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
☎ 26305065-079 : टेलेफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20210564SW0000820225

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/309/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad 13327 to 1328

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-005/2021-22**
दिनाँक Date : **28.04.2021** जारी करने की तारीख Date of Issue : **20.05.2021**

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

ग Arising out of Order-in-Original Nos. **08-09/DC/Demand/20-21/S.Tax dated 15.07.2020**, passed by Assistant/Deputy Commissioner, Central GST & Central Excise, Div-I, Ahmedabad-North

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

Appellant-. - M/s Arvind Electropumps.

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 की 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 उपयुक्त 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 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 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.

(6) 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 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

These appeals have been filed by M/s. Arvind Electropumps, Plot No. 62-63, Phase-I, Modern Bakery Road, GIDC, Naroda, Ahmedabad- 382 330 (henceforth referred as "*appellant*") against the Orders-In-Original No. 08-09/DC/Demand/20-21/S.Tax dated 15.07.2020 (henceforth referred as "*impugned orders*") passed by the Deputy Commissioner, Central GST & CX, Division-I, Ahmedabad-North (henceforth referred as "*adjudicating authority*").

2. The fact of the case, in brief, are that the appellant is engaged in manufacturer and clearance of various types of submersible pumps, motors and parts thereof etc. falling under Chapter 84 of the Central Excise Tariff Act, 1985. The appellant was having Central Excise Registration No. AAOFA2026JXM001, Service Tax Registration No. AAOFA2026JST001 and also holding GSTIN NO. 24AAOFA2026J1ZN. The appellant is also exporting the goods manufactured by the them.

2.1. During the course of audit of records of the appellant by officers of Customs Revenue Audit (CRA), C& AG, it was observed that the appellant had exported its manufactured goods to a foreign based company named M/s. Grainger Global Sourcing U.S.A. (hereinafter referred to as "GGS") and entered into an agreement dated 31.07.2007 with GGS for the purpose of the sale of goods like submersible pumps, motors etc. It was provided in Para 8 B of the said agreement that the appellant was liable to reimburse the charges incurred in connection with the products returned for product failure, defects, recalls or corrective actions. Such reimbursement was for the period of 18 months from the date of receipt of the products by GGS and 12 months from the date of sale by the GGS to its customers. The appellant used to reimburse the amounts to the GGS for the goods returned by GGS for the reasons of defects. Therefore, the appellant was liable to discharge service tax on the expenses incurred by them on the ground that the GGS was providing services to the appellant for aftersales warranty on their behalf.

2.2. Subsequently, the appellant amended para 8 of the agreement dated 31.07.2007 on 06.10.2013 and the product cost was re-negotiated to the extent of 3% less than the value agreed earlier and para 8 (B) which provided that the appellant was liable to reimburse the charges incurred in

connection with the products returned for product failure defects, recalls or corrective actions, was deleted. The last sentence of the para 8A which read as "defects for the purpose of 8 (a)(b) shall be determined by GGS in its reasonable discretion" was also deleted in the agreement dated 06.10.2013.

2.3. It was observed by the Audit officers that after the amendment in agreement w.e.f 06.10.2013, the charges for warranty service provided by GGS were deducted from the value of the goods @ 3% and the appellant was not paying service tax on the differential 3% value on account of warranty services. It was contended by the audit that the appellant was required to pay service tax under reverse charge mechanism for the warranty services provided by the foreign based service provider i.e. GGS U.S.A. Accordingly, a show cause notice F. No. V.16-12/Dem/ Arvind Electropumps/17-18 dated 21.03.2018 was issued to the appellant, demanding service tax amounting to Rs. 26,20,391/- for the period from October-2013 to December-2016 by invoking extended period of limitation under Section 73 of the Finance Act, 1994 alongwith interest under reverse charge mechanism on the ground that the appellant was recipient of warranty services provided by GGS. It was also proposed to imposed penalty under Section 78 of the Finance Act, 1944.

3. Further, a periodical Show Cause Notice F.No. V/16-04/ Arvind/ Dem/19-20/Service Tax dated 19.06.2019 for the period from January-2017 to June-2017, was also issued under the provision of Section 73(1A) of the Finance Act, 1944 demanding service tax amounting to Rs.5,33,597/- under Section 73 of the Finance Act, 1994 alongwith interest under reverse charge mechanism on the ground that the appellant was recipient of warranty services provided by GGS. It was also proposed to imposed penalty under Section 76 of the Finance Act, 1944.

4. The adjudicating authority vide impugned orders dated 15.07.2020 held that the agreement w.e.f 06.10.2013 states regarding 'Product Warranties in consideration of supplier deducting 3% of Product Cost' is nothing but an indirect way of reimbursing "Warranty Charges" for the warranty services that were being provided by the foreign client i.e M/s GGS and the amount of 3% is nothing but the consideration towards warranty services provided by M/s GGS during the period from October-2013 to June-2017. Accordingly, he confirmed the demand of service tax

in both the SCNs alongwith interest and impose penalty under the provision of Section 76 and Section 78 of the Finance Act, 1944.

5. Being aggrieved by the impugned orders dated 15.07.2020, the appellant have filed the instant appeal on the ground that:

- the value of service @3% cannot be loaded on the exported goods because it was neither additional remittance made by the appellant nor value of any service provided by GGS;
- the transaction value was re-negotiated after 06.10.2013 and condition of reimbursement of returned goods was done away with and no commitment for providing any service to the buyers of M/s. GGS;
- the goods were cleared on proper assessment of shipping bills and transaction value was never disputed by the department and therefore, no dispute can be raised for the purpose of charging service tax by enhancing the value of the exported goods;
- there was no evidence on record to show that the appellant had actually received any service from M/s. GGS;
- the service if any, are provided outside India on the goods which are already sold by the appellant and therefore, services performed outside India on goods under the ownership of the foreign buyer are not taxable in India;
- extended period of limitation could not been invoked as the issue of non-payment of service tax on reimbursable charges on warranty services were well within the knowledge of the department;
- the Adjudicating Authority has not considered both the agreements in proper manner as no warranty in terms of any repairs or service was given by the appellant on the products sold by the appellant to M/s. GGS. Thus the Adjudicating Authority has grossly erred in interpreting the terms of the agreement and passed the order on absolutely wrong premise;
- the appellant agreed to reimburse the cost of product and freight charges on returned goods. But this amount was not agreed to be reimbursed by the appellant for any service or repairs undertaken by M/s. GGS on behalf of the appellant;
- in the new agreement there was no warranty for providing any repair service on the in -warranty products and appellant will no longer be responsible to pay cost of the product, plus freight charges and other expenses if the goods are found to be defective and same are returned;
- in the agreement nowhere provided for any reimbursement on account of any repairs and service of in warranty products;
- the said services are "performance based services" where the place of provision of sevice is always outside India;
- the taxable event i.e. the service of in-warranty products has admittedly not taken place within the territory of the Union of India. Service tax can be demanded from a recipient of service located in India only when the service is rendered in India, but not when the service was rendered in a foreign country and relied upon following judgements:
  1. Hon'ble Tribunal in case of Hyundai Motor India Pvt. Ltd. vs.Commr. of C. Ex. & S.T., LTU, Chennai -2019 (29) G.S.T.L. 452 (Tri. - Chennai),
  2. Hon' ble Supreme Court dismissed the civil appeal filed by the department on merits which is reported in Commissioner v. Hyundai Motor India Pvt. Ltd. - 2020 (32) G.S.T.L. J154 (S.C.)],
  3. Hon'ble Tribunal in case of Welspun Gujarat Stahl Rohren Limited-

2007 (5) STR 38,Bharat Forge Limited- 2008 (9) STR 67 and Intas Pharmaceuticals reported in 2009 (16) STR 748,

4. Hon'ble Tribunal in case of Infosys Ltd. reported in 2014-T10L-409-CESTAT-BANG,
5. Hon'ble Tribunal in case of KPIT Technologies Ltd. reported in 2014 (36) STR 1098.

- they also relied upon Circular No. 36/4/2001 dated 8.10.2001 also, the Government has clarified that services provided beyond the territorial waters of India were not liable to service tax as service tax had not been extended to such areas like the Continental Shelf and the Exclusive Economic Zones of India;
- the Show Cause Notice and the impugned order does not provide details of any "taxable service" and therefore, the demand of service tax is unsustainable;
- Sr. No. 10 of the Table given under 30/2012-ST dated 20.06.2012 provides that the service recipient is liable to discharge 100% service tax on 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;
- the show cause notice has determined the person chargeable to service tax and value of the service but the show cause notice did not provide any details as to what is the nature of the service or classification of the service to determine the rate of levy of service tax.
- the show cause notice also does not invoke section 66A of the Finance Act which is mandatorily required charge service tax on services received from outside India;
- the Show Cause notice also did not provide whether the said service was a taxable service within the terms of section 65(105) of the Finance Act, 1994
- they relied upon judgement of Hon' ble Tribunal in case of Commissioner of Central Excise, Bhopal vs. M.P. Windfarm Ltd.- 2017 (51) S.T.R. 413 (Tri. - Del.) and in case of Avatar & Company vs. Commissioner of Central Excise, Nagpur- 2017 (48) S.T.R. 66 (Tri. - Mumbai),
- the adjudicating authority have no jurisdiction to recalculate the transaction value of the exported goods and hold that the goods were exported at only 97% value and 3% deduction from the contract price of the goods was towards service which was chargeable to service tax;
- the adjudicating Authority has not considered the factum of revenue neutrality in the present case and relied upon various decisions;
- the adjudicating Authority could not have invoked extended period of limitation in the absence of suppression of facts with the intent to evade the payment of duty and relied upon various judgements.

6. Personal hearing in the matter was held on 19.02.2021 through virtual mode. Shri Bissa Sudhanshu, Advocate, appeared on behalf of the appellant for hearing. He re-iterated the submissions made in the appeal memorandum.

7. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum as well as oral and written submissions made at the time of personal hearing. I find that the issue to be decided in the instant case is whether the impugned order

correctly held the appellant liable to discharge service tax under RCM on the reimbursement of expenses incurred towards warranty charges for the warranty services provided by foreign client M/s GGS on behalf of the appellant under Reverse Charge mechanism(RCM) in term of Notification NO.30/2012-ST dated 20.06.2012 or otherwise. The demand pertains to period October, 2013 to June, 2017.

7.1 The relevant portion of Notification No. 30/2012-ST dated 20.06.2012 is reproduced below for reference:

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

I. The taxable services,—
(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;
(III) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

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%*

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012. [Notification No. 30/2012-S.T., dated 20-6-2012]

8. It is observed from the legal provision under the said notification that service tax on 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 shall be paid 100% by the person receiving the service.

8.1. It is observed that the appellant had exported their products to M/s GGS, USA and had entered into an Agreement with them on 31.07.2007. As per relevant Clause 8, providing for Product Warranties, Recalls and Corrective Actions, GGS will extend the warranty described in said para to the customer. The appellant, as supplier, has further agreed to provide warranty as detailed in the said clause of agreement. In view of the above, the appellant is the recipient of service in question i.e. reimbursement of expenses incurred towards warranty charges provided by foreign client M/s GGS and hence liability to pay tax lies with the appellant who is located in taxable territory i. e. in India. Thus, so far as the Reverse Charge Mechanism is concerned, there is no doubt on the aspect as to who shall pay the tax and upto what extent. In term of said notification, the appellant was liable to pay tax on full value under reverse charge mechanism with effect from 20.06.2012. They have accordingly discharged their service tax liability till September, 2013. These are undisputed facts.

8.2. Subsequently, the said agreement was amended/modified on 06.10.2013 under which term of product warranty remained same and payment of warranty charges were amended. Relevant portion (para 2(B)) of the amended template dated 06.10.2013 is reproduced below for ease of reference:

> *"Notwithstanding the terms and conditions of the agreement regarding Product Warranties, in consideration of Supplier deducting 3% of Product Cost, the parties agree that Subparagraph B of Section 8 of the Agreement is hereby deleted in its entirety and Supplier will not be responsible to reimburse GGS for 100% of the total cost, plus freight cost and any other charges incurred in connection with in-warranty Products returned for product failures for any reason, and as of the Amendment Date,*

GGS shall indemnify and hold supplier harmless from any and all such In-warranty Products so returned. In addition, the last sentence of sub paragraph A of section 8 ("Defects for the purpose of 8(a)–(b) shall be determined by GGS in its reasonable discretion") is hereby deleted.

8.3 It is apparent from the amended agreement above that in order to accommodate the "warranty charges", 3% deduction from the product cost were allowed and negotiated which were payable to GGS, USA by the appellant. To implement the above modalities, the bills raised earlier by GGS to the appellant for aftersale warranty expenses were discontinued and to adjust said amount, 3% deductions from value of goods itself were put into practice. This shows that as per the revised methodology adopted w.e.f 06.10.2013, the appellant started showing value of exported goods as 97% of the actual value instead of 100%. I find that there is no change in warranty clause in the agreement except the fact that earlier there was actual reimbursement to GGS and now the warranty charges were negotiated at 3% of value of goods, which was to be deducted from the value of goods exported by the appellant to GGS. Thus, without any change in product warranty to their customer in USA, payment method of warranty charges were amended and hence it is as clear as day light that after sale warranty services were provided uninterrupted by GGS to the clients/customers located in USA. Thus, neither the consideration from foreign client GGS to the appellant interrupted nor the services in connection with in-warranty products returned for product failures were discontinued. Thus, the deduction in production cost is nothing but an indirect way of reimbursing "warranty charges" for warranty services that were being provided by the foreign client M/s GGS to the appellant.

9. The appellant further contested that the show cause notice does not invoke Section 66A of the Finance Act,1994 which is mandatorily required to charge service tax on services received from outside India. In this context, it is observed that the provision of Section 66A have been omitted by the Finance Act,2012 and shall cease to operate from 01.07.2012 when negative list approach as introduced by Finance Act,2012 comes into operation. Notification No.23/2012-ST issued under Section 66A of the Finance Act,1994 appointed 1st day of July 2012 as the date with effect from which the provisions of said section 66A of said Act shall not

apply. In view of this, the argument of the appellant that Section 66A of the Finance Act,1994 has not been invoked, does not have leg to stand. The appellant also argued that the adjudicating authority have no jurisdiction to recalculate the transaction value of the exported goods and hold that the goods were exported at only 97% value and 3% deduction from the contract price of the goods was towards service. In this regards, it is observed that there is no material available on records to suggest that the transaction value of exported goods was re-calculated. Hence, the contention of appellant lacks factual detail and is rejected.

10. It is further contested by the appellant that the factum of revenue neutrality has not been taken care by the adjudicating authority. They pleaded that payment in cash made by the appellant would result in no gain to the revenue for the reason that equitant amount would then be re-credited to their account. In this context, there is no dispute on the fact that the appellant is a recipient of service in question and located in taxable territory i. e. in India and hence in term of Notification No.30/2012-ST dated 20.06.2012, the liability to pay tax lies with the appellant under Reverse Charge Mechanism. Furthermore, after accepting the legality of the transaction and liability in toto, the appellant were already discharging their service tax liability till September, 2013. This shows that the concept of revenue neutrality has been taken by the appellant at this later stage which is nothing but after thought only. This definitely appears to be an attempt of choosing the way of not discharging or short discharging service tax liability under the guise of revenue neutrality. It is also observed that payment of tax either under forward charge or under reverse charge against the liability arisen by any service provider cannot be correlated with their suitability of input or input service credit which is governed by separate rules/provisions. Further, there is no evidence on record to show that the department denied credit to the appellant on such payment made by them earlier. It was open for the appellant to pay tax and avail credit of the same in present transaction also, rather than advancing the plea of revenue *neutrality*. Further, the argument of revenue neutrality cannot be made a ground for non-discharge of service tax liability. Hence, their plea is liable for rejection.

11. The appellant further stated that extended period is not invocable and that penalty could not have been invoked in view of the

fact that demand is bad in law. The ground for invoking extended period is mentioned by the adjudicating authority in the impugned OIO and I agree with the same. Had the Customs Revenue Audit (CRA), C&AG, not pointed it out, the facts would never have seen the light of day. I find this to be a fit case for invocation of extended period. Further, since I have already held that the demand is correct in law, the penalty is also properly and correctly imposed and the same is upheld.

12. In view of the observations and discussions above, I do not find merit in the grounds raised by the appellant. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

28th April, 2021

(Akhilesh Kumar)
Commissioner, CGST (Appeals)
Date: .04.2021

Attested

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

By R.P.A.D.

To,
M/s. Arvind Electropumps,
Plot No. 62-63, Phase-I,
Modern Bakery Road,
GIDC, Naroda,
Ahmedabad- 382 330

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
4. The Deputy Commissioner, CGST Division-I, Ahmedabad-North.
5. Guard File.
6. P.A. File