was granted to the assessee on 18.12.2023. Shri Behram Mehta, Managing Director and Shri Shiroy Mehta, Director of the assessee company attended the P.H and reiterated their written submissions dated 07.03.2023, 21.03.2023, 12.09.2023 and 07.12.2023. Further during the course of P.H., they submitted their additional written submissions dated 16.12.2023 and requested to decide the matter on merits.

DISCUSSION AND FINDINGS

19. In this connection, I have gone through the SCN No.V.22/15-43/OA/2015 dated 28.04.2015, OIO No.22/JC/2016GCJ dated 10.11.2016 and OIA No.AHM-EXCUS-002-APP-173-17-18 dated 21.11.2017/28.11.2017, OIO No.23/ADC/2020-21/MSC dated 22.10.2020I and remand back OIA No. OIA No.AHM-EXCUS-002-APP-45/2021-22 dated 30.11.2021 and find that the Commissioner (Appeals), Central GST, Ahmedabad has remanded the case to the adjudicating authority for decision of the case afresh following principle of natural justice vide OIA No.AHM-EXCUS-002-APP-45/2021-22 dated 30.11.2021. Accordingly, the said SCN, alongwith 3 other show cause notices issued in the similar issue, as detailed below) are being taken up for adjudication to decide the case afresh following the principle of natural justice.

Sr. No.	SCN No.	SCN Date	Issued by	Central Excise demand (Rs.)	Period
1	V.22/15-43/OA/2015	28.04.15	Addl. Commr, C.EX, A'bad-II	3008516	2010-11 to 2013-14
2	V/16-	04.04.17	AC, Div-I,	2840243	2014-15

	19/Dem/Sheelpe/16-17		A'bad-II		
3	V/16-19/Dem/Sheelpe/16-17	11.04.17	AC, Div-I, A'bad-II	4324450	2015-16 to Sept-16
4	V/16-11/Sheelpe Ent/Dem/18-19	24.10.18	AC, Div-I, A'bad North	2168262	Oct-16 to June-17

20. On perusal of the records, I find that the Department had filed appeal against OIO No.23/ADC/2020-21/MSC dated 22.10.2020 on the grounds that :-

(a) The adjudicating authority should have examined the invoices issued by the respondent both from their factory at Ahmedabad and Mumbai branch to decide the assessable value.

(b) The adjudicating authority has erred in accepting the respondent's contention that the value at which their product was cleared from their factory at Hansol, Ahmedabad and cleared from their Mumbai Branch were the same, especially when the price variation was quite significant.

(c) Despite repeated requests, the respondent failed to produce relevant documents for thorough verification.

21. The Commissioner (Appeals), Ahmedabad at Para 10, 11 and 11.1 of OIA No.AHM-EXCUS-002-APP-45/2021-22 dated 30.10.2021 has observed as under :-

10.

I have come to a conclusion that the adjudicating authority has not recorded any findings with regard to the cost components of the assessable value in the impugned order or about any verification done of the facts submitted by the respondent with the relevant documentary evidences to examine whether any particular cost component is includable in the assessable value or not. Further, I find that the submission of the respondent that the assessable value, on which duty is paid, is inclusive of all the expenses upto the Mumbai makeshift godown, and the differential figure that was apparent on verification of invoices cleared from their makeshift office and on the basis of which the demand raised in the present case pertains to the post clearance expenses from the makeshift office to the buyer's premises has been accepted, as such, by the adjudicating authority in absence of any substantial documentary evidences and without conducting any verification thereof. Further, it is also observed that the copies of the agreements/contracts submitted by the respondent have also not been examined by the adjudicating authority, as regards the claims and contentions of the respondent for deduction of various components from the gross value for which invoice raised by them to the buyers. Accordingly, I find that the relevant facts and figures have grossly escaped a proper examination at the level of adjudicating authority with the relevant documentary evidences while passing the impugned order.

11. Accordingly, I find that the impugned order passed by the adjudicating authority is not fair and legally sustainable. Further, I find that it would be appropriate to remand back the present case to the adjudicating authority to

decide it afresh, after carrying out due verification of the facts and figures with the documentary evidences and examine all the relevant aspects, and to arrive at the correct valuation and if required, re work the demand of duty, interest and penalty within four corners of the SCN, following the principles of natural justice.

11.1 The respondent is also directed to furnish the relevant facts and figures to the adjudicating authority along with relevant documentary evidences to the satisfaction of the adjudicating authority, so as to enable him for proper verification and appreciation of the claims and contention made by the respondent.

22. According to which, the matter is remanded back by the Com(A) for fresh adjudication by arriving at correct valuation after carrying out due verification of the facts and figures with documentary evidence and after examination of all relevant aspects. The Com(A) has also directed the noticee to furnish relevant facts and figures to the adjudicating authority along with relevant documentary evidences to the satisfaction of the adjudicating authority for proper verification and appreciation of the claims and contention made by the respondent. Accordingly the noticee have filed detailed reply alongwith enclosures as detailed above for consideration.

23. In this connection, I have gone through the SCN, Orders in Original, Orders in Appeal, reply dated 07.03.2023 alongwith following documents by the noticee.

(i) Chartered Accountants certificate dated 09.03.2023 for the period 2014-15 to June-17 along with separate worksheets.
(ii) Certificate of Registration dated 01.03.2014 under Maharashtra Value Added Tax Act, 2002
(iii) Certificate of Registration dated 12.10.2010 under Central Sales Tax (Registration & Turnover) Rules, 1957
(iv) Copy of Tax invoice no.485/11-12 dated 09.01.12 and 486/11-12 dated 10.01.12
(v) Confirmation of contract for mineral water dated 01.09.12 between M/s.Sheelpe Enterprise P. Ltd and Tajsats Air Catering
(vi) Contract Agreement dated 15.03.2011 between M/s.Sheelpe Enterprise P. Ltd and Four Season Hotels Group, Mumbai
(vii) Award of contract dated 01.04.13 between M/s.Sheelpe Enterprise P. Ltd and PE Enterprise
(x) Form F bearing sr. no.27081447088353 dated 04.08.2014 A statement showing details of expenses such as MVAT, transportation charges, unloading charges, union charges, misc. expenses etc. and landed price of the every invoice for the entire period 2014-15 to June 2017.

24. The said assessee vide their further letter dated 21.03.2023 submitted sample copies of invoices issued for supply from Sheelpe Enterprise P. Ltd, Ahmedabad to Sheelpe Enterprise P. Ltd, Mumbai and sample copies of invoices issued for supply from Sheelpe Enterprise P. Ltd, Mumbai to various clients for the period 2014-15 to June-17. Further, vide letter dated 21.03.2023, they have submitted copies of sample invoices for the period from 2014-15 to June 2017. The assessee vide their letter dated 10.10.2023 submitted supporting ledger and bill wise reconciliation alongwith copies relevant ledger, sample copies of invoices issued from factory, vouchers, receipts and corresponding invoices for the FY 2011-12 & 2011-12, vide letter dated 11.10.2023 for the FY 2012-13, vide letter dated 26.10.2023 for the FY 2013-14, 2014-15 and 2015-16 and vide letter dated 30.10.2023 for the FY 2016-17 and 2017-18 (upto June 2017).

25. In this connection, I have carefully gone through the facts and records of the case, relevant Orders in Original, relevant Orders in Appeal, submissions made by the noticee in the defense reply as well as submissions made at the time of personal hearing. On perusal of the records, I find that the noticee is engaged in manufacturing of "AAVA" brand mineral water falling under CETH 22011010 of the First Schedule to CETA, 1985. During the course of audit, it was observed that they had cleared their finished gods after paying duty from their factory at Ahmedabad to their Mumbai Branch. The goods were then sent to customers from Mumbai Branch which were institutional buyers however the value of goods was higher than the value (on which central excise duty was paid) at which goods were cleared from the factory of the noticee. Now the issue at hand is whether valuation of excisable goods shall be as per Section 4(1)(b) of CEA, 1944 read with Rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as claimed by the Revenue in the subject show cause notice or as per Section 4(1)(a) *ibid.* Accordingly SCN No.V.22/15-43/OA/2015 dated 28.04.15 was issued for demanding Rs.30,08,516/- for the period from 2010-11 to 2013-14 proposing rejection of assessable value of finished goods from the factory premises at Ahmedabad to Mumbai branch and to determine the assessable value under the provisions of section 4(1) (b) of CE Act. 1944. The said SCN was adjudicated vide OIO No.22/JC/2016/GCJ dated 14.10.2016 confirming the said demand. However aggrieved with the OIO, the noticee preferred appeal with Com(A) and Com(A) vide OIA No.AHM-EXCUS-002-APP-173-17-18 dated 21.11.2017 remanded back the OIO for fresh adjudication with the direction to appellant to produce relevant documents for proper valuation. Accordingly the said SCN was further adjudicated vide OIO No.23/ADC/2020-21/MSC dated 22.10.2020 by dropping the SCN by agreeing that most of the post clearance expenses from Mumbai Depot are related to excise duty, VAT, Transport, Unloading charges, union charges and misc. charges which are not includible in the assessable value. Aggrieved with the said OIO, Department filed the appeal before the Com(A) and vide OIA No.AHM-EXCUS-002-APP-45/2021-22 Dated 17.12.2021 again remanded back the OIO for fresh adjudication by arriving at correct valuation after carrying out due verification of the facts and figures with documentary evidence and after examination of all relevant aspects. The Com(A) has also directed the noticee to furnish relevant facts and figures to the adjudicating authority along with relevant documentary evidences to the satisfaction of the adjudicating authority for proper verification and appreciation of the claims and contention made by the respondent. Accordingly the noticee have filed replies along with enclosures as mentioned above on various dates for adjudication.

26. In this connectionI first look into the related statutory provisions. The valuation of excisable goods is covered under Section 4 of Central Excise Act, 1944. The Section 4 ibid reads as under:-

> *SECTION [4. Valuation of excisable goods for purposes of charging of duty of excise — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -*
>
> *(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the noticee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*
>
> *(b) in any other case, including the case where the goods are not sold, be the value*

determined in such manner as may be prescribed.

[Explanation. — For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the noticee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the noticee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other tuxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]

..

..

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of the noticee, by reason of or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.]

a. As per Section 4 *ibid*, the duty of excise is chargeable on excisable goods on their value on each removal and value on which the duty is required to be paid shall be the value paid/payable at the time and place of removal and as per Section 4(1) (a) *ibid* when the goods are sold at the time and place of removal the transaction value shall be the value for the purpose of payment of central excise duty. And in other cases where the goods are not sold, Section 4(1)(b) *ibid* prescribes other methods of valuation. The other methods are provided in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

b. Since the 'place of removal' is also contentious in present case I also looked into the definition of 'place of removal' provided in the Section 4(3)(c) *ibid*, which reads as under:-

(c) "place of removal" means –
(i) a factory or any other place or premises of production or manufacture of the excisable goods;
(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed;

As per Section 4(3)(c) *ibid* , 'place of removal' can be a premises where manufacturing takes place or warehouse/any premises where excisable goods are stored without payment of duty or a depot/any premises from where excisable goods are sold.

27. As per Section 2(h) of Central Excise Act, 1944 (CEA, 1944), "sale" means any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration. In the present case, the revenue has argued that the place of removal is the Mumbai Branch of noticee since the actual sale of goods took place from Mumbai Branch whereas the noticee has contended the place of

removal is the factory premises at Hansol, Ahmedabad and any expenses incurred after that shall not be included in the assessable value of goods for the purpose of valuation.

28. Now, I would like to discuss the core issue i.e. the transaction value which is to be decided for the purpose of charging excise duty on the goods in question. In this connection, as directed by the Com(A), in both the original OIA and subsequent OIA, the noticee has submitted a number of documents in support of their claim that the transaction value determined by them is correct and transaction value arrived by the Department is not based on any documentary evidence. In this connection, they have produced copies of agreements dated 01.09.2012 between Sheelpe Enterprise P. Ltd and Tajsats Air Catering, contract Agreement dated 15.03.2011 between Sheelpe Enterprise P. Ltd and Four Season Hotels Group, Mumbai, Award of contract dated 01.04.13 between Sheelpe Enterprise P. Ltd and PE Enterprise, agreement dated 05.07.2012 between M/s.Sheelpe Enterprise P.Ltd and Air India, agreement dated05.07.2012 between M/s.Sheelpe Enterprises P.Ltd and M/s. Sarovar Hotels P.lTd., agremment between M/s.Sheelpe Enterprises P. Ltd and Tesco Hindustan Sholesaling P.Ltd, agreement dated 22.12.2015 between the noticee and M/s.Sofitel Luxury Hotels, purchase order dated 30.12.2014 made by M/s.Trent Limited issued in the name of the noticee, agreement between M/s.Mariot Hotels, Mumbai and the noticee, purchase order dated 03.02.2012 issued to the notice by M/s.Merck Ltd, Mumbai, contract dated 15.01.2014 between the noticee and Mumbai Airport Launch Services, all are their customers, supporting with ledger accounts, invoice wise reconciliation along with copies relevant ledger, sample copies of invoices issued under Rule 11 of CER,2002 and their corresponding invoices of every month, for the period from 2010-11 to 2017-18 (upto June).

29. In this connection, at the outset, I have gone through the agreements dated 01.09.2012 between Sheelpe Enterprise P. Ltd and Tajsats Air Catering, contract Agreement dated 15.03.2011 between Sheelpe Enterprise P. Ltd and Four Season Hotels Group, Mumbai, Award of contract dated 01.04.13 between Sheelpe Enterprise P. Ltd and PE Enterprise, agreement dated 05.07.2012 between M/s.Sheelpe Enterprise P.Ltd and Air India, agreement dated05.07.2012 between M/s.Sheelpe Enterprises P.Ltd and M/s.Sarovar Hotels P.lTd., agremment between M/s.Sheelpe Enterprises P.Ltd and Tesco Hindustan Sholesaling P.Ltd, agreement dated 22.12.2015 between the noticee and M/s.Sofitel Luxury Hotels, purchase order dated 30.12.2014 made by M/s.Trent Limited issued in the name of the noticee, agreement between M/s.Mariot Hotels, Mumbai and the noticee, purchase order dated 03.02.2012 issued to the ntoice by M/s.Merck Ltd, Mumbai, contract dated 15.01.2014 between the noticee and Mumbai Airport Launch Services, all are their customers,. On perusal of the said contract agreements, I find that the rate is fixed for supply of natural mineral water is with the condition of site delivery. The supplier, herein this case the noticee, is required to supply the goods at the door of the customer and the rate is also fixed accordingly. It clearly reveals that the noticee is bound to deliver the goods at the premises of the customer bearing all the expenses such as local transportation costs, loading/unloading/union charges at different floors of the customers, octroi charges, hamali charges etc. It was also mentioned in the agreement that the

goods are to be delivered at the customers premises within 24 hrs/48 hrs of the order failure to which penalty will be levied on the noticee. When the goods are delivered at the premises of the customer, it is natural that the additional expenses in nature of loading charges, unloading charges, union charges, transportation charges and other expenses are occurred.

30. Further, the noticee have also submitted copies of invoices issued under Rule 11 of Central Excise Rules, 2002 from the manufacturing unit and corresponding invoices issued to their customers. On perusal of the said invoices, I find that there are two types of Invoices are issued by the noticee as under:

(i) The invoice issued by the noticee from the factory premises (M/s Shelpee Enterprise Pvt. Ltd, Hansol, Ahmedabad) in the name of M/s Sheelpe Enterprises Pvt. Ltd. Mumbai Branch

(ii) The invoice issued by M/s Sheelpee Enterprises Pvt. Ltd. in the name of customers wherein the address of the manufacturing unit at Hansol, Ahmedabad, Registered Office address at Mithakali, Ahmedabd and Branch Office at Mumbai are mentioned

31. On perusal of the said invoices, I find that the value of goods in the invoices issued by M/s Shelpee Enterprise Pvt. Ltd, Hansol, Ahmedabad is less than the value mentioned in the corresponding invoices issued by M/s Sheelpee Enterprises Pvt. Ltd. Mumbai Branch in the name of customers. In this connection, the noticee stated that the reason for higher value in the invoices issued by M/s Sheelpee Enterprises Pvt. Ltd. Mumbai Branch in the name of customers is because they are supplying the goods to the customers at their place as mutually agreed upon the agreement, goods were to be sold from makeshift office at Mumbai of M/s Sheelpee Enterprises Pvt. Ltd. Mumbai Branch which includes transportation charges, hamali charges, the octroi expenses, union charges, unloading charges etc.. It was further submitted that the difference appeared to the department as additional amount from their customers was nothing but amount of local transportation, unloading on different floor, octroi charges and hamali charges incurred by them and is to be recovered from their buyers. Further, it is pertinent to mention that as per explanation 2 to Rule 5 of the Central Excise Valuation Rules, if factory was not the 'place of removal', cost of transportation from factory to the place of removal shall not be excluded for purpose of determining the value of excisable goods, thus implying, that the cost of transportation and handling from factory to depot will have to be added for the purpose of valuation, as the depot was considered as 'place of removal'. In the instant case, the price at which the goods were cleared from the factory and the price at which the goods cleared from the makeshift office was one and the same and the only differential figure that was apparent on verification of invoices cleared from their makeshift office pertains to octroi and local transportation charges, hamali, union charges, floor loading etc. from the makeshift office to the buyer's premises. The unloading at the customer's premises may require that the goods had to be arranged to reach to the customer's premises which may not be on ground floor and some time there may be 10 deliveries at 10 different floors resulting in payment of heavy amount of labour charges i.e. hamali charges. It was also submitted that the department could also have derived the figures related to such expenses from their books of accounts and by reducing the said from the total invoice, it could have been known that the expenses would be equivalent to the cost of expenses which have

been alleged to be additionally recovered by them from their buyers; that the allegation made by the audit officers was therefore required to discarded in interest of justice.

32. Further, to substantiate their claim the noticee submitted details of invoices and other expenses incurred with supporting documents which justify the difference in the value. They have produced sample invoices along with the corresponding invoice issued to customers for the entire period. These invoices issued by the manufacturing units showing the transaction value on which the excise duly has been paid and corresponding invoices issued for the clients at Mumbai wherein the unit price is find as higher than the unit price mentioned in the original invoices issued under Section 11 of Central Excise Rules, 2002. It is also pertinent to mention here that the invoice issued by the noticee for the customer was not issued under Central Excise Rules,2002. In this connection, I have gone through the details submitted by the assessee and find that they have produced worksheet of all invoices issued under Section 11 of CER, 2002 for the entire period under discussion i.e. from FY 2010-11 to 2017-18 (upto June 2017) wherein the details of assessable value, transport expenses, unloading expenses, loading expenses, octroi expenses, union charges and misc. expenses. Further they have also produced copies of original invoice, their corresponding invoices issued to customers, copies of payment vouchers for unloading and union charges, copies of payment vouchers for transporters, copy of journal voucher for payment of octroi, copies of Cash account book (petty cash) from which the expenses are debited. In the circumstances, I would like to examine the issue FY wise for the sake of clarity.

FINANCIAL YEAR 2010-11

33. In this regard, I have gone through the details submitted by the noticee for the FY 2010-11. On perusal of Annexure – A to the SCN dated 28.04.2015, I find that excise duty of Rs.2,58,794/- has been demanded on the differential value between Ahmedabad factory sale and Mumbai Branch. In this connection, the noticee submitted their detailed bifurcation of the expenses incurred by them for the FY 2010-11 wherein they stated that they have incurred total expenses of Rs.26,52,343/- as local transport expenses, unloading & union expense and misc expenses and have also produced vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) from which the expenses are debited are also produced by the noticee. They have produced copies of Invoices Nos.682 dated 25.08.2010, 745 dated 14.09.2010, 817 dated 30.09.2010, 853 dated 15.10.2010, 1074 dated 18.12.2010, 1302 dated 18.02.2011 and 1361 dated 04.03.2011 issued from the factory for clearance of the goods and their corresponding invoices issued for the clients. On perusal of the said invoices, I find that there is difference in unit price of the water bottle of 200 ml, 500ml and 1 Ltr each. Further, on perusal of statement of the invoices and corresponding invoices for customs, payment vouchers and ledger account, I find that they have incurred total expenses of Rs.26,52,343/- for the delivery of the goods at the premises of the customers. These expenses have been verified from the payment vouchers and ledger account of various heading such octroi account, transport account etc and find that they are not part of assessable value as these are expenses made to deliver the goods at the customers premises. On perusal and scrutiny of the documents,

I find that the differential value of Rs.26,52,343/- is not attracting any excise duty as these expenses are not part of the transaction value as defined. Accordingly they are not liable to pay excise duty of Rs.2,58,794/- on the differential value.

FINANCIAL YEAR 2011-12

34. Similarly I have gone through the details submitted by the noticee for the FY 2011-12. On perusal of the Annexure A to the SCN dated 28.04.2015, I find that excise duty of Rs.4,67,346/- has been demanded on the differential value between Ahmedabad factory sale and Mumbai Branch sale. In this connection, the noticee submitted their detailed bifurcation of the expenses incurred by them for the FY 2011-12 wherein they stated that they have incurred expenses of Rs.50,21,539/- as local transport expenses, unloading &, union expense and misc expenses and have also produced vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) from which the expenses are debited are also produced by the noticee. They have produced copies of Invoice No.21/07.04.2011, 164/11.05.2011, 241/03.06.2011, 341/01.07.2011, 504/25.08.2011, 549/09.09.2011, 631/08.10.2011, 748/12.11.2011, 857/18.12.2011, 988/05.01.2012, 994/ 09.02.2012 and 1225/17.03.2012 pertaining to FY 2011-12 issued from the factory for clearance of the goods and their corresponding invoices issued for their customers. On perusal of the said invoices, I find that there is difference in unit price of the water bottle of 200 ml, 500ml and 1 Ltr each. Further, on perusal of the invoices, vouchers and ledger account, I find that they have incurred the above referred expenses of Rs.50,21,539/- for the delivery of the goods at the premises of the customers and therefore they are not liable to pay excise duty of Rs.4,67,346/- on the differential value.

FINANCIAL YEAR 2012-13

35. Further I have gone through the details submitted by the noticee for the FY 2012-13. On perusal of the Annexure A to the SCN dated 28.04.2015, I find that excise duty of Rs.8,22,504/- has been demanded on the differential value between Ahmedabad factory sale and Mumbai Branch. In this connection, the noticee submitted their detailed bifurcation of the expenses incurred by them for the FY 2012-13 wherein they stated that they have incurred expenses of Rs.70,64,419/- as local transport expenses, unloading &, union expense and misc expenses and have also produced vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) from which the expenses are debited are also produced by the noticee. They have produced copies of Invoice No.13/04.04.2012, 135/09.05.2012, 296/26.06.2012, 354/13.07.2012, 441/08.08.2012, 605/24.09.2012, 696/18.10.2012,782/05.11.2012, 996/19.12.2012, 1309/21.01.2013, 1210/31.01.2013 and 1334/27.02.2013 pertaining to FY 2012-13 issued from the factory for clearance of the goods and their corresponding invoices issued for the clients. On perusal of the said invoices, I find that there is difference in unit price of the water bottle of 200 ml, 500ml, 1 Ltr and 1.5 Ltr each. Further, on perusal of the above referred documents such as vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period,

Cash account book (petty cash) invoices, vouchers and ledger account, I find that they have incurred the expenses of Rs.70,64,419/- for the delivery of the goods at the premises of the customers and therefore they are not liable to pay excise duty Rs.8,22,504/- on the differential value.

FINANCIAL YEAR 2013-14

36. Further I have gone through the details submitted by the noticee for the FY 2013-14. On perusal of the Annexure A to the SCN dated 28.04.2015, I find that excise duty of Rs.14,59,871/- has been demanded on the differential value between Ahmedabad factory sale and Mumbai Branch. In this connection, the noticee submitted their detailed bifurcation of the expenses incurred by them for the FY 2013-14 wherein they stated that they have incurred expenses of Rs.1,33,32,533/- as local transport expenses, unloading &, union expense and misc expenses and have also produced vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) from which the expenses are debited are also produced by the noticee. They have produced copies of Invoice No.66/16.04.2013, 152/04.05.2013, 403/28.06.2013, 547/30.07.2013, 562/02.08.2013, 720/04.09.2013, 915/08.10.2023, 1244/30.11.2013, 1372/19.12.2013, 1 1610/27.01.2014, 1676/05.02.2014, and 1842/04.03.2017 pertaining to FY 2013-14 issued from the factory for clearance of the goods and their corresponding invoices issued for the clients. On perusal of the said invoices, I find that there is difference in unit price of the water bottle of 200 ml, 500ml, 1 Ltr, 1.5 Ltr, 2 Ltr, 300 ml, and 5 Ltr each. Further, on perusal of the invoices, vouchers and ledger account, copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) I find that they have incurred the expenses of Rs.1,33,32,533/- for the delivery of the goods at the premises of the customers and therefore they are not liable to pay excise duty of Rs.14,59,871/-on the differential value.

FINANCIAL YEAR 2014-15

37. Further I have gone through the details submitted by the noticee for the FY 2014-15. On perusal of the Annexure A to the SCN dated 04.04.2017, I find that excise duty of Rs.28,40,243/- has been demanded on the differential value between Ahmedabad factory sale and Mumbai Branch sale. In this connection, the noticee submitted their detailed bifurcation of the expenses incurred by them for the FY 2014-15 wherein they stated that they have incurred expenses of Rs.2,29,79,310/- as local transport expenses, unloading &, union expense and misc expenses and have also produced vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) from which the expenses are debited are also produced by the noticee . They have produced copies of Inv.no.118/16.04.2014, 326/20.05.2014, 484/14.06.2014, 753/25.07.2014, 904/20.08.2014, 1082/13.09.2014, 1320/19.10.20141523/20.11.2014 1771/18.12.2014, 2029/21.01.2015, 2328/27.02.2015, and 2391/05.03.2015 pertaining to FY 2014-15 issued from the factory for clearance of the goods and their corresponding invoices issued for the clients. On perusal of the said invoices, I find that there is difference in unit price of the water bottle of 200 ml, 500ml and 1 Ltr each. Further, on perusal of the invoices, vouchers and ledger account, I find that they have incurred the

expenses of Rs. 2,29,79,310/- for the delivery of the goods at the premises of the customers and therefore they are not liable to pay excise duty of Rs.28,40,243/- on the differential value.

FINANCIAL YEAR 2015-16

38. Further I have gone through the details submitted by the noticee for the FY 2015-16. On perusal of the Annexure A to the SCN dated 11.04.2017, I find that excise duty of Rs.31,08,679/- has been demanded on the differential value between Ahmedabad factory sale and Mumbai Branch sale. In this connection, the noticee submitted their detailed bifurcation of the expenses incurred by them for the FY 2015-16 wherein they stated that they have incurred expenses of Rs.2,31,49,696/- as local transport expenses, unloading &, union expense and misc expenses and have also produced vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) from which the expenses are debited are also produced by the noticee . They have produced copies of Inv.No.124/14.04.2015, 495/30.05.2015, 922/16.07.2015, 1333/30.08.20151378/03.09.20151947/30.10.2015, 2047/08.11.2015 2367/11.12.2013, 2640/05.01.2016, 3060/17.02.2016, 3317/12.03.2016 pertaining to the FY 2015-16 issued from the factory for clearance of the goods, their corresponding invoices issued for the clients and copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) . On perusal of the said invoices, I find that there is difference in unit price of the water bottle of 200 ml, 500ml and 1 Ltr each. Further, on perusal of the invoices, vouchers and ledger account, I find that they have incurred the expenses of Rs.2,31,49,696/- for the delivery of the goods at the premises of the customers and therefore they are not liable to pay excise duty of Rs.31,08,679/- on the differential value.

FINANCIAL YEAR 2016-17 & 2017-18 (Upto June 2017)

39. Further I have gone through the details submitted by the noticee for the FY 2016-17 & 2017-18 (upto June 2017) On perusal of the Annexure A to the SCN dated 11.04.2017 & 24.10.2018, I find that excise duty of Rs.33,84,034/- has been demanded on the differential value between Ahmedabad factory sale and Mumbai Branch sale. In this connection, the noticee submitted their detailed bifurcation of the expenses incurred by them for the FY 2016-17 & 2017-18 (upto June 2017) wherein they stated that they have incurred expenses of Rs.2,62,68,003/- as local transport expenses, unloading &, union expense and misc expenses and have also produced vouchers for transportation expenses, unloading and & union expenses. copies ledger account of octroi expenses for the entire period, Cash account book (petty cash) from which the expenses are debited are also produced by the noticee They have produced copies Inv No.66/05.04.2016, 544/27.05.2016, 807/24.06.2016, 1092/23.07.2016, 1317/13.08.2016, 1575/08.09.2016, 1943/18.10.2016, 2259/17.11.2016 2598/19.12.2016, 2939/21.01.2017, 3144/08.02.2017, 3468/08.03.2017, 116/12.04.2017, 345/04.05.2017, 845/26.06.2017 pertaining to FY 2016-17 & 2017-18 (upto June 2017 issued from the factory for clearance of the goods and their corresponding invoices issued for the clients, ledger account of octroi expenses for the entire period, Cash account book (petty cash). On perusal of the said invoices, I find that there is difference in unit price

of the water bottle of 200 ml, 500ml and 1 Ltr each. Further, on perusal of the invoices, vouchers and ledger account, I find that they have incurred the expenses of Rs.2,62,68,003/- for the delivery of the goods at the premises of the customers and therefore they are not liable to pay excise duty of Rs.33,84,034/- on the differential value.

40. In this connection, the noticee have produced a reconciliation statement which shows the details of Bill No., assessable value, date of branch transfer, date of sale, buyers name, Bill No. of sale , quantity sold, excise duty, MVAT, cost of transport, unloading charges, union charges , misc. expenses and final bill amount. They have also produced copies of a number of invoices, as mentioned above, issued under Section 11 of Central Excise Rules, 2002, as mentioned above, issued from factory for the period from 2010-11 to 2017-18 (upto June 2017). They have also produced the corresponding invoices of all the said original invoices issued wherein they have not mentioned the expenses incurred separately. However they claimed that bills raised in the corresponding invoices is inclusive of the post clearance expenses such as transportation cost, unloading and union charges, octroi expenses and other expenses. They have claimed that these expenses are not covered under transaction value. In support of their claim they have also produced copies payment vouches of expenses made on account of transportation cost, unloading and union charges, octroi expenses and other expenses. They have also produced petty cash (ledger) account and other ledger accounts in relation to the above referred invoices for the entire period. On perusal of the said details, I find that the expenses incurred by the noticee will not be a part of assessable value as theses expenses are made to deliver the goods at the premises of the customers as these customers are institutional customers and as per the agreement the noticee is bound to deliver the goods at the doors of the customer.

41. In this regard, I have gone through the Appellate orders wherein it was directed the noticee to produce required documents to verify their claim that these expenses are not taxable thereby to arrive at correct taxable value. Accordingly the noticee have produced above referred copy of agreements between the noticee and the customers wherein it was clearly mentioned and mutually agreed that the goods is to be delivered at the premises of the customer within the time specified in each agreement. On perusal of the agreement, I find that the noticee is bound to deliver the goods at the door of the customers and accordingly the noticee raised the invoice from their makeshift office at Mumbai inclusive of the cost of delivery such as octroi charges, transportation charges, loading/unloading/union charges and other expenses if any. The rate is also agreed upon by both the parties inclusive of all the expenses at the doorstep of the customer. On perusal of the documents and evidences, I find that no particular cost is includable in the assessable value. I also conclude that the assessable value, on which duty is paid, is inclusive of all the expenses upto the Mumbai makeshift godown, and the differential figure that was apparent on verification of invoices cleared from their makeshift office and on the basis of which the demand raised pertains to the post clearance expenses to buyers premises, therefore the said expenses are not part of transaction value and therefore not subject to excise duty.

42. Further, the noticee contended that the provisions of Rule 7 of central excise Valuation (Determination of price of excisable goods) Rules, 2000

is applicable where sales are from place other than factory gate. In this connection, I have gone through the relevant portion of the said Rule which reads as under:

> *RULE 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place') from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.*

43. Further, As per explanation 2 to Rule 5 of the Central Excise Valuation Rules, if factory was not the 'place of removal', cost of transportation from factory to the place of removal shall not be excluded for purpose of determining the value of excisable goods, thus implying, that the cost of transportation and handling from factory to depot will have to be added for the purpose of valuation, as the depot was considered as 'place of removal. However , in the instant case the price at which the goods were cleared from the factory and the price at which the goods cleared from the makeshift office was one and the same and the only differential figure that was apparent on verification of invoices cleared from our makeshift office pertains to octroi and local transportation charges, hamali, union charges, floor loading etc. from the makeshift office to the buyer's premises. As the makeshift office is not depot as well as not a place from where the goods are to be sold after their clearance from the factory, therefore he transaction value will be normal transaction value and in this case the value which is cleared from their factory is considered as the transaction value. Therefore, I find that the excise duty is not leviable on the differential value received on the delivery of the goods from the makeshift premises of the noticee.

44. Further, the noticee submitted Form F issued by Central sales tax wherein the particulars of the transferee has been mentioned. On perusal of the said Form, I find that the address of the transferee, in the instant case the noticee, is the same address in which the noticee 'registered address in Gujarat i.e.S.No.316, CSD Depot Road, Off. Airport Road, Ahmedaad which also reveals that they do not have any premises at Mumbai for the clearance of the excisable goods. Further as far as the VAT/CST registration of the makeshift godown at Mumbai is concerned, it was submitted that the registration was obtained with the Sales tax Department at Mumbai, as a Non-Resident Dealer, and the principal place of business was shown as that of the factory address located in Hansol, Gujarat. Therefore, in other words, the sale having taken place at Gujarat, the VAT/CST was paid to the Maharashtra Govt, and it was legally permissible and allowed also. It is worth noting that the principal place of business for VAT/ CST registration as non-resident is of Gujarat. Copy of the VAT/ CST registration was enclosed. On perusal of the same, I find that the contention of the notice have merits and therefore the same is acceptable.

45. Further as far as the point of invocation of extended period, I find that the assessee in their reply to SCN alongwith the Annexures have not furnished any evidence to prove that any preventive action was initiated by the Department in this regard. In the absence of any documentary evidence, I find that there is no merit on the submission of the assessee that extended period wrongly invoked. Accordingly, I find that the contention of the assessee is not supported with any evidence and therefore I find that the extended period is rightly invoked.

46. I further find that the said assessee has submitted certificate dated 04.10.2017 issued by Chartered Accountants M/s.Amal Dutt and Associates showing value of clearance from factory, duty paid and expenses incurred post clearances during the period from 2010-11 to 2013-14. Similarly another certificate dated 09.03.2023 was issued by Chartered Accountants M/s.HVG & Associates for the period 2014-15 to June-17 along with separate worksheets showing value of clearance from factory, duty paid and expenses incurred post clearances. The said certificate is also certifies that the break up of expenses incurred on transportation, hamali, unloading and other charges during the transportation of goods from their factory premises at Ahmedabad to the premises of their customers. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the bifurcation of the expenses as true. Therefore, I hold that these expenses are not to be included in the transaction value of the goods as the sale of the goods takes place at their manufacturing unit at Ahmedabad and not at Mumbai as alleged in the SCN.

47. It is pertinent to mention here that the decision of the Apex Court in the case of CCE vs Ispat Industries Ltd 2015 (324) ELT 670 while discussing Rule 5 of the Central Excise Rules substituted w.e.f 1.3.2003, has held that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal. Further, explanation 2 appended to Rule 5 of the Central Excise Rules clarifies that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods. The relevant portion of the case law

is reproduced as under:

> *16. It will thus be seen that where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be the normal value thereof. Sub-clause (b)(iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot, or the premises of a consignment agent of the manufacturer are obviously places which are referable only to the manufacturer. Even the expression "any other place or premises" refers only to a manufacturer's place or premises because such place or premises is stated to be where excisable goods "are to be sold". These are the key words of the sub-section. The place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer. If we are to accept the contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to the buyer's premises.*

48. The said case law is applicable in this case also as the place of removal is the factory gate in the instant case. Therefore the expenses incurred on account of transportation and other charges are excludible from the transaction value. Accordingly the demand of excise duty is not sustainable in this regard also. Therefore I am of the considered opinion that the assessable value of finished goods declared by the assessee in their invoices for clearance of finished goods from their factory premises (Hansol, Ahmedabad) is accepted . The notice has also relied upon a number case laws in their reply to SCN which were not exactly match with the subject matter, hence I do not discuss the relevancy of the said case laws.

49. Further, on perusal of the above facts, it is also pertinent to mention here that the SCN is proposed to recover excise duty on the full value of the goods which are delivered at the doorstep of the customers. On perusal of the agreement between the noticee and customers, I find that the noticee is required to deliver the goods at the doorstep of the customers and invoices are raised inclusive of all the expenses incurred at the place of delivery. On perusal of SCN, I find that the SCN is proposed to recover excise duty on these expenses also. If we take the full amount received from the customers, it will become charging the excise duty on the transaction value arrived at the place of delivery instead of place of removal. Therefore, if we accept the proposal of SCN to recover excise duty on differential value, it will be presumed that the excise duty is charged on value at 'place of delivery' instead of 'place of removal' which is against the concept of charging of excise duty on the transaction value at the place of removal. Accordingly, I conclude that the post clearance expenses made by the assessee is not inclusive in the transaction value and therefore the said

value is not subject to excise duty and therefore the duty demanded on the differential value is not sustainable.

50. In view of the above facts, I find that the central excise duty demanded vide SCN No. V.22/15-43/OA/2015 dated 28.04.2015, No.V/16-19/DEM/Sheelpe/16-17 dated 04.04.2017, No.V/16-19/DEM/Sheelpe/16-17 dated 11.04.2017 and No.V/16-11/Sheelpe Ent/Dem/18-19 dated 24.10.2018 are not sustainable therefore the same is required to be dropped. As the demand itself is not sustainable, interest and penalty proposed is not also sustainable. Accordingly I pass the following order.

ORDER

(i) I drop the proceedings initiated vide SCN No. V.22/15-43/OA/2015 dated 28.04.2015, No.V/16-19/DEM/Sheelpe/16-17 dated 04.04.2017, No.V/16-19/DEM/Sheelpe/16-17 dated 11.04.2017 and No.V/16-11/Sheelpe Ent/Dem/18-19 dated 24.10.2018 for the period from 2010-11 to 2017-18 (upto June 2017) issued against M/s.Sheelpe Enterprises P. Ltd.

(ii) The remand order No.AHM-EXCUS-002-APP-45/2021-22 dated 30.11.2021 passed by the Com(A), Central Tax, Ahmedabad stands disposed off in the above manner.

02/01/2024

(Lokesh Damor)
Additional Commissioner
Central GST & C.Ex.,
Ahmedabad North.

BY REGISTERED POST AD

F.No. V.22/15-14/OA/2019-Denovo Date:

To,

M/s. Sheelpe Enterprises Pvt. Ltd.,
(earlier M/s. Sheelpe Enterprises)
Survey No. 316, C S D Depot Road,
Off Airport Road, Hansol,
Ahmedabad – 382 475.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-I Ahmedabad North.
3. The Superintendent, Range-IV, Division-I, Central GST & Central Excise, Ahmedabad North
4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.