आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

26305065-079 : टेलेफैक्स26305136 - 079 :

DIN-20201264SW0000555EB8

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST) 183/Ahd-South/2019-20

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-58/2020-21
दिनाँक Date : 27.11.2020 जारी करने की तारीख Date of Issue : 30.12.2020

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

ग Arising out of Order-in-Original No. SD-01/18/AC/IFB/2016-17 dated 06.02.2017 passed by the Assistant Commissioner, Service Tax Division-I, Service Tax Commissionerate, Ahmedabad.

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

M/s IFB Industries Ltd.,
202, Maruti Crystal, 2nd Floor,
Opp. Rajpath Club,
S.G. Highway, Bodakdev,
Ahmedabad-380015.

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 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.

(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, प्रेषित् 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 रूपयें 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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गतः–

Under Section 35B/ 35E of Central Excise Act, 1944 or .Under Section 86 of the Finance Act, 1994 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.

(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of ould 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 adjudicating authority shall bear 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 contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) 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:

(iv) amount determined under Section 11 D;
(v) amount of erroneous Cenvat Credit taken;
(vi) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

This order arises on account of appeal filed by M/s IFB Industries Ltd., 202, Maruti Crystal, 2nd Floor, Opp. Rajpath Club, S.G. Highway, Bodakdev, Ahmedabad-380015 (in short '*Appellant*') against the Order-in-Original No.SD-01/18/AC/IFB/2016-17 dated 06.02.2017 (in short '*impugned order*') passed by the Assistant Commissioner, Service Tax, Division-I of the erstwhile Service Tax Commissionerate, Ahmedabad (in short '*adjudicating authority*').

2. Briefly stated, the facts of the case are that during the course of audit of the records of the appellant, it was observed that M/s IFB Industries Ltd., which has its registered office in Kolkatta, West Bengal and manufacturing unit at Goa markets its home appliance products in the territory of Gujarat state through its established/ branch office (Appellant) in Ahmedabad. After sale service of such appliances are also being handled by such branches. The appellant is independently registered with the Service Tax Department and are maintaining separate books of accounts and therefore the Department considers the appellant as a separate entity independent from their own other units and establishments. They rendered post sale repair/service, which included warranty period repair service to their clients in the State of Gujarat, for which they were not charging anything from their customers during the warranty period either for parts replaced or for repairing services provided. However, they were paid a sum of Rs.220/- per machine sold (later revised to Rs.380/- to 440/- per machine depending upon the model sold) by their Goa Unit as a financial support towards the cost of provision of services during the warranty period. They were not paying any service tax on the amount so received from their Goa Unit. The audit observed that on the amount so received by the appellant from their Goa Unit, being towards rendering Warranty services to its customers, service tax was liable to be paid. Further, it was noticed that the appellant was availing cenvat credit on the spares and material/parts received from their Goa unit which was used by them towards rendering warranty service, which also appeared to be inadmissible to them. Based on the above audit objections, Show Cause Notices (in short '*SCN*') were being issued to the appellant periodically. The relevant periodical SCN dated 19.10.2015 to this appeal pertaining to the period October 2013 to March 2015 was adjudicated by the adjudicating authority vide the impugned order wherein he had dropped the demand of service tax amounting to Rs.18,86,255/- on warranty income and confirmed the demand in respect of cenvat credit of Rs.3,40,401/- wrongly availed along with interest and imposed equal amount of penalty on the appellant.

3. Aggrieved with the confirmation of demand on the cenvat credit availed, the appellant has filed the present appeal on the following grounds:

(i) The adjudicating authority has erred in concluding that since the equivalent value of the spares was not included in the cost of providing service, the appellant was not entitled to Cenvat Credit on such spares;

(ii) The adjudicating authority failed to take note of the important notification No.3/2011-C.E.(N.T.) dated 01.03.2011 which came into effect from 01.04.2011 which categorically provides that the cenvat credit on inputs is not required to be reversed for providing free warranty for final products. The adjudicating authority has passed the order following the order of the Additional Commissioner passed in the case of SCN dated 22.10.2010 for the previous period, which is under challenge;

(iii)The fact is that the appellant provided after sales service of its products under warranty period to its customers and was not charging anything from them for such service provided or parts used for providing such service during the course of warranty period as the appellant is obliged in terms of the contract of sale of such goods. Wherever required, the appellant replaced parts of the products under warranty period. Since the appellant was not charging any amount from its customer for providing taxable services during the warranty period, it did not pay any service tax on it as the value was nil;

(iv)The very nature of service provided by the appellant during the currency of warranty, is categorized under 'Management, Maintenance or repair services', as in the negative list regime, service provided for repair & maintenance is taxable under Section 66B of the Act since such service is not specified in the negative list under Section 66D read with Mega Exemption Notification No.25/2012-ST dated 20.06.2012 and hence service provided by the appellant during warranty period cannot be considered as 'exempted service';

(v) It is an admitted fact that the inputs have been used for services provided during warranty period to the customers and goods used for providing free warranty for final products are covered within the meaning of 'input' as defined under Rule 2(k)(ii) of the Cenvat Credit Rules, 2004 as amended with effect from 01.04.2012. The letter of law in rule 3(1) of the Cenvat Credit Rules, 2004, also does not provide that consideration is a *sine qua non* after provision of taxable output service for entitlement to the benefit of Cenvat Credit of excise duty paid on goods and service tax paid on input services used for providing such output service. On the basis of the facts and the legal position therefore, the Cenvat Credit of excise duty on spares used for taxable output services under the head "repair and maintenance" provided during the period of warranty cannot be denied to the appellant in the instant case;

(vi)The reimbursement of value of parts by its Goa unit cannot be reason for reversal of Cenvat Credit taken by the appellant on spares used for service during warranty period. The reimbursement is nothing but internal adjustment/support within the company. In their own on the similar issue based on similar facts covered by the third show cause notice dated 20.09.2012 relating to the financial year 2011-12, the Commissioner (Appeals-IV), Central Excise, Ahmedabad vide Order-in-Appeal No.99/2013

(STC)/SKS/Commr.(A)/Ahd. dated 31.05.2013 and Order-in-Appeal No.AHM-SVTAX-000-APP-384-13-14 dated 10.03.2014 upheld the basic legal principles and contentions of the appellants in so far as they are applicable to the availment of Cenvat Credit on warranty spares;

(vii) They relied on the decision of the Principal Bench of the Hon'ble Tribunal (Delhi) passed vide Final Order No.A/56363/2016-SM[BR] dated 23.12.2016 in the case of their Bhopal Branch on the similar facts wherein the Hon'ble Tribunal has allowed the cenvat credit by following the decision of coordinate bench of the Hon'ble Tribunal in the case of Carrier Airconditioning & Refrigeration Ltd. Vs. C.C.E., Gurgaon [2016 (41) STR 1004 (Tri.-Del.). They further relied on the decision of Hon'ble Tribunal, Ahmedabad in the case of Gujarat Forgings Ltd. Vs.Commissioner of Central Excise, Rajkot [2014 (36) STR 677 (Tri.-Ahmd.);

(viii) The adjudicating authority failed to appreciate that the inputs were used by the appellant in provision of taxable service during the warranty period to its customers and that provision of taxable service rendered for which no consideration was received according to the terms of sale, cannot be classified as 'exempted service' within the meaning of Rule 2(e) of the Cenvat Credit Rules, 2004 rendering it eligible for Cenvat Credit being excise duty on inputs used for providing the taxable service;

(ix) The adjudicating authority grossly erred in imposing interest under Section 75 of the Act when Cenvat Credit is not liable to be reversed at all; and

(x) The adjudicating authority erred in imposing penalty equivalent to cenvat credit disallowed under Rule 15(1) of the Cenvat Credit Rules, 2014 as no recovery of Cenvat Credit is sustainable. Further, the penalty imposed equivalent to cenvat credit disallowed is not tenable in view of the amended provisions of Section 76 /78 of the Act.

4. The present appeal was transferred to Call Book as a departmental appeals on similar issue for the past period involving the same appellant were pending before the Hon'ble Tribunal, Ahmedabad for decision. The Hon'ble Tribunal vide their Orders dated 28.10.2019 and 20.09.2018 has dismissed departmental Appeals as withdrawn and on the ground of low tax effect. In view of the disposal of the departmental appeals, the present appeals were retrieved from Call Book and appeal proceedings on the same were reopened.

5. Personal hearing in the matter was held on 22.09.2020. Shri Pulak Saha, Chartered Account, attended the hearing on behalf of the appellant. He re-iterated the submissions made in Appeal Memorandum as well as in written submission. He further stated that the issue has been settled by Hon'ble Tribunal, Chandigarh and Tribunal, Delhi in their favour.

6. I have carefully gone through the facts of the case, appeal memorandum and the submissions made during the hearing. It is observed that the issue to be decided in the case is as to whether the appellant was entitled to avail cenvat credit of duty paid on inputs/parts used by them during service of products under warranty period, in absence of any amount being charged/collected from the recipients of such service viz. customers who bought the product. The demand pertains to period from October, 2013 to March, 2014 and from April, 2014 to March, 2015.

6.1 It is observed that the appellant was providing after sales service under warranty period and were not charging anything from their clients on such service provided or parts used during the course of warranty period. Wherever, need be, the appellant according to the requirement, replaced parts of the products under warranty period and the value of such parts were reimbursed to the appellant by their Goa unit along with warranty charges. The appellants were availing cenvat credit of duty paid on such inputs/parts used during service of products under warranty. The department objected to said availment of cenvat credit on the ground that as the value of the cenvat credit availed was reimbursed by the manufacturing unit who in fact had borne the cost of such spare parts, the service provider i.e., the appellant is not to be treated as the bearer of the expenses towards the parts utilized by them while providing the warranty services on behalf of the manufacturing unit in the light of the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004. It was also contended by the department that the spare parts supplied by the appellant during the service provided during the warranty period service as well as other than warranty period services are not used in the providing the output service of appellant as the same is nothing but sale of spare parts and therefore, cenvat credit taken on such spare parts is not admissible to them.

6.2 After going through the impugned order, it is seen that the adjudicating authority has confirmed the demand in the issue by following the order of the Additional Commissioner passed in the case of SCN dated 22.10.2010 for the previous period. In this regard, at the outset, I find that the demand under dispute in the present appeal, has been issued in terms of Section 73(1A) of the Finance Act, 1994 with reference to earlier Show Cause Notice dated 21.10.2011 issued for the period 2010-11 and hence it is undisputed that the issue was required to be examined by the adjudicating authority with reference to the grounds raised in the said SCN. However, the adjudicating authority seems to have examined the issue based on the grounds raised in the SCN dated 22.10.2010. It is observed that the grounds raised for demand on the issue under dispute in the present case in both the SCNs were different and the SCN dated 22.10.2010 was in fact not for recovery of wrong availment of cenvat credit on duty paid on spare parts used during service of products under warranty period by the appellant but was for demand of service tax on the quantum of value of the parts utilized in warranty period service by the appellant on the ground that since the appellant had availed cenvat credit on such parts, value of such free of cost parts so used would necessarily form

part of taxable value of the service rendered by the appellant. Therefore, on facts, it seems that the adjudicating authority has erred in relying on the Order of the Additional Commissioner in the case of SCN dated 22.10.2010, in deciding the issue under dispute in the present demand. It is more so, when the said decision of the Additional Commissioner stand set aside by the Commissioner (Appeals) vide OIA No.99/2013(STC)/SKS/Commr.(A)/Ahd dated 31.05.2013, a fact which was taken note of by the adjudicating authority while deciding the first issue of service tax liability in the SCN but surprisingly ignored while considering the second issue of admissibility of cenvat credit in the notice.

6.3 The appellant is contending that the cenvat credit under dispute in the instant case is not deniable to them as the inputs/spare parts on which they had availed cenvat credit were used by them during service of products under warranty period and the service so provided by them under warranty period to their customers/clients is a taxable service within the meaning of the service tax law as the same was not covered in the negative list of services under Section 66D of the Finance Act, 1994 and not exempted from service tax under Mega Exemption Notification No.25/2012-ST dated 20.06.2012 as amended. It is their case that they have not paid service tax on the services provided to their clients under warranty period as they were not charging any amount from their clients for such services. It is also their argument that the letter of law in rule 3(1) of the Cenvat Credit Rules, 2004, also does not provide that consideration is a *sine qua non* after provision of taxable output service for entitlement to the benefit of Cenvat Credit of excise duty paid on goods and service tax paid on input services used for providing such output service. They further contended that goods used for providing free warranty for final products are covered within the meaning of 'input' as defined under Rule 2(k)(ii) of the Cenvat Credit Rules, 2004 as amended with effect from 01.04.2012 and that Notification No.3/2011-C.E.(N.T.) dated 01.03.2011 which came into effect from 01.04.2011 categorically provides that the cenvat credit on inputs is not required to be reversed for providing free warranty for final products. It is also contended that the issue stand settled in their favour in view of the decisions of Hon'ble Tribunals of Delhi and Chandigarh in the case of their own other branches.

6.4 It is observed that the issue under dispute in the appeal under consideration pertains to the period October 2013 to March 2015 and hence the issue of admissibility of cenvat credit in the case requires examination on the basis of legal provisions of Cenvat Credit Rules, 2004 as existed during the period of dispute. It is a fact that the said Cenvat Credit Rules, 2004 has undergone substantial changes in so far the same pertains to provision of output services with the introduction of Negative List Regime in Service Tax Law with effect from 01.07.2012. After the said changes effected in the Cenvat Credit Rules, 2004, cenvat credit under the said Rules is allowed to a provider of "output service" with effect from 01.07.2012 in place of provider of taxable service earlier and the term "output service" has been defined as meaning *any service provided by a provider of service located in the taxable territory but shall not*

include a service, - (1) specified in section 66D of the Finance Act; or (2) where the whole of service tax is liable to be paid by the recipient of service. The term 'service' is not defined under Cenvat Credit Rules, 2004 but rule 2(t) of the said Rules provides that '*words and expressions used in these rules and not defined but defined in the Excise Act or the Finance shall have the meanings respectively assigned to them in those Acts.*" Thus, the term 'service' used in the above definition of output service in the Cenvat Credit Rules would have the meaning assigned to it in the Finance Act. The very concept of service has changed drastically in the new negative list regime with the insertion of the definition of "service" under Section 65B(44) of the Finance Act, 1994. As per the said section, the term "service" means **any activity carried out by a person for another for consideration**, and includes a declared service, but shall not included certain specified categories as detailed in the said section. Thus, with effect from 01.07.2012 for an activity to be considered as "service", there has to be a consideration for the said activity. It means an activity or a service falls within the meaning of output services as defined under the Cenvat Credit Rules, 2004 only when the same first qualifies as service as defined under the Finance Act, 1994. In the present case, it is undisputed that the appellant was not charging any amount from their clients for the service provided by them during the warranty period. Thus, there was no consideration paid by the recipient of service, viz. customer who bought the product, in this case to the service provider viz. the appellant for the service provided to them under warranty period. This fact is even confirmed by the appellant. Therefore, the activity or service of repair or maintenance provided free of any cost by the appellant to their customers under the warranty period of the products sold, would not qualify as a "service" as defined under the Finance Act, 1994 for there being no consideration for the said activity or service. Further, it was the argument of the appellant on the first issue of taxability of the warranty services provided by them in the notice that the said services are not taxable as the same amounted to self service as the service provider and the service recipient in the case viz. the manufacturing unit and the respondent, being part of the same legal entity viz. M/s IFB Industries Ltd., are not different legal persons for the purpose of levy of service tax. The adjudicating authority has dropped the demand on the said issue on the same ground. Considering the said contention of the appellant, the warranty services provided by them does not qualify as 'service' as defined under the Act for there being no different persons in the case as service provider and service receiver. The appellant cannot contend that their service was not taxable on the first issue and was taxable on the second issue as such a stand is contradictory on facts as both the issue of taxability of the service and the availement of cenvat credit with respect to such service are interlinked. When the service provided by the appellant under warranty period did not qualify as "service" as discussed above, it would also not qualify as "output service" as defined under the Cenvat Credit Rules, 2004 for the purpose of availing cenvat credit under the said Rules. Consequently, no cenvat credit would be admissible on the inputs/spare parts used by the appellant for such activity or service which did not qualify as 'output service'

under the said Rules, as input defined under Rule 2(k) of the said Rules covers only goods used for providing any output service.

6.5 I find force in the contention in the SCN that as the value of the cenvat credit availed was reimbursed by the manufacturing unit who in fact had born the cost of such spare parts, the service provider i.e., the appellant is not to be treated as the bearer of the expenses towards the parts utilized by them while providing the warranty services on behalf of the manufacturing unit in the light of the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004. Rule 3(1) of the Cenvat Credit Rules, 2004 allows a provider of output service to take cenvat credit of duty paid on any input received by them. In the instant case, since the appellant service provider was not bearing the expenses towards the parts utilized by them for the free services provided under the warranty period, for same being reimbursed by their manufacturing unit, it can not be said that the duty on such inputs used was in fact paid by them for being eligible for cenvat credit of the same. It is observed that the appellant had not objected to the above contention and in fact had reversed the cenvat credit so availed during the period of 2010-11 as per SCN dated 21.10.2011. The credit in dispute in the case, if available, was actually admissible to the manufacturing unit who had manufactured and cleared the products for which the warranty service was provided as the cost towards such warranty service was included in the cost products and the amended definition of 'input' under the said Rules effective from 01.04.2011 included goods used for providing free warranty for final products. However, such credit was not available to a service provider.

6.6 It is observed that the appellant's contention that the service provided by them under warranty period to their clients was taxable service on which no service tax was paid by them as they were not charging any amount for the said service from their clients is solely based on the interpretation of legal provisions of the Finance Act, 1994 as it existed during the period prior to 01.07.2012 i.e., pre-negative list regime, where taxability of service was defined based on classification of services and there was no mandatory requirement of a consideration for a service to be considered as taxable. However, their such view does not hold good in the negative list regime where consideration is a *sine qua non* for an activity to be considered as service in the first place. Their further contention that their service under warranty period were taxable as the same were not covered under negative list and not exempted vide Mega Exemption Notification No.25/2012-ST dated 20.06.2012 is not legally correct as their impugned activity does not qualify as a 'service' as defined under the Act in the first place. Therefore, the appellant's contention in this regard fails to sustain on merits before law for the period under dispute. Further, the reliance placed by the appellant on the amended definition of input under Rule 2(k) of the Cenvat Credit Rules, 2004 with effect from 01.04.2012 and on the new proviso inserted in Rule 3(5) of the Rules ibid vide Notification No.3/2011-C.E.(N.T.) dated 01.03.2011 with effect from 01.04.2011, does not help their cause as the said provisions are applicable only to manufacturers of final products and not to providers of

output service. The appellant being a service provider, therefore, can not avail cenvat credit on the basis of the above said provisions.

6.7 The decisions of Hon'ble Tribunal, Delhi and Chandigarh in the case of IFB Industries Ltd.'s Bopal and Mohali branches on similar issue relied upon by the appellant are not applicable to the facts of the present case in view of the changed legal provisions under the Finance Act, 1994 with effect from 01.07.2012. The said Tribunal decisions were on the issue pertaining to the period prior to 01.07.2012, where taxability of service was defined based on classification of services and there was no mandatory requirement of a consideration for a service to be considered as taxable as provided under the negative list regime with effect from 01.07.02012. Therefore, the said decisions relied by the appellant are clearly distinguishable on facts and applicable legal provisions. The other decision relied upon by the appellant of Hon'ble Tribunal, Ahmedabad in the case of Gujarat Forgings Ltd. Vs.Commissioner of Central Excise, Rajkot [2014 (36) STR 677 (Tri.-Ahmd.) is also distinguishable on facts as the issue in the said case was that the manufacturer was providing services under warranty period to their clients through a third party who had provided services under warranty period to the clients on behalf of the manufacturer and raised bills to the manufacturer for the service provided by them and charged service tax for the same and the manufacturer was availing cenvat credit of service tax so paid to the third party to which the department objected to on the ground that such services provided during warranty period would not fall under the category of input service as the scope of the credit is restricted to the services used at factory premises and not beyond that point and the facts in the present case are clearly different from the facts of the said case.

6.8 In view of the facts and legal position discussed above, it is held that the appellant is not entitled to avail cenvat credit of duty paid on inputs/spare parts utilized by them during the service of products under warranty period and they had wrongly availed cenvat credit of duty paid on such goods. When the credit under dispute is held as wrongly availed, the same is liable to be reversed or paid back and naturally interest chargeable as per Section 75 of the Act also would be payable on the amount so held as payable.

7. Regarding the penalty imposed vide the impugned order, I find that the adjudicating authority has imposed penalty equivalent to demand raised for recovery of cenvat credit which I find is not sustainable as the provisions of Section 76 of the Finance Act 1994 under which the impugned penalty is imposed does not empower the adjudicating authority to impose any penalty exceeding ten per cent of the amount of demand of tax. Therefore, in view of the provisions of Section 76 of the Act ibid read with Rule 15(1) of the Cenvat Credit Rules, 2004, I reduce the penalty imposed vide the impugned order from Rs.3,40,401/- to Rs.34,040/-.

8. In view of the foregoing discussions, the appeal of the appellant is partly allowed to the extent it relates to penalty aspect and stand rejected for the remaining part. Accordingly, the impugned order passed by the adjudicating authority stand modified as discussed in this order.

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

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

27th November, 2020.

(Akhilesh Kumar)
Commissioner (Appeals)

Date : 27.11.2020

Attested:

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

BY SPEED POST TO :

M/s IFB Industries Ltd.,
202, Maruti Crystal, 2nd Floor,
Opp. Rajpath Club,
S.G. Highway, Bodakdev,
Ahmedabad-380015.

Copy to:-

1. The Chief Commissioner, Central GST , Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South..
3. The Deputy/Assistant Commissioner, Central GST & C.Ex., Division-VII, Ahmedabad South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South. (for uploading the OIA)
5. Guard file.
6. P.A. File