आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065- **टेलेफैक्स**07926305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)163/Ahd-South/2019-20 / 15770 to 15776

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-35-2020-21**

दिनाँक Date : **28-08-2020** जारी करने की तारीख Date of Issue 28-08-2020

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित O/C

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No **MP/20/AC/DIV-III/2019-20** दिनाँक**: 30.10.2019** issued by Assistant Commissioner, Div-III, Ahmedabad South.

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

M/s Poggen Amp Nagarsheth Powertronics Private Limited,
Plot No. C-A/B, 4402, GIDC Estate, Vatva-382445.

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 issued under the Central Excise Act 1944,may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(ख) 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।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) 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।

(d) 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 अपील:–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) **केंद्रीय जीएसटी** अधिनियम, 2017 की धारा 112 के अंतर्गत:–

Under Section 112 of CGST act 2017 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.

(ग) 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 न्यिमों 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.

(20) 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)

(21)

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:

(xxii) amount determined under Section 11 D;
(xxiii) amount of erroneous Cenvat Credit taken;
(xxiv) 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।

6(I) 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."

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.

ORDER IN APPEAL

M/s Poggen Amp Nagarsheth Powertronics Pvt. Ltd., Plot No.C-1/B, 4402, GIDC Estate, Vatva, Ahmedabad-382445 *(hereinafter referred to as 'the appellant')* have filed the present appeal against Order-in-Original No.MP/20/AC/Div-III/18-19 dated 30.10.2019/ issued on 14.11.2019 *(hereinafter referred to as 'impugned order')* passed by the Assistant Commissioner, Central GST, Division-III, Ahmedabad South *(hereinafter referred to as 'adjudicating authority').*

2. The facts of the case, in brief, are that during the course of audit under EA-2000 of the records of the appellant by the department, it was observed that they had received exhibition service in foreign and made payment for the stand or stall at CWIEME, Berlin for the period from 2013-14 to 2016-17 as detailed in SCN and not paid the service tax amounting to Rs.34,724/- payable in terms of Notification No.30/2012-ST dated 20.06.2012 (effective from 01.07.2012) as the said services were provided from a non-taxable territory and were received in the taxable territory. It was further observed by the Audit that the said appellant had shown indirect income as 'sundry creditors balance written off' amounting to Rs.6,72,361/- for the period from 2013-14 to 2016-17 which pertains to amount of Security Deposits, Salary & Wages charges, charge of manpower supply agency service provider, etc. and that the said amount were payable to the respective persons but it appears that without paying the said amount to them, the appellant has written off the amount and converted as indirect income in balance sheet and that retaining payment of Security Deposits, Salary & Wage charges, charge of manpower supply agency service provider, etc. relating to service used in the course of or for furtherance of business or commerce are covered under a situation of non-toleration of an act and considered as declared taxable service in terms of the provisions of Section 66E(e) of the Finance Act, 1994 and therefore the appellant was liable to pay service tax of Rs.88,446/- on the said indirect income of Rs.6,72,361/-. Based on the above audit objections, a Show Cause Notice dated 24.04.2018 was issued to the appellant for recovery of service tax amounting to Rs.1,23,170/- [Rs.34,724/-+Rs.88,446/-] not paid as discussed above. The said notice was decided by the adjudicating authority vide the impugned order wherein he had confirmed the demand along with interest and also imposed penalty.

3. Being aggrieved with above order, the appellant has filed the present appeal mainly on the following grounds:

(i) In any taxation law, the levy has to be first made and then the machinery for collection thereof would come into place. The machinery cannot substitute levy. In the facts of the present case, therefore, much before going into Notification No.30/2012-ST, one needs to decide and ascertain the levy of tax;

(ii) As per Section 66B of the Act read with Rule 6 of the Place of Provision of Rules, 2012, the services of exhibition received by them was not taxable as the place of provision of service in the case was in non-taxable territory viz. Berlin, Germany

where the exhibition was actually held. If levy is not there, question of applying Notification No.30/2012 does not arise. The demand is, therefore, beyond the provision of law and not tenable;

(iii)Notification No.30/2012 only decides the person who is liable to pay tax and extent thereof. It has no relation to the levy of tax;

(iv)The contention of the department for the 2nd demand is that all activities are in the nature of *Declared Service* as under Section 66E(e) which read as "*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.*" It is submitted that the amounts received pursuant to the agreement is not a consideration towards rendition of any taxable services and hence not liable for service tax.

(v) In the facts of the present case, there is neither any activity nor any consideration. There is no agreement to forbore, obligation to refrain from an act or tolerate an act or situation. The originally supply undertaken by supplier was already tax paid. From such tax paid amount deductions are made. Such deduction do not constitute service nor consideration;

(vi)The amount received is towards the damage or breach of contract towards full and final settlement of all disputes arising under the supply agreement. This agreement cannot be construed as agreement entered into by them to refrain from initiating proceedings against the other parties/companies. The matter is covered by Tribunal decisions in case of Accounts Officer, Madhya Pradesh Kshetra Vidyut Vitaran Company Ltd. Vs. Commissioner of Central Goods and Services Tax, Customs & Central Excise [2019 (7) TMI 500 – CESTAT New Delhi] and M/s Amit Metaliks Ltd. Vs. Commissioner of Central Goods and Services Tax, Bolpur [2019 (11) TMI 183 – CESTAT Kolkata];

(vii) In the facts of present case, the credit balances in the books, which are the balance in respect of liability for payment, are written off on the premises that the payment for such credit balances need not be paid for whatever reason the Management decide and thus, it is the case of non payment of liability. Such situation has no even a remote relation to Section 66E(e). It is the creditor i.e., the person who is entitled to recover, has probably agreed to refrain from an act or tolerate the situation which is non payment by them. Thus, the service, if any, is a declared service in the hands of creditor and not in their hands;

(viii) The demand is barred by limitation as there was no intention to evade tax on their part in any manner. They were under belief that no service was involved in the matter and hence there was no question of payment of service tax on the issue. There is also no question of any concealment or suppression as the details are contained in their books of accounts which are available to the department at all times;

(ix)In both the cases, there is complete misreading of law and facts. Non comprehension of departmental erroneous reading cannot be treated with concealment or suppression. Therefore, neither the extended period nor the penalty under Section 78 can be imposed.

4. Personal hearing in the matter was held on 20.08.2020. Shri S.J. Vyas, Advocate, appeared on behalf of the appellant and re-iterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. I find that the issues to be decided in the case are as to whether (i) the payments made by the appellant for services of exhibition held at Berlin, Germany and (ii) the indirect income shown by the appellant on account of writing off of sundry creditors balance from their books of accounts, are leviable to service tax or not?

6. It is observed that in respect of the exhibition services received by the appellant, it is not in dispute that the event of exhibition has took place in Berlin, Germany. As per Section 66B of the Act, service tax is leviable in respect of services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another. From the said charging section, it is abundantly clear that a service is subjected to levy of service tax only when the same is provided or agreed to be provided in the taxable territory. In other words, the taxability of a service will be determined based on the "**place of its provision**". The place of provision of a service is determined by the Place of Provision of Service Rules, 2012 notified by the Government which specify the manner to determine the taxing jurisdiction for a service. Rule 6 of the said Rules provides for place of provision of services relating to events which reads as under:

> ***RULE 6. Place of provision of services relating to events.*** *— The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.*

From the above Rule 6, it is clear that in the case of services provided by way of admission to or organization of a exhibition, the place of provision of service shall be the place where the event is actually held. It is undisputed that in the case on hand, the place of provision of service was in Berlin, where the exhibition was actually held and the said place of provision of service was not in taxable territory as defined under Section 65B (52) of the Finance Act, 1994 read with Sectin65B (27) of the Act. When the place of provision of the service was not in taxable territory, the service would not be taxable under the provisions of the Act and when the service was not taxable, there can not be any levy against the same. Consequently , no liability of tax arise in the matter. Hence, the confirmation of demand on this issue is without any legal backing.

6.1 Notification No.30/2012-ST dated 20.06.2012 would come into play only when there is a liability to pay service tax. This is clearly evident from the fact that the said Notification is issued in terms of Section 68(2) of the Act. The said Notification does not in any way provide for any levy independent of the statutory provisions of the Act. The demand in the matter has been raised by the Audit solely in terms of Notification No.30/2012-ST dated 20.06.2012 on the premise that the said services, though provided

from non-taxable territory, were received by the appellant in India. However, the basic and vital aspect as to whether such service in question is actually taxable under the provisions of the Act has gone a complete missing by the Audit which has led to a wrong conclusion and wrong demand. As discussed in the previous para, since the place of provision of the exhibition service received by the appellant being not in taxable territory, the said service is not taxable under the provisions of the Act and therefore, the payment made by the appellant towards such service is not exigible to tax under the provisions of the Act. Consequently, the demand made in this regard is not sustainable before law and the impugned order confirming the said demand deserves to be set aside outrightly.

7. Coming to the issue of second demand in the case, it is observed that the said demand has been made on the assumption that the 'indirect income' shown by the appellant on account of writing off of sundry creditor's balance from their books of accounts, was purportedly consideration for the appellant for not taking action against the creditors which falls within the ambit of declared service as specified under Section 66E(e) of the Act and hence is leviable to tax. It is the contention of the appellant that the said amount does not pertain to any activity or service but only writing off of their dues. I find that there is no dispute on the fact that the amounts covered under the said income were in fact amounts pending for payment by the appellant which was later decided not to be paid and subsequently written off from their liabilities in their books of accounts. After going through the facts and evidences available on records, I find that there is no evidence put forth by the department in the case which proves that the amounts due for payment were retained by the appellant in lieu of not taking action against persons to whom the said payments were to be made. The show cause notice has merely proceeded on assumption and has not discussed any reliable base for the demand. No evidence of any kind has been brought on records which supports the cause of the demand. The Show Cause Notice alleges that retaining payment of security deposits, salary & wages charges, charge of manpower supply agency service provider, etc. relating to service used in the course of or for furtherance of business or commerce are covered under a situation of toleration of an act and considered as declared service in terms of the provisions made under Section 65 and 66E(e) of the Act. But how the said act is covered under the ambit of service under Section 65 or the declared service under Section 66E(e) of the Act has not been discussed. The appellant, on the other hand, has contended that there is no element of service in the matter and the amount received is towards the damage or breach of contract towards full and final settlement of all disputes arising under the supply agreement and therefore this agreement cannot be construed as agreement entered into by them to refrain from initiating proceedings against the other parties/companies. I find force in the said argument of the appellant as there is nothing on records to prove contra. It is a normal practice in the trade to forfeit amounts due for payment to parties and is usually done when there is a breach of promise/agreement/contract by one of the parties involved. Such forfeiture of amounts is

necessitated out of breach of promise and the amount so forfeited is in lieu of the financial loss the affected party has suffered in consequence of the act of the other party. Hence, the amount, if any, so received would be in the nature of a compensation to the affected party. Section 53 of the Indian Contract Act, 1872 provides for such a compensation in the event of breach of promise between the parties involved in a contract. Mere receipt of money which is in the nature of a compensation can not be treated as consideration for any activity. Further, the definition of the term 'service" as given in Section 65B(44) of the Act envisages "consideration" and not "compensation" When there is no consideration, there is no element of service in the matter so as to be taxable under the provisions of the Act.

7.1 The adjudicating authority has confirmed the demand holding that as per written submission dated 12.05.2019, the assessee has accepted that the amounts pending for payment by them were forfeited for not discharging liabilities by the vendors and the said assesse had forfeited their credit amount in lieu of not taking any action against for not discharging their liabilities and hence the demand is very well covered under clause (e) of Section 66E of the Act. The relevant part of the submission of the appellant quoted by the adjudicating authority for his above view reads as under:

> "*In the facts of present case, the credit balances in the books are written off. The credit balances are the balance in respect of liability for payment is recorded in the books, e.g., upon purchase of material, there is liability to pay to the vendor which is shown by way of credit balance in the accounts of the vendor. Such credit balances are written off on the premises that the payment for such credit balances need not be paid for whatever reason the Management decide.*"

As is evident, the appellant's above submission only explain the nature of credit balances in their books. It does not indicate that credit balances written off were against any non-discharging of liability from the vendor's side. Nor does it also indicate the same were in lieu of not taking any action against vendors as viewed by the adjudicating authority. Therefore, the adjudicating authority's above view is not a correct inference in the facts of the case.

7.2 Further, what is declared as a service under clause (e) of Section 66E of the Act is *agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.* In the present case, the act of the appellant of retaining certain amount payable by them does not *per se* amounts to agreeing to any obligation to refrain from an act, or to tolerate an act or a situation, or to do an act as envisaged in the above Section. Their act is not in lieu of not taking any action against offending parties nor is for tolerating the act of breach of promise by such parties but for compensating the loss/damage that might have caused to them on account of the breach of promise committed during the course of supply of materials to the appellant. Therefore, the case of the appellant does not fall under the ambit of Section 66E(e) of the Act as canvassed by the department. The case law

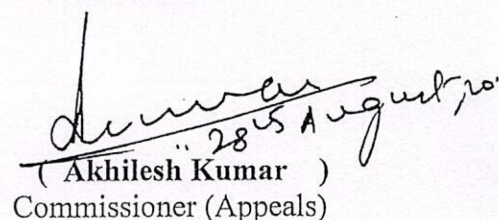
relied upon by the appellant in the case of M/s Amit Metaliks Ltd. Vs. Commissioner of Central Goods and Services Tax, Bolpur [2019 (11) TMI 183 – CESTAT Kolkata] supports the above view. The department could not prove with any material evidence that the act of appellant in the matter constitutes a taxable service as defined under the provisions of the Act. Therefore, it is observed that the act of retaining of amounts payable to creditors by the appellant in the case does not constitute any activity which can be qualified as service as defined under the Act and consequently, the 'indirect income' arising out of such act of the appellant is not leviable to tax under the provisions of the Act.

8. In view the above discussions, it is to be held that the demand raised by the department on both the issued involved in the case on hand fails to sustain before law both on facts and merits and hence the impugned order passed by the adjudicating authority confirming the said demands deserves to be set aside for being not legal and proper. When the demand fails, there does not arise any question of interest or penalty in the case.

9. Accordingly, the impugned order passed by the adjudicating authority is set aside and the appeal of the appellant is allowed with consequential relief, if any.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

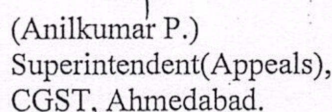
The appeal filed by the appellant stands disposed off in above terms.



(Akhilesh Kumar)
Commissioner (Appeals)

Date: 28.08.2020.

Attested:



(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s Poggen Amp Nagarsheth Powertronics Pvt. Ltd.,
Plot No.C-1/B, 4402,
GIDC Estate, Vatva,
Ahmedabad-382445.

Copy to:

1) The Principal Chief Commissioner, CGST , Ahmedabad Zone.
2) The Principal Commissioner, CGST, Ahmedabad South.
3) The Assistant Commissioner, CGST & C.Ex., Div-III, Ahmedabad South.
4) The Asst. Commissioner (System), CGST, Ahmedabad South. (for uploading the OIA)
5) Guard File.
6) P. A. File.