



सत्यमेव जयते

आयुक्त का कार्यालय, अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
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DIN-20210364SW0000444BD8

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/230/2020-Appeal-O/o COMMR-CGST-APPL-AHMEDABAD

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-54/2020-21
दिनांक Date : 24.02.2021 जारी करने की तारीख Date of Issue : 05.03.2021

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

ग Arising out of Order-in-Original Nos. Div. 07/DC/Demand/20-21/S.Tax dated 07.07.2020,
passed by Deputy Commissioner, Central GST & Central Excise, Div.-I, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant-. - M/s Ahmedabaad Aviation and Aeronautics Ltd, AAA Hangar, Ahmedabad
old Terminal, Airport Ahmedabd, Ahmedabad-380003.

Respondent- Deputy Commissioner, Central GST & Central Excise, Div.-I, Ahmedabad-
North

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 पूर्वोक्त 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.



Handwritten notes: Copy sent through post returned on 24th March. Mr. Shreedhar Muchandani was called in person to handover OIA on 23 March. Recd on 23/3/2021. Sanjeev.



(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 मामलों 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 ड्यूटी क्रेडिट 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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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 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 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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. Registrar 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 आदेश 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 है।

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 Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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 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

This appeal has been filed by M/s. Ahmedabad Aviation and Aeronautics Limited, AAA Hangar, Ahmedabad Old Terminal, Airport Ahmedabad, Ahmedabad-380003, (here-in-after referred to as the "appellant") against the Order-in-Original No. 07/DC/Demand/20-21/S.Tax dated 07.07.2020 (here-in-after referred to as the "impugned order") issued by the Deputy Commissioner, CGST & C. Ex, Division-I, Ahmedabad North (here-in-after referred to as the "adjudicating authority").

2. The facts of the case, in brief, are that the appellant was engaged in providing supply of tangible goods service, repair and maintenance service and having service tax Registration No. AADCA0558PST001. During the course of scrutiny of financial records of the appellant by the departmental Audit, it was observed that in the FY 2013-14, **they had earned income of Rs. 22,38,554/- under the indirect income head i.e Sundry Credit Balance written back, which were the amount held back/not paid to the creditors for violation of the conditions/non performance of the contracts.** The audit party was of the view that by forfeiting the order cancellation income, the appellant was tolerating the act of his customers, therefore, the said activity falls under the category of declared service viz. agreeing to the obligation to refrain from an act, or to tolerate on act or a situation, or to do an act as provided in Section 66E(e) of the Finance Act, 1944. Hence, the appellant appeared to be liable to service tax amounting to Rs. 2,76,685/- under Section 66E(e) of the Finance Act, 1944 on taxable income amounting to Rs. 22,38,554/-. Based on audit observation, a Show Cause Notice was issued to them vide F. No. VI/1(b)-37/C-5/AP-31/2017-18 dated 17.10.2018 for recovery of service tax amounting to Rs. 2,76,685/- under proviso to Section 73 (1) of Finance Act,1944 along with Interest under Section 75 of the Act. It was also proposed to impose penalty under Section 78 of the Finance Act,1944.

2.1. The adjudicating authority, vide impugned order dated 07.07.2020, has dropped demand of Rs. 2,814/- and confirmed remaining amount of Rs. 2,73,871/- against the nonpayment of service tax on taxable declared service income amounting to Rs. 22,15,787/- under Section 73 (1) of Finance Act,1944 alongwith Interest. He also imposed penalty of Rs. 2,73,871/- under Section 78 of Finance Act, 1944





3. Being aggrieved by the impugned order dated 07.07.2020, the appellant have filed the instant appeals on the grounds that:

- That only allegation in the notice that “by forfeiting the order cancellation income, the assessee is tolerating the act of his customers” must be with supporting facts i.e (i) there were orders received, (ii) advance money were received for such order, indication credit balance, (iii) subsequent cancellation of the order and (iv) there upon their forfeiting the advance by write back of the credit balance which is missing and hence the transaction would not be covered by tax net;
- That in absence of allegation with supporting facts, the notice is null and void and required to be vacated;
- That credit balance in books of account shows liability to pay which cannot be covered by definition of declared services and therefore, write back of such liability is not a service and the same is without any consideration;
- That they rely on the judgement of Hon’ble Tribunal in case of Molight Shipping Services P. Ltd vs CCE, Chennai 2017 (9) TMI 944-CESTAT Chennai wherein it is held that amount of write backs are those which are yet to be claimed by the assessee and are payable to the client when the claims are lodged cannot be considered as consideration received towards service rendered;
- That actual nature of transaction/relation with each party in question is as under:

Sr. No.	Name of Party	Type/ Nature of relationship with the party
1	Banasthali Vidhyapith	Sundry Creditor-Excess amount written off
2	Bright Metal Weld Appliances	Sundry Creditor-Purchased Breath Analyser partly given discount which was written off
3	Chimes Aviation	Sundry Debtor- Advance for aircraft given and due to non-supply/recoverability the said amount written off
4	Nagpur Flying Club	Sundry Creditor-Excess amount written off
5	Global Avainquitics Ltd	Sundry Creditor-Appellant had made discount against invoice and the said amount was written off
6	Bhagyashree Construction	Sundry Creditor-Amount payable to contractor but not paid due to dispute and written off





7	Creative Aviation	Had purchased Aircraft. Advance paid was transferred to WIP account in excess. Such excess written off. But for the entry of WIP, there would be debit balance in accounts, being advance given. No part of advance actually received back. In the presumed event of breach of contract, entire advance would have been returned.
8	Natraj Construction	Sundry Creditor-Amount payable to contractor but not paid due to dispute and written off

- That for the purpose of declared service, there must be two parties to the said transaction viz. serviced provider and service receiver and agreement between them and party whose credit balance is written back is absent in the present notice and also not agreement and therefore, the entries in books never constituted declared service;
- That no tax was payable in the instant case and hence question of interest and penalty does not arise;

5.1 Personal hearing in the matter was held on 18.12.2020 through virtual mode. Shri Shridev J. Vyas, Advocate, appeared on behalf of the appellant for hearing. He re-iterated the submissions made in Appeal Memorandum.

5.2. The appellant also submitted further written submission vide letter dated 24.12.2020 wherein they have submitted case laws in respect of Hon'ble Tribunal in case of M/s South Eastern Coalfields Ltd vs Commissioner of Central Excise & Service Tax, Raipur and stated that the same directly applies in their case.

6. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum. It is observed that the issue to be decided in the case is whether income earned under the indirect income head i.e "Sundry Credit Balance written back" which were the amount held back/not paid to the creditors for violation of the conditions/non performance of the contracts falls under the category of declared service viz. agreeing to the obligation to refrain from an act, or to tolerate on act or situation, or to do an act, as provided under Section 66E (e) of the Finance Act, 1944 or otherwise.





7.1. It is observed from the records and appeal memorandum that the departmental audit had taken value of Rs. 22,15,787/- which was reflected under the head of "indirect income head i.e Sundry Credit Balance written back" and held that by forfeiting the order cancellation income, the appellant was tolerating the act of their customers. Therefore, the said activity falls under the category of declared service viz. agreeing to the obligation to refrain from an act, or to tolerate on act or a situation, or to do an act and simply calculated the service tax payable on the said amount.

7.2. It is observed that the adjudicating authority in para 43 of impugned order has come to conclusion that as per narrations of the ledger of "Sundry Credit Balance Written Back", the amount earned by the appellant on employee/staff advance written off which was forfeited due to non performance of the contracts does not fall under the category of declared services as provided under Section 66E (e) of the Finance Act, 1944 and hence service tax is not applicable of the same and dropped the demand. However, as regards the amount earned in respect of various parties to whom payment was made, but the same was forfeited due to non performance of the contracts, the adjudicating authority in para 44 observed that these amounts held back/not paid to the creditors for violation of the conditions/ non performance of the contracts and thereby, the appellant was tolerating the act of his customers and hence the said activity falls under the category of declared service as provided in Section 66E (e) of the Finance Act, 1944 and accordingly confirmed the demand with interest and imposed penalty.

8.1. The relevant legal provisions contained under Section 66E (e) of the Finance Act, 1944 is reproduced below:

66E. Declared services — The following shall constitute declared services, namely :—

**(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;**

8.2. The relevant interpretation of the terms, 'declared service', 'service' as per section 65B of the Finance Act, 1994, is as follows:

Section 65B. Interpretations. — In this Chapter, unless the context otherwise requires,—

(22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E;

(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.

On a combined reading of Section 65B (22), (44) and 66E (e) of Finance Act, 1994, for a transaction to fall under the ambit of declared service/service, the transaction should encompass the following –

*a person carrying out the activity of agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act for another person for a consideration.*

9.1. The appellant contended in their submission that the said balance of Rs. 22,15,787/- reflected on credit side of their profit and loss account as indirect Income. The details of transactions are as under:

Sr. No.	Name of Party	Amount	Type/ Nature of relationship with the party
1	Banasthali Vidhyapith	14000	Sundry Creditor-Excess amount written off
2	Bright Metal Weld Appliances	280	Sundry Creditor-Purchased Breath Analyser partly given discount which was written off
3	Chimes Aviation	321400	Sundry Debtor- Advance for aircraft given and due to non-supply/recoverability the said amount written off
4	Nagpur Flying Club	2	Sundry Creditor-Excess amount written off
5	Global Avainquitics Ltd	2257	Sundry Creditor-Appellant had made discount against invoice and the said amount was written off
6	Bhagyashree Construction	864946	Sundry Creditor-Amount payable to contractor but not paid due to dispute and written off
7	Creative Aviation	888000	Had purchased Aircraft. Advance paid was transferred to WIP account in excess. Such excess written off. But for the entry of WIP, there would be debit balance in accounts, being advance given. No part of advance actually received back. In the presumed event of breach of contract, entire advance would have been returned.
8	Natraj Construction	124902	Sundry Creditor-Amount payable to contractor but not paid due to dispute and written off





9.2. It is observed from the above explanation/contention given by the appellant that the credit balance of Rs. 22,15,787/- is composite sum of unpaid amount to their customers i.e. debtors or unpaid amount to their creditors. For further illustration of entry mentioned at Sr. No. 1 in above table wherein name of party shown as Bansthali Vidyapith amounting to Rs. 14,000/- and type/nature of relationship with the party mentioned as Sundry Creditor-Excess amount written off which shows that when anything is purchased from a vendor [Banasthali Vidhyapith], its account is reflected by debiting purchase account and giving Credit to the Vendors account. When payment is made to vendor its account is debited and credited to Bank account. It is observed in this case that as per the explanation of the appellant, the excess amount is written off which means Credit of vendor is exceeds to debit in vendor's account. As the said amount of Rs.14000/- reflected on credit side, being excess than the debit, is written off. Meaning thereby purchase cost is reduced. Therefore, such amount can be written off by following Journal entry.

Vendors account .....Debit  
To Income account .....Credit

Thus, it reduces the purchase cost resulting in to income. It is one sort of Kasar/Vatav/discount. Therefore it is only transaction in money in books of account and no service portion is involved.

9.3. Further illustration of entry mentioned at Sr. No. 2 in above table wherein name of party shown as Bright Metal Weld Appliances amounting to Rs. 280/- and type/nature of relationship with the party mentioned as Sundry Creditor-Purchased Breath Analyser partly given discount which was written off wherein the effect of above explanation is the same as explained about except Vendor name is Bright Metal Weld Appliances and amount Rs.280/-. Similar effect is applicable in respect of entry at Sr. No. 4,5, 6 and 8 of above table.

9.4. Further illustration of entry mentioned at Sr. No. 3 in above table wherein name of party shown as Chimes Aviation amounting to Rs. 321400/- and type/nature of relationship with the party mentioned as Sundry Debtor- Advance for aircraft given and due to non-supply/recoverability the said amount written off wherein the party i.e Chims Aviation is the client and its account is reflected as Debtor. As per the explanation Advance for Air craft given by the appellant, the said amount is written off due to non supply/ recoverability from Chims Aviation and hence is written off.





Thus, the books entry shows that the said amount of Rs.321400/- has been booked as loss in the books of account. As the explanation suggests that no service portion is involved. Similar effect is also applicable in respect of entry at Sr. No. 7 of above table.

9.5. In view of above explanation in respect of accounting point of view, the transactions mentioned in the above table are only amount to transaction in money towards unpaid/ not received/discount amount towards sale or purchase of goods. Such transactions are not covered in the definition of Service as per section 65B(44) of the Finance Act,1994. Therefore, I find that the first condition is not satisfied as nothing is brought on record that the contract had a provision, which obligated the appellant to tolerate such acts. As far as the second condition is concerned, supra, since it is already held that the appellant was not obligated to tolerate an act or a situation, the question of a declared service being provided to another person does not arise. Therefore, it is observed that Section 66E(e) of the Finance Act, 1994 is not applicable to the present situation

10.1 Further, it is observed that there exists no relationship between the appellant and the creditors/debtors which establishes that the said balance of Rs. 22,15,787/- related to rendering of service under clause 66E(e) of the Finance Act,1994. The appellant has relied upon a judgement pronounced by the Hon'ble Tribunal New Delhi in the case of M/s South Eastern Coalfields Ltd V/s Commissioner of Central Excise & Service Tax, Tikrapara, Raipur at para-42 to 44 of its judgment have stated as under :

*42. The conclusion drawn by the learned authorized representatives of the Department from the aforesaid decision of the Supreme Court that compensation received is 'synonymous' with 'tolerating' or that the Supreme Court acknowledged that in breach of contract, one party tolerates an act of situation is not correct.*

*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 66E(e) of the Finance Act.*

*44. The impugned order dated December 18, 2018 passed by the Commissioner, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.*

10.2. I have gone through the aforesaid judgement delivered by the Hon'ble Principal Bench, CESTAT, New Delhi in the case of South Eastern Coal-Fields Ltd. Vs

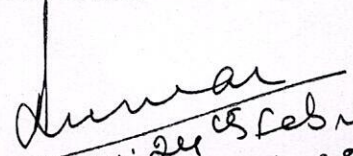




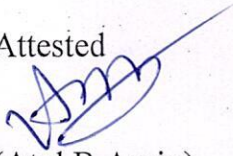
Commissioner of Central Excise and Service tax, New Delhi relied upon by the appellant wherein identical issue has been considered and found that the same is squarely applicable in the present case. Hence, the finding of adjudicating authority to charge service tax on indirect income head i.e Sundry Credit Balance written back is legally not correct.

11. From the above discussion, I find that the demands of service tax are not sustainable on merit itself and are hereby set aside. Since the demand has been set aside, the question of interest on demand and imposition of penalty does not arise. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

12. The appeals filed by the appellant stands disposed of in above terms.

  
 (Akhilesh Kumar)  
 Commissioner (Appeals)  
 Ahmedabad  
 /02 /2021

Attested

  
 (Atul B Amin)  
 Superintendent (Appeals)  
 CGST, Ahmedabad

By R.P.A.D

To

M/s. Ahmedabad Aviation and Aeronautics Limited,  
 AAA Hangar, Ahmedabad Old Terminal,  
 Airport Ahmedabad,  
 Ahmedabad- 380003

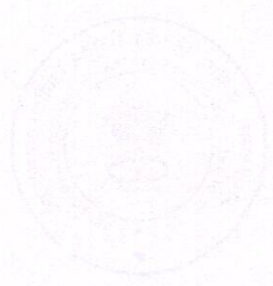
Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Deputy Commissioner, CGST & C.Ex, Division-I, Ahmedabad North
4. The Assistant Commissioner, System-CGST, Ahmedabad North.
5. Guard File.
6. P.A. File.





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