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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NATION TAX MARKET

**DIN-20210664SW000000C0D7**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/STD/103/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad/1662 TO 1667

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-009/2021-22**
दिनाँक Date : **08.06.2021** जारी करने की तारीख Date of Issue : **15.06.2021**

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

ग Arising out of Order-in-Original No. **12/ADC/2020-21/MSC dated 20.08.2020**, passed by Additional Commissioner, Central GST & Central Excise, Ahmedabad-North

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

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

**Respondent**- M/s Inductotherm (India) Pvt. Ltd.

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.

(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/– फ़ीस 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 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**

The Department, through the Deputy Commissioner, CGST, Division-III, Ahmedabad North, has filed this appeal, as per Review Order No. 36/2020-21 dated 23.10.2020 passed against Order-in-Original No. 12/ADC/2020-21/MSC dated 20.08.2020 [hereinafter referred to as "impugned order"] passed by Additional Commissioner, CGST & Central Excise, Ahmedabad North [hereinafter referred to as "adjudicating authority"] in the case of M/s Inductotherm (India) Pvt. Ltd., Plot No.6, Sanand(Bol GIDC), Sanand, Ahmedabad-382170 [hereinafter referred to as "Respondent"].

2.1. The facts of the case, in brief, are that the respondent are engaged in the manufacture of tailor made 'Melting furnace, Manual changeover arrangement, Hydraulic Power Supply Unit, Induction Melting furnaces with charge cars and Automotive Pouring Furnace' thereof falling under Chapter 84 and 85 of the First Schedule of the Central Excise Tariff Act, 1985 were having Central Excise Registration No. AAACI13672BEM004 and Service Tax Registration No. AAACI13672BST001.

2.2. During the course of audit of their financial records by the Department for the period January, 2015 to March, 2017, it was observed that the respondent and the customers have entered into an agreement whereby the respondent have agreed to supply the requisite goods at the price fixed upon and the customers have agreed to purchase such goods and as token of acceptance of such agreement, the customers have made the advance payment to the respondent as agreed upon. Subsequently, by cancelling the order placed, the customers appeared to have prevented the respondent from performing the contract and for that reason the respondent became entitled for receiving compensation from the customers as provided for under Section 53 of the Indian Contract Act, 1972. However, the respondent had chosen not to seek such compensation by way of filing a civil suit with the appropriate forum and instead have

forfeited the advance amount paid by the customers and that in other words, the respondent had refrained from filing a civil suit seeking compensation against forfeiture of the advance received. It contended by the audit officers that the act of refraining from seeking compensation from the customer by the respondent was covered under the ambit of Section 66E(e) of the Finance Act, 1994 (in short '*the Act*') which declares the event of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' as a service and the amount of advances forfeited in the case was the consideration against the said service. Therefore, it was contended by the audit that the respondent was liable to pay service tax on the said income booked on account of forfeiture of advances in respect of cancellation of orders.

2.3. Based on audit observations as discussed in para 2.2 above, Show Cause Notice F.No. IV/1(b)-163/IA/ /AP-40/CIR-VI/17-18 dated 19.06.2018 for the period from Jan-2015 to March-2017 demanding service tax amounting to Rs. 21,74,849/- on account of forfeiture of advances in respect of cancellation of orders was issued to the respondent. Based on the allegations mentioned in the SCN dated 19.06.2018, this SCN **18.10.2019** for the period from **April-2017 to June-2017** as periodical under Section 73(1A) of the Finance Act,1944 was issued to the respondent proposing for recovery of service tax amounting to **18.10.2019** for the period from **April-2017 to June-2017** against an income of Rs.4,45,71,314/- shown in their financial records on account of forfeiture of advances in respect of cancellation of orders in terms of Section 73 of the Finance Act, 1994, along with interest under Section 75 of the Act and imposition of penalty under Section 76 of the Act.

2.4. The said SCN was adjudicated vide the impugned order wherein the adjudicating authority has dropped the proceeding initiated against the respondent in the SCN dated 18.10.2019 on following grounds:

(i) That the respondent entered into an agreement with their customers to supply of certain goods as per the price fixed and the customers made the advance payment to the respondent as agreed upon. Accordingly, the respondent commence production of the goods before the cancellation of order and the respondent would not find customers and hence, the amount realized by way of forfeiture of deposit would not come within the purview of definition of Section 66E(e) of the Finance Act, 1994.

(ii) In the OIA No. AHM-SVTAX-000-APP-022-17-17 dated 26.05.2017/08.06.2017 issued by the Commissioner (Appeal)-II, Ahmedabad in case of M/s Nirma University, Ahmedabad wherein it is held that the process of payment made by the employees to the respondents for termination of job before the completion of the agreed upon period is not to be treated as a service nor any act of consideration for refraining from an act or tolerating an act and set aside the order.

(iii) In a similar issue of same respondent i.e. M/s Inductotherm (India) Pvt. Ltd., the Commissioner (Appeals), Ahmedabad vide **OIA No. AHM-EXCUS-002-APP-005-2020-21 dated 23.06.2020**, set aside the demand for the period **January, 2015 to March, 2017 confirmed** vide OIO No. 24/DC/D/AKJ/18-19 dated 30.03.2019 issued by Deputy Commissioner, CGST & Central Excise, Division-III, Ahmedabad North and allowed the appeal filed by the respondent.

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

- ✓ As per Section 65B(44) of the Finance Act, 1994, "service means any activity carried out by a person for another for consideration, and includes a declared service" and the interpretation of service makes it amply clear that 'declared services' are services as per Section 65B(44) of the Finance Act, 1994.

- ✓ The as per the declared services listed out at Section 66E of the Finance Act, 1994 indicates that agreeing to the obligation to tolerate an act or a situation constitutes a declared service.
- ✓ The compensation/consideration received by the respondent in the form of forfeited advance payment is nothing but "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" which is a declared service under Section 66E(e) of the Finance Act, 1994.
- ✓ The adjudicating authority has wrongly relied on the OIA No. AHM-EXCUS-002-APP-005-2020-21 dated 23.06.2020 passed by the Commissioner (Appeal)-II, Ahmedabad in case of M/s Nirma University, Ahmedabad as the same deals with the issue of termination of employment before completion of the agreed upon period, whereas the instant case deals with the issue of cancellation of order and receipt of consideration in the form of advance payment which has been forfeited towards refraining from an act of filing civil suit.
- ✓ The adjudicating authority has relied on the **OIA No. AHM-EXCUS-002-APP-005-2020-21 dated 23.06.2020 passed by the Commissioner (Appeal), Ahmedabad** in their own case for earlier period which has been **accepted by the department on 24.08.2020 on Low Monetary Grounds.**

4. Personal hearing in the matter was held on 26.04.2021. Shri Amal P. Dave, Advocate, appeared on behalf of the respondent. He reiterated submissions made in the cross objection.

5. I have carefully gone through the facts of the case, ground of appeal in the Appeal Memorandum and submissions made in cross-objection made by the respondent. The issue to be decided in the instant case is whether the advance amount forfeited by the respondent in case of cancellation of orders in terms of agreement 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. The demand pertains to period April, 2017 to June-2017.

6. It is observed from the case records that the SCN dated 18.10.2019 in the present case has been issued under Section 73(1A) of the Finance Act, 1994 as amended, for period from **01.04.2017 to 30.06.2017**, with reference to earlier **Show Cause Notice dated 19.06.2018** demanding service tax amounting to **Rs. 21,74,849/-** for the period from **January, 2015 to March, 2017**, issued by the Assistant Commissioner, CGST & C.Ex, Circle VI, Audit Commissionerate, Ahmedabad, on same grounds relied upon in earlier SCN. There is no change in legal provision as per Show Cause Notice dated 19.06.2018 and in the present SCN except the period and amount of demand.

6.1. It is observed that the SCN dated 19.06.2018 issued to respondent for the similar issue of earlier period has been decided by the Deputy Commissioner, CGST & Central Excise, Division-III, Ahmedabad North vide OIO No. 24/DC/D/AKJ/18-19 dated 30.03.2019 wherein confirmed the demand. The respondent filed an appeal against the said order with the Commissioner (Appeals) Ahmedabad. The said appeal has been decided vide OIA No. AHM-EXCUS-002-APP-005-2020-21 dated 23.06.2020 in the respondent's own case, wherein the Commissioner (Appeals) set aside the demand and allowed the appeal filed by them.

7. It is observed that while deciding the instant case, the Additional Commissioner, CGST, Ahmedabad North vide impugned order dated 20.08.2020 has considered and agreed with contentions of respondent that no service has been rendered by the respondent as the amount realized by way of forfeiture of deposits is justifiable and would not fall under the definition of Section 66E(e) of the Finance Act, 1994. The Additional Commissioner has relied on the OIA No. AHM-SVTAX-000-APP-022-17-17 dated 26.05.2017/ 08.06.2017 issued by the Commissioner (Appeal)-II, Ahmedabad in case of M/s Nirma University, Ahmedabad wherein it is held that the process of payment made by the employees to the respondents for termination of job before the completion of the

agreed upon period is not to be treated as a service nor any act of consideration for refraining from an act or tolerating an act and also held that the said order are squarely applicable. The adjudicating authority also relied upon the OIA No. AHM-EXCUS-002-APP-005-2020-21 dated 23.06.2020 passed by the Commissioner (Appeals) Ahmedabad in respondent's own case for the earlier period wherein set aside the demand and allowed the appeal filed by respondent. Accordingly, the adjudicating authority dropped the proceedings.

8. It is observed that the issue involved in the instant case has already been decided by me in the respondent's case for earlier period vide Order-In-Appeal No. AHM-EXCUS-002-APP-005-2020-21 dated 23.06.2020. The issue being similar, relevant extracts of the order portion is reproduced below for reference:

6. *After going through the facts of the case, views of the adjudicating authority and the contentions raised in the appeal memorandum, I find that the first point to be decided in the instant case is as to whether the amount of advances forfeited by the appellant would amount to a consideration as envisaged in the service tax law or not and then only the question of taxability arises in the matter. The department is contending that the said amount is nothing but a consideration for refraining from an act of filing civil suit against the buyer which was available to the appellant in terms of the provisions of Section 53 of the Indian Contract Act. The relevant Section 53 of the Indian Contract Act reads as under:*

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

*From the above legal provision, it is amply clear that what is provided therein is the entitlement of a compensation to the party who was prevented from performing the contract for any loss which he may sustain as a consequence of the non-performance of the contract. The nature of relief envisaged in the said provision is clearly defined as a compensation for the affected party for any loss which may sustain on account of the act of the other party. Such a compensation need not emanate from a civil court proceedings. It can even be agreed upon by the two parties involved even while entering into an agreement. Merely because there is a mutual consent on the amount of compensation receivable in the event of a breach of promise/agreement, the compensation does not take the colour of consideration, as contended by the department. What is to be understood is the fine distinction between the terms "consideration" and "compensation". Consideration is not defined under service tax*

*law but as per provisions of Indian Contract Act, it means a promise made by the promisee in reciprocation. Whereas the compensation is something which is awarded to the sufferer on account of breach of the contract/promises by the other party. Needless to mention that the consideration involves desire of the promisor whereas compensation involves breach. It is not disputed that definition of the term 'service" as given in Section 65B(44) of the Act envisages "consideration" and not "compensation". It is also not the case of the department in the present case that the amount of advances forfeited by the appellant is not in the nature of a compensation.*

*6.1It is the contention of the appellant that the agreement between them and their buyers became void as the buyers failed to pay the remaining amount of the goods as promised or agreed and it is against the breach of this promise on the part of the buyers that the advance amounts deposited by them were forfeited. The department has not disputed this contention of the appellant. Thus, it is a fact not in dispute that the forfeiture of advance amounts was necessitated out of breach of promise and the amount so forfeited was in lieu of the financial loss the appellant had suffered in consequence of the act of the buyer. When that being so, such a transaction is clearly in the nature as envisaged in Section 53 of the Indian Contract Act and hence the amount so received would definitely amount to a compensation. Mere receipt of money which is in the nature of a compensation can not be treated as consideration for any activity.*

*6.2.Further, when it is established that the transaction in the case in the nature of compensation against a breach of promise as envisaged in Section 53 of the Indian Contract Act, the contention that there was an act of tolerating the cancellation of order or refraining from a filing a civil suit for compensation does not stand on merits especially when the compensation intended in terms of Section 53 of the Indian Contract Act has been made good by the appellant themselves by way of forfeiture of advances without the intervention of any legal forums. When the appellant himself takes care of situations in the contract which may lead to financial losses to him without taking a legal recourse, it is completely his choice to do so irrespective of the fact whether such an act is consented by the other party or not. It can not be insisted that compensation in such cases necessarily should flow from a legal proceeding. In the instant case, it is the case that the appellant has simply chosen to claim compensation by way of forfeiture of advance amounts deposited by the buyer.*

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

*6.4It is observed that the Kolkata Regional Bench of Hon'ble Tribunal in their decision dated 25.10.2019 in Service Tax Appeal No.ST/76339 of 2018 (DB) in the case of M/s Amit Metaliks Ltd., Durgapur Vs. The Commissioner of Central Goods and Services Tax, Bolpur, has dealt with a similar kind of situation as in the present case and it is held that :*

*25. We also find a considerable force in the contention raised by the learned Advocate that the compensation received by the Appellant from the cultivators and M/s AML, the debt in present and future, which as per Transfer of Property Act in the category of Actionable Claim placing reliance on the decision of Hon'ble Supreme Court in case of* ***Kesoram Industries and Sunrise Association(Supra)***

*13. A careful reading of the Settlement Agreement in question clearly show that the land owners have agreed to pay a definite sum, that is, an ascertained amount to the Appellant developer to resolve all claims of settlement. The settlement agreements have resulted in creation of a debt in favour of the Appellant. Under the said circumstances a debt is clearly created and the said amount would fall within the scope and ambit of an actionable claim within the meaning of Section 3 of the Transfer of Property Act, 1882 and hence excluded from the definition of ' service' as per Section 65B(44).*

*14. It is submitted that the amount in question is an ' actionable claim' which is not liable for any service tax under the provisions of the 1994 Act. The meaning, nature and scope of actionable claim has been dealt with in detail by the Constitution Bench of the Hon'ble Supreme Court of India in case of Sunrise Association vs. Govt. of NCT of Delhi reported in (2006) 5 SCC 603.*

*26. Thus, we held that the entire sum of money would be classified as Actionable Claim which otherwise is beyond the scope of service tax under Section 66B(44) (iii) of the Finance Act. If the transaction of Development Agreement, Settlement Agreement and compensation not fall under 'Service' under the Finance Act there is no application of Section 66 E(e) of the Act ibid.*

*27. As far as the compensation received from M/s Amit Mines is concerned, the Show Cause Notice mentions the leviablity of Service tax on the amount received towards the compensation for non supply of the agreed quantity of manganese ore under Section 66 E(e) of Finance Act which is even otherwise is purely the transaction sale of the iron ore to the Appellant by M/s Amit Mines. Thus, the compensation amount is towards default on the sale of the goods. The sale could not be effected and, therefore, Appellant received the liquidated damage by way of raising the debit note which was honoured by M/s AML. Thus, this amount of compensation/ liquidated damage cannot be treated as service under Section 66 E(e) of the Act. The demand is thus not sustainable on this aspect also.*

*7. In view of the above discussions and the above decision of the Hon'ble Tribunal, it is to be held that the impugned order confirming demand in the matter fails to survive on merits before law and hence deserves to be set aside. When demand fails, there can not be any question of interest or penalty.*

9. Looking into the facts and circumstances of the instant case, it is observed that there is no change in legal provision or any fresh interpretation by way of judicial pronouncement on the issue in the appeal memorandum. Hence, following the decision taken in earlier OIA of the respondent wherein it was held that the order confirming demand in the matter fails to survive on merits before law and set aside. The instant demand is periodical in nature. Accordingly, I do not find any reason to interfere with the impugned order passed by the adjudicating authority. Hence, I do not find any merit in the appeal filed by the department.

10. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

(Akhilesh Kumar )
Commissioner (Appeals)
Date:

Attested

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

**BY SPEED POST TO:**

M/s Inductotherm (India) Pvt. Ltd.,
Plot No.SM-6, Road No.11,
Sanand Industrial Estate,
BOL Village, Sanand,
Ahmedabad-382170

**Copy to:-**

1. The Principal Chief Commissioner, Central GST , Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Ahmedabad North.
3. The Additional Commissioner, CGST & Central Excise, Ahmedabad North
4. The Deputy Commissioner, Central GST & C.Ex., Division-III, Ahmedabad North.
5. The Assistant Commissioner, CGST (System), HQ, Ahmedabad North.
6. Guard file.
7. P.A. File