



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

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स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/46/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad /1482-201482
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-007/2021-22**
दिनांक Date : **20.05.2021** जारी करने की तारीख Date of Issue : **31.05.2021**
- आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **02/DC/Demand/2020-21** dated **05.05.2020**, passed by Assistant/Deputy Commissioner, Central GST & Central Excise, Div-I, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant-. - Deputy Commissioner, CGST & Central Excise, Div-I, Ahmedabad-North.

Respondent- M/s Ingersoll Rand (India) Limited

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के पारित होने के तत्पश्चात् बताने वाले 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 :

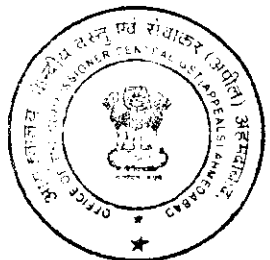
Revision application to Government of India :

(1) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत 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 कारखाने से 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 प्रक्रिया 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 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 है।

(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 हों।

(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: एम.ए.ए. 8/2001 के प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दा-दा प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फीस 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.

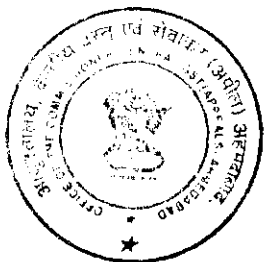
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2nd भाला, 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. 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 पढ़ी कार्य से बचने के लिए यथास्थिति अधीनस्थ 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 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 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 निर्दिष्ट हैं।

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, अधिस्तरीय प्राधिकरण परेशान 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 'तंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व जमा करने के लिए आवश्यक 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

The Department, through the Deputy Commissioner, CGST, Division-I, Ahmedabad North, has filed this appeal, as per Review Order No. 35/2020-21 dated 24.08.2020 passed against Order-in-Original No. 02/DC/Demand/20-21 dated 05.05.2020 [hereinafter referred to as "impugned order"] passed by Deputy Commissioner, CGST, Division-I, Ahmedabad North [hereinafter referred to as "adjudicating authority"] in the case of M/s. Ingersoll Rand (India) Limited, 21-30, GIDC Estate, Naroda, Ahmedabad - 382 330 [hereinafter referred to as "Respondent"].

2.1. The fact of the case, in brief, are that, the respondent were engaged in manufacturer of goods viz., Air Compressor, Air Motors and parts thereof etc falling under Chapter 84 of the First Schedule of the Central Excise Tariff Act, 1985 and having Central Excise Registration No. AACI3099QM003, Service Tax Registration No. AACI3099QST002 and GST Registration No. 24AACI3099Q1Z2.

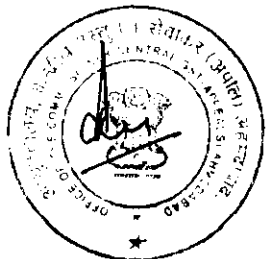
2.2. The respondent were also providing air compressors on rental/lease basis to their customers as per rental agreements between two parties. On the amount collected under rental agreements, the respondent was discharging VAT/CST considering the activity as a deemed sale. Whereas the department contended that, as the right to possession and effective control remained with the respondent, the activity of renting of air compressors attracted service tax as it was transfer of goods by way of hiring or leasing or licensing without transfer of right to use the goods, a situation covered under section 66E(f) of the Finance Act, 1994. Therefore, the respondent is engaged in "supply of tangible goods services"/"Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods". It was observed that during April, 2016 to June, 2017 the assessee had resorted/adopted to the practice of non-payment of service tax on the Air compressors rent income received for providing "supply of tangible goods service" which post 30.06.2012 was covered as declared service i.e. "Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" in view of provisions of Section 66E(f) of the Finance Act, 1994.



Accordingly, Show Cause Notice dated 22.01.2018 was issued to respondent for classification of service under the category of "supply of tangible goods service" in view of provisions of Section 66E(f) of the Finance Act, 1994 and also demanding service tax amounting to Rs. 12,06,800/- for the period April-2016 to June-2017 under Section 73(1) of Finance Act, 1994 alongwith Interest at appropriate rate under Section 75 of Finance Act, 1994. It was proposed for imposing penalty under Section 76 and Section 77 of Finance Act, 1994.

2.3. The said SCN was decided by the adjudicating authority vide Order-In-Original No. 02/DC/Demand/20-21 dated 05.05.2020 wherein he dropped all the proceeding initiated against the respondent on following grounds:

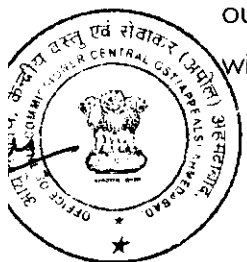
- (i) The transaction carried out under the agreement between the respondent and customer is chargeable to VAT and no service element is involved in the same.
- (ii) The transaction is purely for transfer of right to use equipment, where possession and control of equipment are transferred for the exclusive use of hirers. The respondent has been discharging VAT/CST on the entire lease rent turnover of the respondent.
- (iii) "Service" defined u/section 65B(44) of Finance Act, 1944 shall not include transfer, delivery or supply of any goods which is deemed to sale within the meaning of clause (29A) of article 366 of the Constitution;
- (iv) that to levy service tax on a transaction as supply of tangible goods for use under section 66E(f), the one of the conditions to be met is that the supply is without transfer of right to use the goods, as right to use goods is leviable to VAT/CST as deemed sale in terms of relevant VAT laws.
- (v) As the two ingredients in a transaction are fulfilled i.e. there is transfer of right to use goods and VAT is paid by the respondent, then such activity would be treated as deemed sale and would be outside the scope of definition of 'Service' under section 65B(44) of Finance Act, 1994.
- (vi) As the transfer of possession as well as effective control of the equipment (air compressors) and supply of equipment is not for the purpose of giving service without parting with the effective control of the equipment, the supply of goods in the present case therefore accompanies with transfer of right to use the goods. In such situation, the disputed transactions are not covered under section 66E(f) of the Finance Act, 1994 and consequently out of purview of service tax.



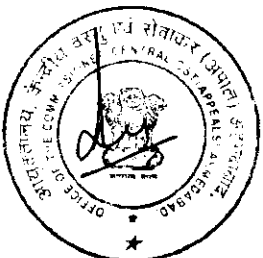
(vii) In a similar issue of same respondent i.e. M/s Ingersoll Rand, the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-002-APP-124-17-18 dated 27.10.2017, set aside the OIO No. SD-06/14/AC/Ingersoll Rand/16-17 dated 02.02.2017 issued by Assistant Commissioner, STC(Div-VI), Ahmedabad for the period 21.08.2012 to 11.03.2016 and allowed the appeal filed by the appellant.

3. Being aggrieved with the impugned order, the department has filed the instant appeal on the grounds that:

- That the order dated 05.05.2020 is bad in law and is liable to be set aside;
- That as per Section 65(105)(zzzzj) of Finance Act, 1994, taxable service of 'supply of tangible goods service' means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances. After introduction of negative list regime, with effect from 01.07.2012, the transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use goods was covered under Section 66E(f) of the Finance Act, 1994 as a declared service;
- That in terms of Clause 29A(d) of Article 366 of the Constitution of India, for a transaction to qualify as deemed sale leviable to state sales tax/VAT, the condition namely, "the transfer of right to use any goods for any purpose", is required to be fulfilled. And if in a transaction the 'right to use' is not transferred then such transaction cannot be classified as 'deemed sale'. The Hon'ble Supreme Court of India in the case of BSNL vs. Union of India [2006 (2) STR 161 SC] has held that a transaction involves transfer of right to use goods, in case it fulfills the following criteria:
 - There must be goods available for delivery;
 - There must be consensus ad idem as to the identity of the goods;
 - Transferee should have legal right to use the goods;
 - Such right should be to the exclusion of the transferor i.e. it should not be merely license to use the goods, and
- that in transfer of right to use goods all the rights except the ownership rights are transferred by the lessor to the lessee. This implies that the lessee will be free to use the subject goods in the manner and way he deems fit. There cannot be any restriction on the lessee so far as use of the leased out goods is in reckon. If this condition is fulfilled then the said transaction will be eligible for being considered as 'deemed sale';



- That department relied upon the clarification issued by the CBEC vide para 2.5.8 of Circular No. 334/1/2012-TRU, dated 16.03.2012 that *Transfer of right to use goods is a well recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. Transfer of right of goods involves transfer of possession and effective control over such goods. Transfer of goods without transfer of possession and effective control over goods would not be a sale but a service (such transfer has also been declared as a service under section 66F of the Act);*
- That department relied upon Section 4.4 of Circular No. 334/1/2008-TRU, dated 16.03.2008 by which the Revenue have shown their intention to levy service tax on such transactions under the category of Supply of Tangible Goods for use;
- That the said service was duly notified/defined vide Notification No. 18/2008-ST dated 10.05.2008 under Section 65(105)(zzzzj) as "Supply of Tangible Goods Services" and was further defined under declared services under Section 65B of the Finance Act, 1994 w.e.f 01.07.2012. Thus it has been clarified that in terms of Article 366 (29A) (d), transfer of right to use involves transfer of both possession and control of the goods to the user of the goods and in such a case, the transaction shall be subject to levy of sales tax/VAT.
- Department replied upon the judgement of Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Vs UOI (2006 (2) STR 161) accordingly to decide as to whether a certain transaction in the nature of provision of service and shall be subject to levy under the Finance Act has to be decided by applying judiciously the provisions provided under the Finance Act itself and not by reading the provisions under State law;
- Department replied upon the judgement of Hon'ble Supreme Court in the case of Idea Mobile Communication Ltd. Vs. Commissioner of Central Excise & Customs, Cochin (Civil Appeal No. 6319 of 2011) in judgment dated 04.08.2011, reported at 2011 (23) STR. 433 (SC) has observed that it also cannot be disputed that even if sales tax is wrongly remitted and paid that would not absolve them from the responsibility of payment of service tax, if otherwise there is a liability to pay the same.
- That the Board vide circular No. 198/8/2016-ST dated 17.08.2016 has categorically stated 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. In the present

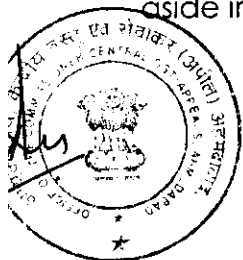


case there are legal agreements between the lessor and the lessee for Rent agreements of the subject goods;

- That department relied upon the judgements in case of Mahyco Monsanto Biotech (India) Pvt. Ltd vs. UOI (2016 (44) STR 161 (Bom.), the Hon'ble High Court; Hon'ble Supreme Court, vide judgment dated 06.03.2002, in the case of State of Andhra Pradesh vs. Rashtriya Ispat Nigam Limited, in the Appeal (civil) 31 of 1991, (2003) 3 SCC 214) and Carzonrent (India) Pvt Limited Vs. Commissioner of Service Tax, Delhi-I (2017(50) STR 172 (Tri-Del.) in connection with right given for permissive use only and effective control over the machinery not given;
- That the Hon'ble Courts/Tribunal have consistently held that for a transaction to qualify as a transfer of the right to use goods, 'effective control' must be transferred to the transferee. In the instant case, in light of conditions prescribed under clause 1 and 12 of the Rental Agreement, it cannot be concluded that the lessor has transferred effective control over the rented equipments i.e Air Compressors' to the lessee;
- That the 'rights to use the equipment' has not been passed on by the lessor (the assessee) to the lessee (Customer) and accordingly, the transactions was taxable service falling under the category of 'Supply of Tangible Goods Service' defined under Section 65(105)(zzzzj) of Finance Act, 1994 (upto 30.06.2012) and with effect from 01.07.2012, as 'Declared Service" under Section 66E(f) of Finance Act, 1994.

4.1. Personal hearing in the matter was held on 19.02.2021 through virtual mode. Shri Madhu Jain, Advocate appeared on behalf of respondent for the hearing. She reiterated the submission made in cross objection. She also stated that the matter is periodical demand and SCN for earlier period was decided by the Commissioner (A) against which no appeal has been preferred.

4.2. The respondent filed additional cross objection vide letter dated 22.02.2021 wherein it was stated that the department having accepted principles laid down in earlier case cannot be permitted to take a contra stand in subsequent cases and relied upon OIA No. AHM-EXCUSE-002-APP-124-17-18 dated 23.10.2017 in their own case of earlier period wherein OIO was set aside and allowed the appeal and accordingly, requested to set aside impugned order.

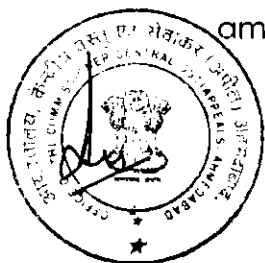


5. I have carefully gone through the facts of the case and submissions made by the appellant. I find that the issue requiring determination in this case is whether the income earned by the respondent from renting of Air Compressors is taxable service falls under the category of "Supply of Tangible Goods Service" as defined under erstwhile Section 65 (105) (zzzzj) of the Finance Act, as amended, for the period upto 30.06.2012 and w.e.f. 01.07.2012 under Declared Service in view of the provisions of Section 66E(f) of the Finance Act, 1994 or otherwise?

6. It is observed from the appeal memorandum that the main contention in grounds of appeal is that the 'rights to use the equipment' has not been passed on by the lessor (the assessee) to the lessee (Customer) and accordingly, the transactions was taxable service falling under the category of 'Supply of Tangible Goods Service' defined under Section 65(105)(zzzzj) of Finance Act, 1994 (upto 30.06.2012) and with effect from 01.07.2012, as 'Declared Service" under Section 66E(f) of Finance Act, 1994 and also relied upon the clarification issued by the CBEC vide para 2.5.8 of Circular No. 334/1/2012-TRU, dated 16.03.2012.

7. It is observed from the cross objection filed by the respondent that similar issue for earlier period i.e from 21.08.2012 to 11.03.2016, involving demand amounting to Rs. 27,86,664/- in case of respondent itself, the appeal filed by them has been decided by the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUSE-002-APP-124-17-18 dated 23.10.2017. The Commissioner (Appeals), Ahmedabad vide deciding the appeal vide order dated 23.10.2017 held that the supply of goods in the case is accompanied with transfer of right to use the goods and in such a situation, disputed transactions are not covered under Section 66E(f) of the Finance Act, 1994, and consequently, out of purview of service tax and allowed the appeal filed by appellant.

8. It is observed from the case records that the SCN dated 22.01.2018 in the present case has been issued under Section 73(1A) of the Finance Act, 1994 as amended, for period from 01.04.2016 to 30.06.2017, with reference to earlier Show Cause Notice dated 01.08.2016 demanding service tax amounting to Rs. 27,86,664/- for the period from 21.08.2012 to 11.03.2016,



issued by the Assistant Commissioner, Central Excise & CGST, Division-I(Naroda), Ahmedabad-North, on same grounds relied upon in earlier SCN. There is no change in legal provision as per Show Cause Notice dated 01.08.2016 and in the present SCN.

9. It is further observed from the records that no appeal had been preferred by the department against the OIA dated 23.10.2017 under which similar issue of the respondent for the earlier period i.e 21.08.2012 to 11.03.2016 involving demand amounting to Rs. 27,86,664/- was decided. In the said OIA, it was held by the Commissioner(Appeals) that the supply of goods in the case is accompanied with transfer of right to use the goods and in such a situation, disputed transactions are not covered under Section 66E(f) of the Finance Act, 1994, and consequently, out of purview of service tax and allowed the appeal filed by appellant. It is also observed from the appeal memorandum that department has not mentioned anything about the review of OIA No. AHM-EXCUSE-002-APP-124-17-18 dated 23.10.2017 on the basis of which the adjudicating authority decided the case and passed impugned order. Thus, the OIA dated 23.10.2017 passed by the Commissioner (Appeals), Ahmedabad, wherein similar issue of earlier period of the respondent's case itself has been decided by setting aside OIO dated 02.02.2017, has been accepted by the department and hence, it is not open for the department to re-open the issue again, particularly when there is no change in legal provisions or any judicial pronouncement from higher appellate forum.

10. In view of above discussion, I find that the main issue of taxability of renting income earned by the respondent from renting of air compressors for the earlier period was already decided by this authority wherein the appeal was allowed in favour of the respondent. I find that in the OIA referred above, the issue of taxability of renting of Air Compressors has already been dealt with in detail and it was concluded that the said transactions are not covered under Section 66E(f) of the Finance Act, 1994, and consequently, remained out of purview of service tax. As this appeal is in respect of periodical demand and there is no change in legal provisions, I find no reason to take any contrary view in this matter. Thus, I find that the adjudicating authority has correctly dropped the demand



and I do not find any reason to interfere with the impugned order passed by the adjudicating authority.

11. In view of the facts as discussed hereinabove, I do not find any reason to interfere with the impugned order passed by the adjudicating authority. Accordingly, I uphold the impugned order and reject the appeal filed by the department.

12. 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.

(Signature)
(Akhilesh Kumar)
Commissioner, CGST (Appeals)
Date: .05.2021

Attested

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

By R.P.A.D.

To,
M/s. Ingersoll Rand (India) Limited,
21-30, GIDC Estate,
Naroda, Ahmedabad - 382 330

Copy to:

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

