आयुक्त(अपील)का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

. ☎ 07926305065- टेलेफैक्स07926305136

DIN : **20211264SW000072297C**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1486/2021 / 5113 TO 5121

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-75/2021-22**
दिनाँक Date : **14-12-2021** जारी करने की तारीख Date of Issue 15.12.2021

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **KLL DIV/STAX/KHATIK/24/2020-21** दिनाँक: **15.01.2021** issued by Deputy Commissioner, CGST& Central Excise, Division Kalol, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Deora Wires and Machines Pvt Ltd.
Deora Avenue, Near Mithakhali Six Roads,
Navrangpura, Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत:–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(52) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(cxxxix) amount determined under Section 11 D;
(cxl) amount of erroneous Cenvat Credit taken;
(cxli) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Deora Wires and Machines Private Limited, Deora Avenue, Near Mithakali Six Roads, Navrangpura, Ahmedabad (hereinafter referred to as the appellant) against Order in Original No. KLL DIV/STAX/KHATIK/24/2020-21 dated 15-01-2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST, Division- Kalol, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is holding Service Tax Registration No. AAACD6608EST001 and engaged in providing Business Auxiliary Service, Transport of goods by road/Goods Transport Agency service, legal consultancy service provided/received by them. Information gathered by the officers of Directorate General of Central Excise Intelligence [now Directorate General of Goods and Service Tax Intelligence, hereinafter referred to as (DGGI)] indicated that the appellant was having large amount of transaction in their HDFC bank account. Based on the information inquiry was initiated by DGGI and documents were called and on examination of the same it was found that the appellant had received income for 'Non Fulfillment of Contract' from their customers, which was reflected in their financial records as 'Other Income' for the F.Y. 2013-14. It was also gathered that the appellant had not paid service tax on such income received by them. Shri Sanjay Deora, Director of the appellant, submitted in his statement dated 12.04.2019 that the amount is related to advance forfeited against order of production and the amount was forfeited for not lifting of the order partially by their customer. It appeared to the department that the appellant had tolerated the act of default in terms and conditions of the agreement by their customers, for which they recovered consideration in the form of forfeit of advance money. Thus, the act of tolerance of the default appeared to render itself within the ambit of service as defined under Section 65B (44) of the Finance Act, 1994 and was a taxable service as per Section 66E (e)

of the Finance Act, 1994 i.e. 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'.

2.1 The appellant was issued a SCN bearing No. DGGI/AZU/Gr.D/36-15/2019-20 dated 24.04.2019 wherein it was proposed to determine the service provided by them against amounts recovered as 'Non Fulfillment of Contract' towards 'agreeing to the obligation to tolerate an act or a situation' as a taxable service under Section 66E (e) of the Finance Act, 1994 and recover the service tax amount of Rs.16,10,982/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty under Section 77 and 78 of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the service provided by the appellant against amounts recovered as 'Non Fulfillment of Contract' towards 'agreeing to the obligation to tolerate an act or a situation' was held to be a taxable service under Section 66E (e) of the Finance Act, 1994. The demand for service tax was confirmed along with interest. Penalty was also imposed under Section 77 and 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

i. The advance amount forfeited on account of non lifting of the goods ordered by the customer was in lieu of the financial loss suffered by them and there was no provision of service in the entire transaction as it is purely a business transaction happening in the course of purchase and sale of goods.

ii. The adjudicating authority has wrongly interpreted the term 'Declared Service' under Section 66E read with Section 66B of the Finance Act, 1994. From a bare perusal of the definition of declared service as provided under Section 66B (22) it is evident that to consider a transaction as a declared service, there should be an

action and that too for a consideration. In the present case, there is no action and no consideration involved.

iii. The adjudicating authority has mis-interpreted and mis-construed that the amount forfeited is a consideration received by them in lieu of activity of tolerance on their part.

iv. As per Section 53 of the Indian Contract Act, they are entitled to compensation from their client as per their agreement, as the client failed to perform his promise by non lifting of good manufactured. Merely because there is a mutual consent on the amount of compensation receivable in the event of a breach of promise/agreement, the compensation does not take the color of consideration.

v. The issue has already been decided by the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-002-APP-005-2020-21 dated 28.04.2020 wherein it was held that the amount retained when order was cancelled is compensation and not consideration and hence not liable to service tax.

vi. They rely on the decision in the cases of : (i) Cricket Club of India Vs. Commissioner of Service Tax – 2015 (40) STR 973 (Tri.-Mum); (ii) Mormugao Port Trust Vs. Commissioner of Customs, C.Ex. and Service Tax, Goa – 2016 TIOL 2843 (Tri.-Mum); (iii) Jaipur Jewellery Show Vs. CCE & ST, Jaipur-I – 2017 (49) STR 313 (Tri); (iv) Reliance Life Insurance Co Ltd Vs. Commissioner of Service Tax, Mumbai-I in Tax Appeal No. ST/85584/2015; (v) Amit Metaliks Ltd Vs. Commissioner of CGST, Bolpur in Service Tax Appeal No. ST/76339 of 2018.

vii. The demand is hit by the bar of limitation. Their records were audited periodically by the department and no objection was raised on the subject issue. Therefore, the allegations that they had not disclosed the facts is not correct. They rely upon the various case laws in this regard.

viii. The department was aware about the issue while auditing the records earlier and no observation was raised which made them believe that no service tax is payable on the amount due to

cancellation of purchase order. Thus imposition of penalty is not sustainable. They rely upon the judgments of the various appellate authorities.

5. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri M.H. Raval, Consultant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and their additional written submissions.

5.1 I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. I find issue before me for decision is whether the advances received from the customer and which was forfeited on the customer not lifting the goods ordered is a consideration towards the service under the category of declared services viz. "*Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*" as provided in Section 66E (e) of the Finance Act, 1994. The demand pertains to the period October, 2013 to March, 2014.

5.2 I find that the appellant are engaged in the manufacturing of Aluminum Wire and Machine etc. The goods are manufactured by them on the specific order of the customer on taking advance. Upon the goods being manufactured, the customer who ordered the goods did not lift the goods manufactured for them. It is the contention of the department that the advance amount forfeited for non fulfillment of contract is consideration received for providing the taxable service of 'agreeing to the obligation to refrain from an act or to tolerate an act or a situation' as defined under Section 66E (e) of the Finance Act, 1994.

5.3 Having considered the facts involved in the present appeal, I find that since the goods were manufactured as per the specification of the customer, it is quite possible that the appellant may suffer loss if the goods are not lifted by the customer. Since there was a failure on the part of the

customer to fulfill his part of the contract i.e. taking delivery of the goods ordered, the advance money was adjusted by the appellant. The forfeiture of the advance amount by the appellant is, in my view, not a consideration for any taxable service provided by them and neither has any taxable service been provided by the appellant by forfeiting the advance amount paid by the customer. I am of the view that the advance amount forfeited by the appellant is in the nature of compensation in terms of the provisions of Section 53 of the Indian Contract Act.

6. I find that a similar issue has been decided by me earlier vide OIA No. AHM-EXCUS-002-APP-17/2021-22 dated 17/09/2021 in the case of M/s.Hi Tech Industry. The relevant part of this OIA is reproduced as under :-

"I find that the first point to be decided in the instant case is as to whether the amount of booked under Order Cancellation Income by the appellant would amount to a consideration as envisaged in the service tax law or not and then only the question of taxability arises in the matter. The department is contending that the said amount is nothing but a consideration for tolerating the act of not performing the contractual obligation by the buyers of the appellant. At this juncture it is relevant to refer to Section 53 of the Indian Contract Act which reads as under:

> *"When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract."*

From the above legal provision, it is amply clear that what is provided therein is the entitlement of a compensation to the party who was prevented from performing the contract for any loss which he may sustain as a consequence of the non-performance of the contract. The nature of relief envisaged in the said provision is clearly defined as a compensation for the affected party for any loss which he may sustain on account of the act of the other party. Merely because there is a mutual agreement on the amount of compensation in the event of a breach of promise/agreement, the compensation does not take the colour of consideration, as contended by the department. What is to be understood is the distinction between the terms "consideration" and "compensation". Consideration is not defined under service tax law but as per provisions of Indian Contract Act, it means a promise made by the

promisee in reciprocation. Whereas the compensation is something which is awarded to the sufferer on account of breach of the contract by the other party. The definition of the term 'service" as given in Section 65B(44) of the Act envisages "consideration" and not "compensation". I find that the amount forfeited/penalty by the buyers of the appellant is in the nature of a compensation and not consideration as contended by the department.

10. It is a fact accepted by the department too that the amount forfeited/penalty is for tolerating the act of not performing the contractual obligation. Therefore, such a transaction is clearly in the nature as envisaged in Section 53 of the Indian Contract Act and hence the amount so received would definitely amount to a compensation. Mere receipt of money which is in the nature of a compensation cannot be treated as consideration for any activity. Further, when it is established that the transaction in the case is in the nature of compensation against a breach of contract as envisaged in Section 53 of the Indian Contract Act, the contention that there was an act of tolerating the act of not performing the contractual obligation by the service provider is not sustainable.

11. I am, therefore, of the considered view that the amount booked as Order Cancellation income which is infact forfeiture of amounts/penalty paid by the buyers of the appellant in the present case is in the nature of a compensation as envisaged in Section 53 of the Indian Contract Act, 1872 for non performance of the contractual obligations. Such a transaction, being compensation against breach of contractual obligations, does not per se amount to a consideration and does not per se constitute any service or declared service as envisaged under Section 65B (44) and Section 66E(e) of the Act. When there is no consideration, there is no element of service as defined under the Act and consequently there cannot be any question of service tax in the matter.

12. I find that the Kolkata Regional Bench of Hon'ble Tribunal in their decision dated 25.10.2019 in Service Tax Appeal No.ST/76339 of 2018 (DB) in the case of M/s Amit Metaliks Ltd., Durgapur Vs. The Commissioner of Central Goods and Services Tax, Bolpur, has dealt with a similar kind of situation as in the present case and it was held that :

> *27. As far as the compensation received from M/s Amit Mines is concerned, the Show Cause Notice mentions the leviablity of Service tax on the amount received towards the compensation for non supply of the agreed quantity of manganese ore under Section 66 E(e) of Finance Act which is even otherwise is purely the transaction sale of the iron ore to the Appellant by M/s Amit Mines. Thus, the compensation amount is towards default on the sale of the goods. The sale could not be effected and, therefore, Appellant received the liquidated damage by*

way of raising the debit note which was honoured by M/s AML. Thus, this amount of compensation/ liquidated damage cannot be treated as service under Section 66 E(e) of the Act. The demand is thus not sustainable on this aspect also.

13. The appellant have also relied upon a few decisions in support of their stand. I find that the decision dated 22.12.2020 of the Hon'ble Tribunal in the case of M/s.South Eastern Coalfields Vs. Commissioner of Central Excise and Service Tax, Raipur is applicable to the present case. In said the case the issue was the collection of an amount towards compensation/penalty from the buyers of coal on the short lifted/un-lifted quantity of Coal; collected amount towards compensation/penalty from the contracts engaged for breach of terms and conditions; and collected amount in the name of damages from the suppliers for breach of the terms and conditions of the contract. The department contended that this amount was taxable as a declared service under Section 66E (e) of the Finance Act, 1994. The Hon'ble Tribunal held that :-

" 43. It is, therefore, not possible to sustain the view taken by the Principal Commissioner that penalty amount, forfeiture of earnest money deposit and liquidated damages have been received by the appellant towards consideration for tolerating an act leviable to service tax under section 66(E) (e) of the Finance Act."

14. The appellant have also relied upon the decision in the case of M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. Vs. Principal Commr., CGST & C. EX., Bhopal reported at 2021 (46) G.S.T.L. 409 (Tri. - Del.). In the said case the appellant was collecting an amount towards liquidated damages from the contractors and suppliers when they failed to ensure compliance of the terms of the contract within the time stipulated and the appellant was also recovering amount from consumers for theft and un-authorized use of electricity. According to the Department, this amount was not included in Section 66D(k) of the negative list and so a show cause notice was issued to the appellant mentioning therein that the penalty amount and the amount collected towards theft of electricity by the appellant was towards consideration for tolerating an act and covered as a "declared service" under Section 66E(e) of the Finance Act w.e.f. July 1, 2012. It was held by the Hon'ble Tribunal that :

"Thus, for all those reasons stated above, it is not possible to sustain the order passed by the Principal Commissioner confirming the demand of service tax on the amount collected towards liquidated damages and theft of electricity. The order dated December 31, 2018 is accordingly set aside and the appeal is allowed".

15. In the case of M/s.K.N. Food Industries Pvt Ltd, Vs. Commissioner of CGST and Central Excise, reported at 2020 (38) G.S.T.L. 60 (Tri. - All.) the Hon'ble Tribunal had held that :

"In the present case apart from manufacturing and receiving the cost of the same, the appellants were also receiving the compensation charges under the head ex-gratia job charges. The same are not covered by any of the Acts as described under Section 66E(e) of the Finance Act, 1994. The said sub-clause proceeds to state various active and passive actions or reactions which are declared to be a service namely; to refrain from an act, or to tolerate an act or a situation, or to do an act. As such for invocation of the said clause, there has to be first a concurrence to assume an obligation to refrain from an act or tolerate an act etc. which are clearly absent in the present case. In the instant case, if the delivery of project gets delayed, or any other terms of the contract gests breached, which were expected to cause some damage or loss to the appellant, the contract itself provides for compensation to make good the possible damages owning to delay, or breach, as the case may be, by way of payment of liquidated damages by the contractor to the appellant. As such, the contracts provide for an eventuality which was uncertain and also corresponding consequence or remedy if that eventuality occurs. As such the present ex-gratia charges made by M/s. Parle to the appellant were towards making good the damages, losses or injuries arising from "unintended" events and does not emanate from any obligation on the part of any of the parties to tolerate an act or a situation and cannot be considered to be the payments for any services.

5. *In view of the foregoing, we find no reasons to uphold the impugned orders. Inasmuch as the appeal stands allowed on merits, the plea of limitation is not being adverted to."*

16. In the light of the above decisions of the Hon'ble Tribunal, I find that the contention of the department is not sustainable. Having found no merit in the contention of department for raising demand in the matter, I am not going into the merits of appellant's other contentions in the matter."

7. Further, the case of M/s. Inductotherm (India) Pvt Ltd, involving the same issue, was also decided by me vide OIA No. AHM-EXCUS-002-APP-005-2020-21 dated 23.06.2020. In the said OIA it was held that :

" 6.3 In view thereof, I am of the considered view that the act of forfeiture of advance amounts by the appellant in the present case is in the nature of a compensation as envisaged in Section 53 of the Indian Contract Act, 1872 against the breach of promise/agreement on the part of the buyer and such a transaction, being compensation against breach of promise/agreement, does not *per se* amount to a consideration and does not *per se* constitute any service or declared service as envisaged under Section 65B (44) and Section 66E(e) of the Act. When there is no consideration, there is no element of service as defined under the Act and consequently there can not be any question of service tax in the matter."

8. I find that the facts involved in the present appeal are similar to that in the cases cited supra. I further find that there is no change in the legal provisions nor has there been any judicial ruling contrary to the aforesaid orders. I also find that there is nothing on record to indicate that the OIAs

cited supra have been overruled by any higher appellate authority. That being so, I do not find any reason to take a different view in the matter. Hence, following my above decisions on similar facts as well as the judicial pronouncements cited in the OIA supra, it is held in the present case also that the forfeiture of advance by the appellant is not a consideration and neither has any service in terms of Section 66E (e) of the Finance Act, 1994 been provided by the appellant. Consequently no service tax is payable by the appellant on the advance forfeited by them from their customer. The demand confirmed in the impugned order, is therefore, not legally sustainable.

9. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

14th December 2021.

(**Akhilesh Kumar**)
Commissioner (Appeals)
Date: .12.2021.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Deora Wires and Machines Private Limited, Appellant
Deora Avenue, Near Mithakali Six Roads,
Navrangpura, Ahmedabad

The Deputy Commissioner, Respondent
CGST & Central Excise,
Division- Kalol
Commissionerate : Gandhinagar

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.

2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)
4. Guard File.
5. P.A. File.