आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
सत्यमेव जयते
07926305065- टेलेफैक्स07926305136

DIN: 20230164SW0000333FDE

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/712/2022-APPEAL / 7055 – 60

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-100/2022-23**
दिनाँक Date : **30-12-2022** जारी करने की तारीख Date of Issue 10.01.2023

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

ग Arising out of Order-in-Original No. **MP/29-33/Dem/AC/2021-22/HNM** दिनाँक: **09.02.2022**, issued by Deputy/Assistant Commissioner, Division-II, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Arvind Ltd. ,
   Naroda Road, Ahmedabad-380025

2. Respondent
   The Assistant/Deputy Commissioner, CGST,Division-II, Ahmedabad North , 3rd Floor,Sahjanand Arcade,Opp. Helmet Circle, Memnagar, Ahmedabad – 52.

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 हानि कारखाने 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 में 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 भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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,Bahumali Bhawan,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 होते 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 notwithstanding 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय 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.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (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 सेवा कर 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:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) 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. Arvind Ltd., Naroda Road, Ahmedabad-380025 (hereinafter referred to as "the appellant"), against Order–in–Original No. MP/29-33/Dem/AC/2021-22/HNM dated 09.02.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST and Central Excise, Division-II, Ahmedabad North (hereinafter referred to as the "adjudicating authority"). The appellant is providing various taxable services including 'Business Support Service' and 'Fashion Designing Services' and are holding Service Tax Registration No. AABCA2398DST001.

2. During the course of audit done by the departmental officers, on verification of the financial records of the appellant, it was observed that the appellant were providing following taxable services on which they had failed to pay applicable service tax:

a) **Supply of Tangible Goods Services: -** The appellant had provided looms, winding machines on lease rent to M/s. Ankur Textiles. The appellant thereafter merged with M/s. Ankur Textiles. M/s. Ankur Textiles provided these looms and winding machines on lease rent to M/s. Yashvi Fabrics & M/s. S.R. Fabrics under different lease agreements. Similarly, they also provided Tusudakoma Airjet Looms on lease rent for the F.Y. 2009-10 and F.Y. 2010-2011 under the lease agreement to M/s. Arvind Polycot. The appellant had not paid service tax on lease rent received by them for the period 16.05.2008 to 31.03.2009 amounting to Rs. 85,074/-. It was observed that the machinery was given on lease without transferring the right of possession and effective control of the machinery. Hence, the activity was taxable under the category of 'Supply of Tangible Goods services'.

b) **Technical Inspection and Certification Services: -** The appellant had made the payment in foreign currency to M/s. Shirley Technologies Ltd., U.K. for getting OEKO-Tex Certificate meant for testing of the sample fabrics in terms of non-usage of banned dyes, chemicals etc. and also to test as to whether the dyes and chemicals used were not harmful for human body and were hygienic. The charges were remitted to them in foreign currency. These transactions were made for receiving the taxable service rendered in the nature of 'Technical Inspection and Certification service' during the period 01.03.2008 to 31.03.2012. As the services were rendered by a foreign firm to the appellant based in India, they were treated as if performed in India and taxable in terms of Section 66A of the F.A., 1994.

c) **Fashion Designing Services: -** The appellant received fashion designing services from foreign service providers (M/s. Red Rags Sri- Italy, Creations Robert Vernet-France & Nocomment Advertising Sri- Italy) which was partly performed in India and was liable to service tax.

d) **Business Support Services :-** During the period F.Y. 2008-09 to F.Y. 2011-12, the appellant received services of Post Shipment supervision of weighing of their products exported to foreign countries from M/s. SGS Societe Generate de Surveillance SA, Cargo Control Group etc. which were taxable under Business Support Services.

2.1 A Show Cause Notice No. STC/4-54/O&A/12-13 dated 12.04.2011 (SCN) was issued to the appellant proposing the total service tax demand of Rs. 23,67,041 under Section 73(1) of the F.A., 1994 alongwith interest under Section 75. Penalties under Section 78 were also proposed. The said SCN was adjudicated vide the O-I-O No. 24/STC/AHD/ADC(JSN)/2013-14 dated 24.12.2013, wherein the demand of service tax were confirmed alongwith interest and imposition of penalty.

2.2 Aggrieved by the said O-I-O, the appellant went in appeal and the Commissioner (Appeals - IV), Central Excise, Ahmedabad vide O-I-A No AHM-SVTAX-000-APP-143-14-15 dated 30.10.2014, upheld the demand under 'Technical Inspection & Certification Services' and 'Business Support Service' and dropped the demand on 'Supply of Tangible Goods Services' & 'Fashion Designing Services'. Aggrieved with the decision of Commissioner (A), both the department as well as the appellant went in appeal before the Hon'ble CESTAT, Ahmedabad.

2.3 Meanwhile, as the appellant continued with the practice of non-payment of service tax, five periodical SCNs were issued in terms of Section 73(1A) of the Finance Act, 1994 for non-payment of service tax on 'Supply of Tangible Goods Services', 'Technical Inspection & Certification Services' and 'Business Support Service'. The details are given below. These SCNs do not cover the issue of non-payment service tax on 'Fashion Designing Services'.

Sl. No.	SCN No.	Date	Amount (in Rs.)	Period Involved
01	STC/4-47/O&A/2013-14	15.04.2014	5,39,108/-	01.04.2012 to 30.09.2013
02	STC/4-30/O&A/ADC/D-VI/ 2015-16	19.10.2015	10,40,870/-	01.10.2013 to 31.03.2015
03	STC/4-16/O&A/Arvind-SCN/2016-17	17.04.2017	19,11,509/-	01.04.2015 to 31.03.2016
04	V.44/3-10/Dem-Arvind Ltd/2017-18	20.11.2017	11,10,126/-	01.04.2016 to 31.03.2017
05	AR-III/GST-13/PSCN/17-18	23.12.2019	4,12,304/-	01.04.2017 to 30.06.2017
		Total	**50,13,917/-**	

2.4 As the departmental appeal filed before Hon'ble Tribunal was pending, all the five SCNs listed above were transferred to call book. The Departmental appeals before Hon'ble Tribunal were, however, dismissed on monetary limits. Further, the appeal filed by the appellant has now been decided vide Final Order No. A/11289/2022 dated 26.10.2022, wherein the demands pertaining to 'Technical Testing & Certification Services' and 'Business Support Service' was remanded to the adjudicating authority to decide the case afresh.

2.5 Consequent to the dismissal of departmental appeal filed for the earlier period, all the above listed five SCNs were retrieved from call book and were decided vide the impugned order, wherein the total demand of Rs. 50,13,917/- was confirmed alongwith interest. Penalty of Rs. 50,13,917/-was also imposed under Section 78 of the FA, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds elaborated below:-

- There was abnormal delay in the adjudication. Personal hearing in the notices issued during 2014 to 2019, were held on 10.01.2022 i.e. after three to eight years. Such delay has denied proper opportunity to defend the case. They relied on various case laws viz., J. M. Baxi & Co. - 2016 (336) ELT 285 (Mad), Lavin Synthetics Pvt. Ltd- 2015 (322) ELT 429 (Bom.).

- As regards the demand of Rs. 9,09,652/- in r/o of Supply of Tangible Goods Services, the earlier demand on said service was dropped by the then Commissioner(A) and departmental appeal before Hon'ble Tribunal was also dismissed on monetary limits.

- The machinery was given on lease and the same was operated by the lessee, thus was under the possession and control of such lessee. There is a contract of bailment and the agreement specifically provides that the lessee hold the equipments as bailee. As per the agreement, the right of possession and use is granted to the lessee and there is no transfer of ownership. The conditions of the lesser specifically provided restriction on the lessee not to transfer, assign and charge mortgage, sublet, sell /dispose off or in any way part with the possession of the machinery. Therefore, the activities are outside the purview of taxable service. Hence, the demand is not sustainable. The definition of 'service' under Section 65B (44) clearly excludes the activities which constitute transfer or supply of goods which is deemed to be the sale within the meaning of Article 366(29A) of the Constitution. This fact is also clarified at Para 2.7.3 of the Education Guide. The copy of invoices raised to this effect is also enclosed. Any transaction which is liable to sales tax would not be liable to service tax. They relied on following case laws:-
    - OIO No. AHM-EXCUS-002-COMMR-23-2019-20 dated 04.02.2020
    - Compucom Software Ltd.- 2019(2) TMI 262
    - Dilip Kumar & Co- 2018(361) ELT-577

- As regards the demand of Rs. 39,86,371/- raised in respect of samples of fabrics sent abroad and services received in India, it is clarified that the sample fabrics were sent to service providers abroad for carrying out necessary test on such samples. Thus, the service was performed by the agencies abroad on the samples physically provided to them hence the place of provision of service is actually performed outside. The inspection and certification is done on samples but the application of these testing is undertaken on the fabrics lying in India. So the testing and performance/application of such testing is done on different products. Performance of service is by carrying out the technical inspection and certification.

- As regards the demand of Rs. 1,17,84/- raised in respect of Business Support Services, the demand on identical issue for earlier period was dropped by Commissioner (A) vide OIA No. AHM-SVTAX-000-APP-143-14-15 dated 03.11.2014, which is binding on the adjudicating authority.

- Interest and penalty u/s 76 not leviable when the demand is not sustainable.

4. Personal hearing in the matter was held on 02.12.2022. Shri S. J. Vyas, Advocate, appeared on behalf of the appellant. He re-reiterated the submissions made in the appeal memorandum. He stated that two issues have already been settled by Commissioner (A) in their favour. As regards the third issue, the Hon'ble Tribunal has vide Order dated 26.10.2022, remanded the case to the adjudicating authority. He submitted a copy of the Hon'ble Tribunal's decision dated 26.10.2022 during the hearing.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as during personal hearing. The issues to be decided in the present appeal are:-

a) Whether Renting of looms and winding machines by the appellant, in the facts and circumstances of the case, can be considered as a taxable service under 'Supply of Tangible Goods Services' till June, 2012 and thereafter as 'service' in terms of Section 65B of the F.A., 1994?

b) Whether the appellant is liable to pay service tax on RCM basis under 'Technical Inspection and Certification Service' (till June, 2012) and thereafter as 'service' in terms of Section 65B of the F.A:, 1994, in respect of the testing and certification services provided by overseas firm on the samples sent by them?

c) Whether the post shipment supervision of weighing of the products exported by the appellant to foreign countries are taxable under 'Business Support Services' till June, 2012 and thereafter as 'service' in terms of Section 65B of the F.A., 1994?

The demand pertains to the period F.Y. 2012-13 to F.Y.2017-18 (upto June, 2017).

6. On **the first issue**, the service tax demand of Rs. 9,09,652/- was raised on the grounds that the renting of looms and winding machines by the appellant is a service classifiable under 'Supply of Tangible Goods Services' for the period from April, 2012 to June, 2012 and thereafter, the said activity is covered under the scope of 'service' defined under Section 65B of the Finance Act, 1994, hence are taxable.

6.1. It is observed that the demand for earlier period (F.Y. 2008-09 to F.Y. 2011-12) covering the same issue was decided by the Commissioner (A), Ahmedabad vide O-I-A No. AHM-SVTAX-000-APP-143-14-15 dated 03.11.2014. The Commissioner (A) had, on examination of the sample invoices/bills raised by way of lease rental debit notes, observed that the appellant has charged VAT on the said lease amount. The right to use has been transferred to the lessee as the VAT has ought to have been paid under the sale lease agreement, so the possession and effective control lies with the Lessee only and not on the appellant. He, therefore, held that the supply of tangible goods for use and leviable to VAT / sales tax as deemed sale of goods, is not covered under the scope of 'Supply of Tangible Goods services'. He, therefore, held that the demand is not sustainable.

6.2. In the instant appeal, though the demand is on same issue, but they cover subsequent period from April, 2012 to June, 2017. They are in the nature of periodical demand raised under Section 73(1A) of the F.A., 1994. The adjudicating authority has held that the activity of renting looms & winding machines is classifiable as 'Supply of Tangible Goods' service upto 30.06.2012 and thereafter as 'service' chargeable to service tax in terms of Section 66B of the F.A., 1994. He has confirmed the demand on the argument that there is no requirement of lease agreement in case of sale. The lease agreement itself points towards the fact that there was no sale involved. As regards the VAT payment made by the appellant, he observed that the payment of VAT for deemed sale of goods does not seems to be incorporated in the agreement, which means that the same has been resorted to afterwards just to avoid payment of service tax. In support of his argument he also relied on Board's letter No. 334/1/2008-TRU dated 29.02.2008.

6.3. I find that the issue decided by the Commissioner (A) vide OIA dated 03.11.2014 in favour of the appellant was for the period prior to introduction of negative list regime. Since the period covered in the instant appeal also covers the period prior to introduction of negative list based regime, I find that to that extent the adjudicating authority was required to follow the judicial discipline and should have granted the benefit to the appellant. The revenue officers are bound by the decisions of the higher appellate authorities. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Mere fact that the order of the Commissioner is not "acceptable" and challenged by the department before Hon'ble Tribunal cannot be ground to ignore the principles of judicial discipline. Since the issue covering similar provision is already settled, I find that the adjudicating authority, by not following the judicial discipline, has denied the benefit already granted by the Commissioner (A) in the earlier decision. Hence, the demand confirmed for the period from April, 2012 to June, 2012, on this count is not legally sustainable and is liable to be set-aside.

6.4. However, for the demand covering the subsequent period from July, 2012 to June, 2017, I find that there were changes in the legal provisions as service tax regime shifted from selective taxation to comprehensive taxation. From 01.07.2012, 'declared services' under Section 66E, the term 'service' under Section 65B (44) and 'Negative list of services' under Section 66D, were introduced. The terms 'service' is defined as;

> *(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*
>
> *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or*
>
> *(iii) a transaction in money or actionable claim;*
>
> *(b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
>
> *(c) fees taken in any Court or tribunal established under any law for the time being in force.*

Further, clause (f) of Section 66E specifies that ***"transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;"*** shall constitute declared service. So, any activity carried out by a person for another for consideration, including a declared service, unless specified in the negative list, is a taxable service under Section 65B.

6.5. Further, I find that Board vide Circular No. 198/8/2016-Service Tax dated 17.08.2016, on the issue of service tax liability in case of hiring of goods without the transfer of the right to use goods, has clarified that in any given case involving hiring, leasing or licensing of goods, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. To determine whether a transaction involves transfer of the right to use goods, Hon'ble Supreme Court has laid down certain criteria. Relevant text of Board's above circular is reproduced for reference.

> *"Further, the Supreme Court in the case of Bharat Sanchar Nigam Limited v. Union of India, reported in 2006 (2) S.T.R. 161 (S.C.), had laid down the following criteria to determine whether a transaction involves transfer of the right to use goods, namely, -*
>
> ***a.*** *There must be goods available for delivery;*
>
> ***b.*** *There must be a consensus ad idem as to the identity of the goods;*
>
> ***c.*** *The transferee should have a legal right to use the goods - consequently all legal consequences of such use, including any permissions or licenses required thereof should be available to the transferee;*
>
> ***d.*** *For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right" to use and not merely a licence to use the goods;*
>
> ***e.*** *Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.*
>
> *XXXXX*
>
> ***4.1*** *There will also be cases involving either a financial lease or an operating lease. The former generally involves a transfer of the asset and also the risks and rewards incident to the ownership of that asset. This transfer of the risks and rewards is also recognised in accounting standards. It is generally for a long term period which covers the major portion of the life of the asset and at the end of the lease period, usually the lessee has an option to purchase the asset.* ***The lessee bears the cost of repairs and maintenance and risk of obsolescence also rests with him. In contrast, an operating lease does not involve the transfer of the risks and rewards associated with that asset to the lessee. It is for a short term period and at the end of the lease period the lessee does not have an option to purchase the asset. The cost of repairs, maintenance and obsolescence rests with the lessor."***
>
> *(Emphasis supplied)*

6.6. The appellant (M/s. Ankur Textiles) had entered into an Agreement on 01.04.2007 with M/s. Yashvi Fabrics to lease the looms and windings machines. From the agreement, it is noticed that the lease agreement is for use of the said machinery for 2 yrs by Lessee on rent agreed upon. The Lessee shall pay rent and shall bear all the existing and future taxes including Sales Taxes, Value Added Taxes, Service Taxes as are applicable against the use of said machineries. However, the Lessee shall not transfer, assign and charge mortgage, sublet, sell /dispose off or in any way part with the possession of the machinery or parts thereof. The Lessee shall permit the Lessor (Appellant) to view, examine the state and condition of the machinery. No ownership rights, lien, charge or other similar rights shall be claimed by the Lessee. The Lessee shall use only those spare fittings tool and inventories to the said machineries which are recommended by manufacturer or in accordance with the functional and operational specifications. The Lessor shall allow, upon prior written permission being sought and obtained, the Lessee to install, alter and change or make such additions or modifications in spares and parts of the said machinery which are removable and necessary for proper usage thereof. The Lessor shall at its own cost and expenses, insure the said machineries against any contingencies. In the event of leased said machinery being acquired by any governmental or statutory authorities under any Act, Law, Circular, Ordinance, then this lease shall cease and determine and Lessor alone shall be entitled to receive the whole of the compensation that may be awarded by acquiring authority.

6.7. Thus, from the terms of the agreement, it is evident that the goods / machineries were supplied to Lessee on lease but without transfer of right to use, as the Lessor reserved the right to undertake repair, maintenance of the machinery and to insure the machinery throughout the term of lease. The Lessee cannot claim ownership rights, lien, charge or other similar rights and shall upon prior written permission install, alter and change or make such additions or modifications in spares and parts of the said machinery which are removable and necessary for proper usage thereof. All cost and expenses, insurance of the said machineries against any contingencies shall be borne by the Lessor. The Lessee shall not be entitled to receive any compensation that may be awarded by any acquiring authority. All these clauses clearly establish that the machinery was transferred by the appellant to the Lessee without transferring the legal right to use the machinery. Further, all the legal consequences of such use, including any permissions or licences required thereof are not available to the Lessee.

6.8. In terms of clause (f) of Section 66E, the transfer of goods by way of hiring, leasing, licencing "without transfer of right to use such goods" is declared service and chargeable to service tax. VAT or Sales Tax is not applicable in such case, as there is no "sale" or "deemed sale". Conversely, where there is transfer of right to use goods for any period for a consideration, it is considered as "deemed sale subject to VAT or Sales Tax.

6.9. The transfer of right to use involves transfer of both possession and control of goods to the user of the goods. From the wording of the agreement, it appears that the goods / machineries were supplied to lessee on lease for use. The Lessee shall preserve and maintain the machinery in good condition. The Lessee shall pay the appellant the cost incurred towards loss, damage or defects inflicted on the said machinery. All these clauses clearly establish that the machinery was transferred by the appellant to the lessee only with the right to use the machinery. Article 366(29A)(d) provides that levy of tax is not on use of goods, but on the transfer of the right to use goods. When there is

no sale or deemed sale, VAT cannot be levied on a transaction of 'transfer of right to use of goods' because the transfer of possession and control of the said goods has not taken place. The right to use goods accrues only on account of the transfer of rights. Unless there is transfer of right, the right to use does not arise.

6.10. The appellant have relied on Board's Circular No. 334/1/2008-TRU dated 29.02.2008. The Board, I find, had clarified that the supply of tangible goods for use and leviable to VAT as 'deemed sale' is not covered under the scope of service. The text is reproduced below:

> *4.4 **Supply of tangible goods for use :***
> *4.4.1 **Transfer of the right to use any goods is leviable to sales tax / VAT as deemed sale of goods [Article 366(29A)(d) of the Constitution of India]. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.***
> *4.4.2 Excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, etc., offshore construction vessels & barges, geo-technical vessels, tug and barge flotillas, rigs and high value machineries are supplied for use, with no legal right of possession and effective control. **Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service.***
> *4.4.3 Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances, for use, with no legal right of possession or effective control. **Supply of tangible goods for use and leviable to VAT/sales tax as deemed sale of goods, is not covered under the scope of the proposed service.** Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts. This could be ascertainable from the fact whether or not VAT is payable or paid.*

6.11. The appellant has emphasized that the lessee is liable to pay sales tax on such transaction, hence, not covered under the definition of service. I find that as per the agreement, the Lessee shall bear all the existing and future taxes including Sales Taxes, Value Added Taxes, Service Taxes as are applicable against the use of said machineries. I find that this is a general clause which anticipates that any liability of Sales Tax, VAT including Service Tax, applicable against the use of machinery, shall be paid by the Lessee. However, whether the VAT was actually paid is not forthcoming as the appellant has not produced any invoice evidencing the payment of VAT made by the Lessee, though in their Appeal Memorandum they have stated to have submitted the same. But, on going through the appeal paper, neither such document was found submitted before me nor was the same produced before the adjudicating authority. In the absence of such documentary evidence, the supply of machineries on lease cannot be treated as deemed sale of goods. Para 2.7.2 of the Education Guide also clarifies that deemed sales do not involve transfer of title in goods like transfer of goods on hire-purchase or transfer of right to use goods.

6.12 Further, the appellant have placed reliance on the decision passed in the case of Compucom Software Ltd. - 2019(2) TMI 262 wherein Hon'ble Tribunal held that;

" **14.** As *a matter of fact, neither the definition given under Section 65(105)(zzzzj) nor the clarification issued by C.B.E. & C. vide Circular DOF No. 334/1/2008-TRU, dated 29-2-2008 specifies or mandates that for not being covered under the service of 'Supply of Tangible Goods', the service provider must have paid VAT or Sales Tax on the amount received as consideration for hiring out and transferring the equipment such as computers, in the instant case. The language of Section ibid makes it abundantly clear that for transfer of right to use the goods, ownership is not mandatorily or necessarily required to be, as provided under the provisions of Income-tax law. Section 65(105)(zzzzj) of the Act is clear and admits of no ambiguity."*

Further, in the case of *Dilip Kumar Company & Others,* the issue of applicability of exemption Notification was decided and Hon'ble Supreme Court has stated that in case of ambiguity alone the benefit of interpretation should go to the Revenue. I find that both the above decisions are not squarely applicable to the present case as the issue dealt therein was for the period prior to the negative list regime. It has already been held above that the issue relating to the period upto 30.06.2012 is settled by the Commissioner (Appeals), Ahmedabad vide OIA dated 03.11.2014 in favour of the appellant.

6.13. Thus, in light of above discussion and applying the ratio of Board's Circular dated 17.08.2016, I find that the appellant have failed to establish their contention that the renting of looms and winding machines supplied by them to lessee was without transfer of legal right to use, hence leviable to VAT as deemed sale of goods. I, therefore, find that the demand for the period from July, 2012 to June, 2017 is legally sustainable in terms of Section 66E (f) of the Finance Act, 1994. However, the demand pertaining to the period from April, 2012 to June, 2012 is not sustainable in view of the Commissioner (A)'s OIA dated 03.11.2014 which has attained finality in this case. The appellant are eligible for all the consequential relief for period upto 30.06.2012 on this issue.

7. On the **second issue**, as to whether the samples of fabrics sent abroad for testing and services received in India are taxable under 'Technical Inspection and Certification Service' or not, it is observed that the adjudicating authority has held that the 'Technical, Inspection and Certification Service' provided by the service providers located abroad was in respect of the samples of fabrics sent to them by the appellant. However, such certification was in respect of the fabrics lying at the premises of the appellant in India. At the time of provision of service, as the goods or materials on which such certification was made applicable were lying in India, therefore, the services performed shall be treated as performed in India in terms of Rule 3 of Place of Provision of Service Rules, 2012. Hence, they are taxable under Section 66A of the F. A., 1994. The appellant, however, have contended that the sample of fabric were made physically available by them to the service provider, therefore, the place of performance of such service shall be outside India as the performance of service was on samples sent abroad. The basis for taxation, therefore, shall be the performance and not on the place of where such services were put in use. As the service is performed abroad, provisions of Rule 4 of the POPS Rules, 2012 shall apply.

7.1. I find that on this issue for the earlier period, the Commissioner (A) vide OIA dated 03.11.2014 had upheld the demand and held that in terms of Rule 3(ii) of the

Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, the Testing and Certification Services, if provided in relation to any goods or material, situated in India at the time of provision of service, shall be treated as taxable service performed in India. It was observed by the Commissioner (A) that the accreditation under the certificates issued by various overseas service providers relates to the goods lying in the appellant's end and which is also a pre-requisite set by the overseas buyers of the said lot, to which the tested samples pertain. He, therefore, held that the services received by the appellant have to be treated having been received partially or wholly in India and thus, the classifiable as service performed partially or wholly in India as contemplated under Rule 3(ii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

7.2 However, the above decision of the Commissioner (A) was challenged by the appellant before Hon'ble Tribunal, Ahmedabad, wherein the classification of the service provided by them was also challenged. They had filed appeals on the grounds that whether the services received by them from abroad are classifiable under 'Technical, Inspection and Analysis Service'falling under clause (zzh) or under 'Technical, Inspection and Certification Service'falling under clause (zzi) of section 65 (105) and whether these services were provided outside India or partly performed in India and liable to service tax.The Hon'ble Tribunal vide Final Order No. A/11289/2022 dated 26.10.2022/27.06.2022 has remanded the matter to the adjudicating authority for fresh adjudication stating that the vital issues were not examined in proper perspective.

7.3 It is observed that in the impugned order since the service is classified under 'Technical, Inspection and Certification Service' under section 65 (105)(zzi) of the Finance Act, 1994 as proposed in the SCN dated 15.04.2014, hence, the issue of classification is no longer in dispute now. Further, the appellant have not raised the classificationdispute in the present appeal either. I also find that the Hon'ble Tribunal, Ahmedabad had remanded the matter pertaining to the period upto F.Y. 2011-12 to examine inter-alia, the issue of revenue neutrality as well as limitation. Hence, it would be prudent that the issue for the period upto 30.06.2012 be remanded back to the adjudicating authority for decision so as to have a uniformity in approach.

7.4 However, for the demand covering the remaining period from July, 2012 to June, 2017, I find the 'Place of Provision of Services Rules, 2012' (POPS Rules, 2012 in short) shall be applicable as it has replaced the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006. The appellant have claimed that their case would fall under Rule 4 of the POPS Rules, 2012.

7.5 It is observed that in terms of Rule 3 of POPS Rules, 2012, generally the place of provision of a service shall be the location of the recipient of service. However, in case of performance based service, the place of provision shall be the location of the service provider, as stipulated in Rule 4 of the POP Rules, 2012. Relevant text of Rule 3 & Rule 4 is reproduced below:-

RULE 3. Place of provision generally.- *The place of provision of a service shall be the location of the recipient of service:*

Provided that in case "of services other than online information and database access or retrieval services"(Inserted vide Notification 46/2012- Service Tax) where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

RULE 4. Place of provision of performance based services. *— The place of provision of following services shall be the location where the services are actually performed, namely :-*

(a) *services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service :*

Provided *that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service :*

*[**Provided** further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;]*

(b) *services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.*

In light of Rule 4 (a) of the Place of Provision of Services (POPS) Rules, 2012, the place of provision of service shall be the location where the services are actually performed, if the services are proposed to be provided in respect of goods that are required to be made physically available by the service receiver to the service provider.

7.6 In the instant case, the 'Technical Inspection & Certification Services' was provided by the overseas service provider on the sample fabrics made physically available by the service receiver (i.e. appellant) located in India. Though the Technical Inspection & Certification Service was performed on the samples provided by the appellant to the overseas service provider, but the fact that such accreditation or certification was given for the fabric lots lying in India, cannot be denied. Though the testing was carried out in foreign country but the appellant have received test certificate. The result of testing, inspection and certification was made applicable on the fabric lots lying in India. Thus, the benefit of service is, therefore, accrued / obtained in India. So, in a way the certification in entirety was for the goods available in India.

7.7 It is further observed that as per Entry No.10 of the Notification No.30/2012-ST dated 20.06.2012, the liability to pay service tax in respect of taxable services provided by any person located abroad and received by a person located in India is on the recipient of service. The relevant entry is reproduced below;

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
10.	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

In terms of above entry, in respect of any taxable services provided by a person located in non-taxable territory and received by a person located in taxable territory, under Reverse Charge Mechanism (RCM), the tax liability shall be on the recipient of the service. This notification was made effective from 01.07.2012. In the instant case, it is not in dispute that the samples are sent to abroad agency for carrying out the taxable service of Technical, Inspection and Certification service. Though the service provider is located in non-taxable territory but the service recipient, who in this case is the appellant, are located in the taxable territory, hence, the service tax liability in terms of the above entry of aforementioned notification, under RCM, shall be on the appellant.

7.8 It is observed that the service is liable to tax for the reason that the 'Technical Inspection & Certification' service in question though performed in non-taxable territory by a foreign agency, was actually received by the appellant located in the taxable territory. Therefore, in terms of Section 65B (51), the service rendered in the nature of 'Technical Inspection & Certification' is taxable service and after 1.7.2012, in terms of Notification No.30/2012-ST, under RCM, the liability to pay service tax on such service, provided by foreign based company and received in India, shall be on the appellant. Further, I find that in terms of Rule 3 of the Place of Provision of Services (POP) Rules, 2012, the place of provision of service shall be location of the recipient, which in this case is in India. Therefore, in terms of Rule 3 of POPS Rules, 2012 read with Entry No. 10 of Notification No.30/2012-ST, the demand pertaining to the period from July, 2012 to June, 2017, confirmed in the impugned order is sustainable on merits.

8. On **the third issue**, it is observed that the demand of Rs.1,17,894/- (covering period 01.04.2016 to 31.03.2017) was raised on the grounds that the post shipment supervision of weighing of products exported by the appellant to foreign countries are taxable under 'Business Support Services'. The adjudicating authority has observed that the invoices produced earlier by the appellant indicate the role of overseas service provider as facilitators of the export order, which entail the instructions of overseas buyers related to the weighment of the goods exported by the appellant. It was further observed that as the recipient of service is in India, therefore, in terms of Rule 3 of the POPS, 2012, the place of provision of service shall be the location of the service recipient and as these activities are covered in the Entry No.10 of the Notification No.30/2012-ST 20.06.2012, the service tax liability shall be on the appellant. The appellant, however, have contended that the issue for earlier period was decided by the then Commissioner

(A) vide OIA No. AHM-SVTAX-000-APP-143-14-15 dated 03.11.2014. Hence, the said decision is binding on the adjudicating authority.

8.1 I find that in the OIA No. AHM-SVTAX-000-APP-143-14-15 dated 03.11.2014, covering earlier period, the Commissioner (A) had decided the issue against the appellant wherein it was held that the services were received by the appellant in India, for use in relation to business or commerce, hence, taxable in terms of Rule 3(iii) of the Taxation of Service (Provided from Outside India and Received in India) Rules, 2006. Accordingly, the demand under Business Support Service was upheld. So, the contention of the appellant that the adjudicating authority has not followed the above decision is factually incorrect. I find that the decision of the Commissioner (Appeals) was challenged by the appellant before Hon'ble CESTAT, Ahmedabad wherein they have challenged whether the services provided in respect of export goods i.e. shipment supervision on weighment charges is classifiable under Business Support Service and are liable for service tax under Reverse Charge Mechanism under Section 66A. The Hon'ble CESTAT, vide Final Order No. A/11289/2022 dated 26.10.2022, had remanded the matter to the adjudicating authority, to decide the issues on merits as well as to examine the contention of the appellant regarding revenue neutrality and consequently the demand being time barred. As the period of dispute covered in the above decision was prior to introduction of the POPS Rules, 2012, i.e. from F.Y. 2008-09 to F.Y. 2011-12, the same has to be examined by the adjudicating authority in terms of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

8.2 In the instant appeal, the period covered is from (01.04.2016 to 31.03.2017), hence, the provisions of the POPS Rules, 2012 shall come into play. Rule 3 of the POPS, *inter alia,* envisages that generally the place of provision of a service shall be the location of the recipient of service. It is observed that the overseas service providers have facilitated the appellant to fulfill the contractual obligations that would have been contracted between the appellant and their overseas buyers. The activity of supervision of condition and weighment of cotton bales with the export invoices is similar to the services offered by various service provided at the port domestically. It is observed that the appellant has not disputed being in the receipt of the said services, hence the taxability of service shall be determined in terms of Rule 3 of POPS Rules, 2012. Further, in terms of Entry No.10 of the Notification No.30/2012-ST, as the services of post shipment supervision of weighing of cotton was provided by the service provider located in non-taxable territory and since the service recipient i.e. the appellant is located in taxable territories, the liability to pay service tax under RCM shall be on the appellant. I find that, in the facts and circumstances of the case, the place of provision of service shall be the location of the recipient of service, which in the instant case is within the taxable territory of India. As the activities in question are covered within the scope of the definition of 'service' defined under Section 65B(44) hence chargeable to service tax under Section 66B. I, therefore, find that in terms of Rule 3 of Place of Provision of Services Rules, 2012 read with Entry No. 10 of Notification No.30/2012-ST, the demand of Rs.1,17,894/- pertaining to the period from July, 2012 to June, 2017, confirmed in the impugned order is sustainable on merits.

8.3 It is further observed that the demand pertains to period F.Y.2016-17 and the SCN was issued on 20.11.2017 under Section 73(1A) of the F.A., 1994. These SCNs were

thus issued within the time limit of thirty months from the date of filing the ST-3 returns as prescribed under Section 73(1A) of the F.A., 1994.

9. Further, the appellant have strongly contended that there was abnormal delay in the adjudication. From the facts of the case, it is clear that all the five SCNs were transferred to Call Book in light of the fact that department had challenged the Commissioner(A) Order covering the demand for earlier period. I find that the adjudicating authority is bound to follow the instruction issued by the Board which clearly stipulates that in cases where department has gone in appeal on similar issue, the SCNs covering similar issues are to be transferred to call book till, the outcome of the decision. I, therefore, find that the delay was not intentional hence justifiable.

10. Thus, in view of above discussion and finding, I find that the demand raised on first issue covering the period from (April, 2012 to June, 2012), is not sustainable in terms of discussions made in Para-6.3. However, the demand covering period from July, 2012 to June, 2017 is legally sustainable as discussed at Para 6.4 to Para 6.13 above. The demand on second issue is partly remanded and partly upheld as discussed at Para 7 to 7.7 and demand on the third issue is upheld in view of the discussion held at Para 8 to 8.2 above.

11. As regards, the penalty imposed under Section 76 of the F.A.1994, I find that the adjudicating authority has imposed a penalty equivalent to the tax confirmed. Erstwhile provisions of Section 76 provided that where "A *person, who is liable to pay service tax, but fails to pay the same, shall pay, in addition to service tax and the interest, a penalty which is not less than Rs. 100 for each day during which such failure continues or at the rate of 1% p.m. of such tax, whichever is higher, starting with the first day after the due date till the date of actual payment of service tax. However, the total penalty payable shall not exceed 50% of the Service tax Payable.*" However, this provision was substituted vide F.A.,2015, w.e.f. 14.05.2015 which read as "*Where service tax has not been paid, or short-paid for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of F.A., 1944 or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax.*" Considering the above legal provisions, I find that the imposition of penalty equal to tax demand of Rs.50,13,917/- by the adjudicating authority, under Section 76, is not sustainable, as there is ceiling of either 50% & 10% as applicable during the period of demand.

12. When the demand sustains there is no escape from interest hence, the same is therefore also recoverable under Section 75 of the F.A., 1994. Appellant by failing to pay service tax on the taxable service are liable to pay the tax alongwith applicable rate of interest. The jurisdictional authority may quantify the demand, interest and penalty as per discussion held supra.

13. Accordingly, the impugned order is partially upheld and partially set-aside and the appeal filed by the appellant is allowed / rejected to the above extent.

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.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 12.2022

Attested

(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Arvind Ltd., - **Appellant**
Naroda Road,
Ahmedabad-380025

The Assistant Commissioner, - **Respondent**
CGST, Division-II (Naroda Road),
Ahmedabad North

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. ~~Guard~~ File.
5. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.