



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20220364WT00009959DF

फा.सं./F.No. STC/15-138/OA/2020

आदेश की तारीख/Date of Order :- 31.03.2022
जारी करने की तारीख/Date of Issue :- 31.03.2022

द्वारा पारित/Passed by:-

मुकेश राठौर / Mukesh Rathore

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 131/ADC/MR /2021-22

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

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (ST-4) 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।

(3) उक्त अपील की प्रति।

(4) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

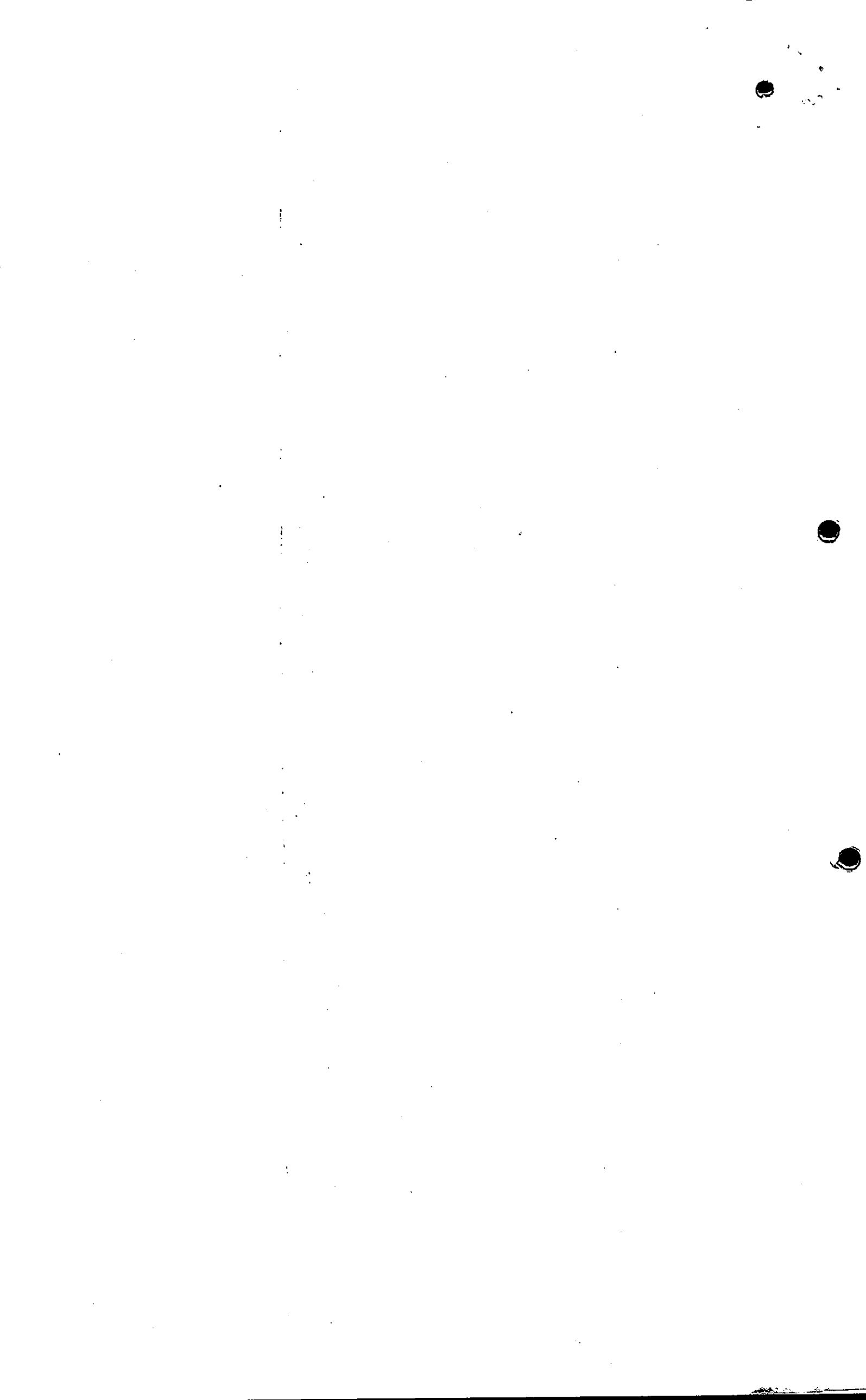
The appeal should be filed in form एस टी -4 (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(3) Copy of accompanied Appeal.

(4) 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.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/15-138/OA/2021-22 dated 23.04.2021 issued to M/s HI-Tech Automation, Survey No. 912, Village-Vithlapur, Shed No. 1, Taluka-Mandal, Ahmedabad-382120.



BRIEF FACTS OF THE CASE

M/s. HI Tech Automation, Survey No.912, Village- Vithlapur, Shed No.- 1, Village - Vithalpur, Tal.- Mandal, Ahmedabad, Gujarat, 382120, (hereinafter referred to as the 'said service provider' for the sake of brevity) is un-registered in Service Tax despite being providing service during the year 2015-16 & 2016-17.

2. Ongoing through the data received from Income Tax department (CBDT data) for the Financial Year 2015-2016 & 2016-17 for un-registered service provider, it has been observed that the said service provider has shown 'Gross receipt from Service' in their Income Tax Return, however, the said service provider has neither obtained valid service tax registration nor paid Service Tax. The details of the value shown in Income Tax return for F.Y 2015-16 & 2016-17 is as per table mentioned below: -

F.Y.	Basic value as per ITR/P&L account (Rs)	Resultant Service tax not paid (Rs.)
2015-16	Rs. 66,24,087/-	S.T- Rs. 9,27,372/- S.B.Cess- Rs. 33,121/- Total-Rs. 9,60,493/-
2016-17	Rs. 7,39,89,271/-	S.T- Rs. 1,03,58,499/- S.B.Cess- Rs. 3,69,946/- K.K.Cess- 3,69,946/- Total- Rs. 1,10,98,391/-

3. Letters/e-mail dated 07.04.2021 & 12.04.2021 were issued requesting clarification regarding the service turnover as mentioned in the above table with certified documentary evidences, but the said service provider has not replied the observations raised by Range office with supporting documents till the issuance of this notice.

4. Unquantified demand at the time of issuance of SCN-

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs. UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

5. From the facts, it appears that the "Total Amount Paid / Credited under Section 194C, 194H, 194I, 194J OR Sales / Gross Receipts from Services (From ITR)" for the period April, 2017 to June, 2017 has not been disclosed by

the Income Tax Department and the service provider has also, even after the issuance of letters and reminders from the Department, not submitted the same. Therefore, the assessable value for the period from April, 2017 to June, 2017 is not ascertainable at the time of issuance of this Show Cause Notice. Consequently, if any other amount is disclosed by any other sources / agencies, against the same service provider, action will be initiated against the said service provider under the proviso to Section 73(1) of the Finance Act, 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017, in as much as the Service Tax liability arising in future, for the period from April, 2017 to June, 2017 will be recoverable from the said service provider accordingly.

6. As per Section 69 of the Finance Act, 1994 — *“(1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.*

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed

Whereas In the instant case, it appears that the said service provider has failed to obtain Service Tax registration and thereby violated the provisions of Section 69 of the Finance Act, 1994.

7. Further, as per Section 68 of the Finance Act, 1994 *(1) Every person providing taxable service to any person shall pay service tax at the rate specified in Section [66B] in such manner and within such period as may be prescribed.*

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. 14 Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. “

In this case, the said service provider has failed to pay the service tax on the taxable services provided by them and thereby contravened the provisions of Section 68 of the Finance Act, 1994.

8. In view of above, the said service provider has contravened the provisions of; (1) Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 and (2) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to take service tax registration and pay Service Tax to the extent of Rs.1,20,58,884/- [Rs. 9,60,493/- (S:T- Rs.9,27,372/-/+ S.B Cess- 33,121/-) for F.Y. 2015-16 and Rs. 1,10,98,391/- (S.T- Rs.1,03,58,499/-+ S.B Cess- 3,69,946/- + K.K. Cess- 3,69,946/-) for F.Y. 2016-17]as per their Income Tax Return/ Form 26AS/P&L account.

9. It has been noticed that at no point of time, the said service provider has disclosed or intimated to the Department regarding receipt/providing of Service, which has come to the notice of the Department only after going through the CBDT Data generated for the Financial Year 2015-2016& 2016-17. The Government has, from the very beginning, placed full trust on the

service providers and accordingly measures like self assessment etc, based on mutual trust and confidence are in place. From the evidences, it appears that the said service provider have knowingly suppressed the facts regarding receipt of/providing of services by them. It appears that the above act of omission on the part of the said service provider resulted into non- payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 by invoking proviso under sub-section (1) of Section 73 read with the Notification issued on 27.06.2020 under Section 6 of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated 31.03.2020, along with Interest thereof, at appropriate rate, under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the said service provider constitute offence of the nature specified under Section 68 & Section 69 of the Finance Act, 1994, it appears that the said service provider has rendered themselves liable for penalty under Section 77 (1) (a) & Section 78 of the Finance Act, 1994.

10. Accordingly Show Cause notice was issued to M/s.Hi Tech Automation called upon to show cause, as to why:

- a) The demand for Service Tax to the extent of Rs. 1,20,58,884/- [Rs. 9,60,493/- (S.T- Rs.9,27,372/-/-+ S.B Cess- 33,121/-) for F.Y. 2015-16 and Rs. 1,10,98,391/- (S.T- Rs.1,03,58,499/-+ S.B Cess- 3,69,946/- + K.K. Cess- 3,69,946/-) for F.Y. 2016-17]not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- b) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- c) Penalty should not be imposed upon them under the provisions of Section 77 (1) (a) of the Finance Act 1994, for failure to take Service Tax Registration;
- d) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994, for non-payment of service tax by knowingly suppressing the facts from the department with intent to evade the payment of service tax

DEFENCE REPLY

11. The assessee vide letter dated 20.05.2021 submitted reply to SCN wherein they stated that they purchase raw material from Badve Autotech P.Ltd and supplying the product according to specification and requirement of customers M/s.Baldev Auto P.Ltd and customer M/s.Badve Auto P.Ltd had deducted TDS thereon u/s.194.C of IT Act, 1961. The assessee declared sale under the excise act and charged excise. Sample sale bill and excise return are enclosed for the relevant period. Assessee charged excise on sale and all sales were properly reflected in it excise and proper reconciliation of sale with profit and loss accounts.. They have provided copies of ITR & 26 AS for F.Y 2015-16 & 2016-17, Audited Balance Sheet and Profit & Loss account, sample sales invoices and reconciliation of sale in excise and sale sown in P & L account.

12. Vide letter dated 20.12.2021, the assessee further submitted that their manufacturing process is that they purchase the raw material from the various parties (e.g sheets, coils etc) the same goes through the manufacturing process like de coiled the coil(if coil purchased), coil cut to sheet form, sheet blanking by power process. Black pieces bending by power press, punching, nut projection, welding packing and dispatch. Final product is manufactured which a rotor parts. As the same is considered as manufacturing process and they have already paid the excise on the same, it will not fall under the service category thus there will not be any service tax liability.

13. They further contended that in order to levy central excise duty, it is necessary that a new article should come into existence as a result of manufacturing activity. Unless there is manufacture, excise duty is not payable. Into existence as a result of manufacturing activity. Unless there is manufacturing, excise duty is not payable. Section 2(f) of CE Act, 1944 defines manufacture includes any process (i) incidental or ancillary to the completion of manufactured product (ii) which is specified in relation to any goods in the Section or chapter notes of the First Schedule to the CET Act, 1985 as amounting to manufacture or (iii) which in relation to goods specified in third schedule(MRP Goods) involves packing or repacking such goods in a unit container or labeling or labeling of container including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

PERSONNEL HEARING

14. The Personnel Hearing was granted to the assessee on 07.02.2022. Shri Vaishal Y Dave, CA, appeared for P.H on behalf of M/s.Hitech Automation. He reiterated the submissions dated 20.05.2021 & 22.12.2021.

DISCUSSION AND FINDINGS

15. I have carefully gone through the records of the case, submission made by the noticee, Audited Balance Sheet, ITR/ER1 and copies of invoices for the year 2015-16 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,20,58,884/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. Rs.1,20,58,884/- for the financial year 2016-16 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

16. On perusal of the reply to SCN and other documents, I find that the assessee purchased raw material from Badve Autotech P.Ltd and supplying the product according to specification and requirement of their customer M/s.Baldev Auto P.Ltd. The assessee declared sale under the excise act and charged excise. Sample sale bill and excise return are enclosed for the period under reference. Assessee charged excise on sale and all sales were properly reflected in it excise and proper reconciliation of sale with profit and loss accounts. They have provided copies of ITR & 26 AS for F.Y 2015-16 & 2016-

17, Audited Balance Sheet and Profit & Loss account, sample sales invoices and reconciliation of sale in excise and sale shown in P & L account.

17. On perusal of the written submission and reply to SCN filed by the assessee, I find that the assessee is manufacturer of motor vehicle parts and accessories for which they have obtained Central Excise Registration No. CRMPS5087CEM001. They are clearing the manufactured goods and scrap on payment of excise duty and have filed ER 1 return for the relevant period. They have produced and filed copies of ER1 for the period 2015-16 and 2016-17.

18. On perusal of SCN and audited Balance Sheet for the year 2015-16, I find that in the audited balance sheet, Rs.89,56,267.86 is shown as income by sale and in the Show Cause Notice the basic value as per ITR/P&L is taken as Rs.66,24,087/-. As the sales value of Rs. 89,56,267.86 shown the balance sheet is more, I take the same as the value for the year 2015-16. The assessee in his reply to SCN submitted that they are manufacturer of automobile parts and accessories and are clearing the said goods on payment of excise duty. They have also submitted copies of ER1 in support of their claim. On perusal of copies ER 1 returns, I find that motor vehicle parts and accessories are shown as their description of goods under CTH No.87141010 and also clearing scrap. On perusal of audited Balance sheet, reconciliation statement, ER 1 Returns, I find that they have an income of Rs.89,56,237.86 by sales. Hence it is clear that the income of Rs.89,56,237.86 is the proceeds from sale of motor vehicle parts, accessories and scrap on which they have paid excise duty at appropriate rate and also filed ER 1 returns. In view of the above, I consider the income of Rs. 89,56,237.86 as sale proceeds from automobile parts and accessories and scrap and no element of service as defined in Finance Act, 1944 is involved in it and therefore no service tax is applicable on this proceeds as sale of goods are not covered under the definition of service and also is exempted from payment of service tax.

19. On perusal of SCN and audited Balance Sheet for the year 2015-16, I find that in the audited balance sheet, Rs. 7,85,91,408.94 is shown as income by sale and in the Show Cause Notice the basic value as per ITR/P&L is taken as Rs. 7,39,89,271/-. As the sales value of Rs. 7,85,91,408.94 shown the balance sheet is more, I take the same as the value for the year 2016-17. The assessee in his reply to SCN submitted that they are manufacturer of automobile parts and accessories are clearing the said goods on payment of excise duty. They have also submitted copies of ER1 in support of their claim. On perusal of copies ER 1 Returns, I find that motor vehicle parts and accessories are shown as their description of goods under CTH No.87141010 and also clearing scrap. On perusal of audited Balance sheet, reconciliation statement, ER 1 Returns, I find that they have an income of Rs.7,85,91,408.94 is the proceeds from sale of motor vehicle parts, accessories and scrap on which they have paid excise duty at appropriate rate and also filed ER 1 returns. In view of the above, I consider the income of Rs.7,85,91,408.94 as proceeds from sale of goods and no element of service as defined in Finance Act, 1944 is involved in it and therefore no service tax is applicable on this proceeds as

sale of goods are not covered under the definition of service and also is exempted from payment of service tax.

20. In view of the above, I would like to discuss the relevant provisions with regard to trading of goods/sale of goods; As per the extant provisions of Chapter V of the Finance Act, 1994 activity of trading in Goods is not taxable. Levy of Service as per Section 66B is on Services only, said section reads as under:

66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Term 'Service' as defined in section 2 (44) excludes the activity of transfer title in goods by of sale, which is nothing for Trading.

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

Further, as seen in section 66B, all activities listed as Negative List in section 66D are also out of the ambit of Service tax. Activity of Trading in Goods is mentioned in section 66D (e), said section reads as under:

66D. The negative list shall comprise of the following services, namely:—

(e) trading of goods;

21. On perusal of the Section and definitions, I find that sale is not falling under the definition of service as defined in Section 2(44) of Finance Act, 1994. Similarly trading of goods falls under the negative list of services specified in Section 66D of Finance Act, 1994 and accordingly the sale proceeds of excisable goods of the assessee are not liable to be taxed under the provisions of service tax and accordingly the service tax demand of Rs.1,20,58,884/- is not sustainable.

22. The financial and other records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company/ individual during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated 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 at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the 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 of the company/individual. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

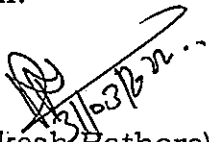
23. Having considered above facts and discussion, I am of the view that the assessee was engaged in manufacturing of automobile parts and accessories and sale thereof FY 2015-16 & 2016-17. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments. I am, therefore, of the view that the assessee has established their case quite clearly and therefore I hold that no service tax is payable by the assessee as demanded in the subject SCN.

24. Further, on perusal of paras 4 & 5 of SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN. On perusal of SCN, I further find that the SCN has not questioned the taxability on any income other than the income from clearing and forwarding services. I, therefore, refrain from discussing the taxability on any other income.

25. In view of the facts and circumstances pertaining to the case as aforementioned, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on charging interest or imposing penalty. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

: ORDER :

26. I drop the demand of Rs.1,20,58,884/- and proceedings initiated against M/s. Hi Tech Automation and accordingly Show Cause Notice F.No. STC/15-138/OA/2021-22 dated 23.04.2021 is hereby disposed off.


(Mukesh Rathore)
Additional Commissioner
Central Excise & CGST,
Ahmedabad North

F No:STC/15-138/O&A/2021-22

Dated: .03.2022

By Regd. Post AD./Hand Delivery

To,

M/s. HI Tech Automation,
Survey No.912, Village- Vithlapur,
Shed No.- 1, Village - Vithalpur, Tal.- Mandal,
Ahmedabad, Gujarat, 382120

Copy for information to:

1. The Commissioner, CGST & CX, Ahmedabad North.
- 2.. The Dy. /Assistant Commissioner, DIV-III, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-II, Division-III, CGST & CX, Ahmedabad North
4. The Superintendent, Systems, CGST & CX, Ahmedabad North
5. Guard File.