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-20201264SW000051565C

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST) 35/EA-2/Ahd-South/2019-20

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-59/2020-21**
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

Appellant : The Assistant Commissioner, Service Tax Division – I,
Service Tax Commissionerate, Ahmedabad.
[now CGST & C.Excise Division-VII, Ahmedabad South.]

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, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ 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 out of an appeal filed by the Assistant Commissioner, Service Tax Division – I, Ahmedabad of erstwhile Service Tax Commissionerate, Ahmedabad (hereinafter referred to as "the appellant/department") in terms of Review Order No. 5/2017-18 dated 11.05.2017 issued by the Commissioner, erstwhile Service Tax, Ahmedabad (hereinafter referred to as the "Reviewing Authority") against the Order-in-Original No. SD-01/18/AC/IFB/2016-17 dated 06.02.2017 (hereinafter referred to as *'impugned order')* passed by the Assistant Commissioner, Service Tax, Division-I of the erstwhile Service Tax Commissionerate, Ahmedabad (hereinafter referred to as '*adjudicating authority*') in the case of M/s IFB Industries Ltd., 202, Maruti Crystal, 2nd Floor, Opp. Rajpath Club, S.G. Highway, Bodakdev, Ahmedabad-380015 (hereinafter referred to as "the respondent").

2. Briefly stated, the facts of the case are that during the course of audit of the records of the respondent, 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 (respondent) in Ahmedabad. After sale service of such appliances are also being handled by such branches. The respondent are independently registered with the Service Tax Department and are maintaining separate books of accounts and therefore the Department considers the respondent 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 respondent 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 respondent 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 respondent 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 respondent.

3. Aggrieved with the dropping of demand of service tax amounting to Rs.18,86,255/-, the appellant department has filed the present appeal on the following grounds:

(i) The A.C. has dropped the demand, relying upon the judgment in the case of M/s Precot Mills Ltd. Vs. CCE, Bangalore [2006(2) STR 495 (Tri.-Bang.)] and Commissioner of Service Tax Vs. ITC Hotels [2012 (27) STR 145 (Tri.-Del)] wherein it is held that services provided to its own units would be considered to be self service and no service tax is payable for self service. Financial assistance to dealer who is same legal entity cannot be said to be consideration for the service. Whereas in this case, the above said judgments are not at all applicable as the consideration has already been paid by the client at the time of purchase of goods and the service are provided by the dealer to the client later on. Service recipient (Client) and dealer are separate entity and services cannot be considered as self service;

(ii) The adjudicating authority has failed to judge that SCN has not been issued for any service provided by dealer to its manufacturing unit as both are same legal entity. SCN has been issued for services provided by dealer to client i.e. customer of equipment.

(iii)'Service" has been defined in clause (44) of Section 65(B) of the Finance Act, 1994 as "*any activity carried out by a person for another for consideration, and includes a declared service but does not include* ……". It is clear from the definition that consideration is essential component of service but there is no restriction in the definition that it has to come from service recipient at the time of provision of service. In the instant case the consideration has been paid by the service recipient to manufacturer which was later re-imbursed by manufacturer to dealer for providing services to client. Thus, there is no dispute that there is no consideration. The adjudicating authority has misunderstood that the service has been provided by dealer to manufacturer which is not the case. Services were provided to clients who is an individual and has been defined as person under Section of the Finance Act 1994 and is separate legal entity than dealer i.e., M/s IFB Industries Ltd., which is a company. From the definition of 'maintenance and repair services as per clause (64) of section 65 of the Finance Act, 1994 and as per sub-clause (zzg) of clause (105) of section 65 of the Finance Act 1994 pertaining to taxable services, it is clear that the services provided by M/s IFB Industries Ltd., Ahmedabad to its clients duly fall under taxable service;

(iv)From the Board's Circular No.59/8/2003 dated 20.06.2003, it is clear that though service receiver i.e. client/customer is not making the payment for the service during the warranty in the instant case, however service tax is leviable on the amount paid for the service provided towards maintenance and repair. In the instant case, the amount has been received by the service provider from their manufacturing unit at Goa which means that service tax is leviable on such amount. Hence the above circular is

applicable in the present case as the same clarifies that service rendered by the dealer or any authorized person during the warranty period is taxable irrespective of the fact from where consideration is received; and

(v) Therefore, the amount of Rs.1,52,60,961/- received by the service provider from IFB Industries Ltd., Goa towards rendering warranty services to its clients during October 2013 to March 2014 & 2014-15 is liable to service tax amounting to Rs.18,86,255/-.

4. The respondent on 05.07.2017 has submitted their reply to the appeal filed by the department wherein they have mainly reiterated their submissions made before the adjudicating authority in reply to the SCN in the matter. Their main contentions are that:

(a) The manufacturing unit in Goa and the Respondent, are very much the integral parts of the same company i.e. IFB Industries Ltd., having single certificate of incorporation under the Companies Act, 1956.

(b) As the Respondent and its manufacturing unit in Goa are two independent profit centres and as the billing and accounting are not maintained centrally, it was mandatory for the Respondent to have separate registration as per sub-rule 3A of Rule 4 of the Service Tax Rules, 1994. By obtaining the separate registration as required under the law, manufacturing unit in Goa and the Branch situated in Ahmedabad cannot be considered to be two separate persons for levy of service tax. Goa Unit and Ahmedabad Branch under reference cannot be different entities as the service tax registration for both the units were given based on common PAN, which would not have been possible had they been different persons in the eye of law.

(c) The amount received from the manufacturing unit at Goa through the Marketing Division by the Respondent during the material period was by way of financial support provided to Service Division of the Ahmedabad Branch, the Respondent, for meeting certain administrative expenditure and costs incurred in connection with provision of taxable service provided to customers during the warranty period. According to their corporate policy, the Service Division of the Ahmedabad Branch of IFB Industries Ltd. is an independent profit centre and the performance of each such division of IFB Industries Ltd. is evaluated independently. Thus the financial support provided by the Goa Unit through its Marketing Divisions to the Respondent in terms of the corporate policy cannot be equated with the consideration for the taxable service provided by the Respondent to the Goa Unit.

(d) Circular No.59/8/2003 dated 20.06.2003 relied upon by the department does not have any relevance whatsoever. The Circular envisages payment of service tax in cases of products under warranty only if the same is repaired by a third party i.e. dealer or any authorized person whereas in the instant case the sale of goods and the taxable service provided during the warranty period were both carried out in the name of the said

corporate entity namely IFB Industries Ltd., as such the applicability of the aforesaid circular fails *ab initio* in the instant case;

(e) The provider of service and the customer cannot be the one and the same as in the instant case the Goa Unit and the Service Division of the Ahmedabad Branch are part of the same corporate entity i.e. IFB Industries Ltd. Being constituents of the same company, the service provider and receiver remained same. When one renders service to oneself, as in the instant case, there is no question of leviability of service tax. As such the respondent did not render any taxable service to the Goa unit as the main condition of rendering taxable service to any service receiver is not fulfilled.

(f) In their own case, the demands for the past period on similar issue based on the similar facts were settled in their favour based on above legal principles. They referred to OIO No.STC/69/N-Ram/AC/D-III/11-12 dated 31.01.2012, OIA No.99/2013(STC)/SKS/ Commr.(A)/Ahd. dated 31.05.2013 and OIA No.AHM-SVTAX-000-APP-384-13-14 dated 10.03.2014 in this regard.

(g) They also relied on the Tribunal decisions in the case of (a) Precot Mills Ltd. Vs. Commissioner of Central Excise [2006(2) STR 495 (Tri.-Bang.)]; (b) Commissioner of Service Tax, Delhi-I Vs. ITC Hotels Ltd. [2012 (27) STR 145 (Tri.-Del)] and (c) Indian Oil Corporation Ltd. Vs. Commissioner of Central Excise, Patna [2007 (8) STR 527 (Tri.-Kolkata)].

5. The present appeal was transferred to Call Book as a departmental appeals on similar issue for the past period involving the same respondent 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 terms of Government's Litigation Policy. 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.

6. Personal hearing in the matter was held on 22.09.2020. Shri Pulak Saha, Chartered Account, attended the hearing on behalf of the respondent. He re-iterated the submissions made in written reply to appeal. He stated that the issue has been settled by orders of Hon'ble Tribunal, Chandigarh and Delhi in their favour. He further stated that the Commissioner (Appeals), Ahmedabad also decided the matter in their favour. No one appeared for the hearing from the appellant's side.

7. I have carefully gone through the facts of the case, submissions made in the appeal memorandum, reply filed by the respondent and submissions made by the respondent at the time of personal hearing and evidences available on records. It is observed that the issue to be

decided in the case is as to whether in the facts and circumstances of the case, the amount received by the respondent in the form of financial support from their manufacturing unit at Goa towards cost of provision of services provided by them under warranty period, is leviable to service tax or not ?

7.1 It is observed that the respondent is branch office/service centre of M/s IFB Industries Ltd., a company incorporated under the provisions of Company Act, 1956 having registered office at Kolkata and was providing after sales service of the products sold by the company for which they were registered under Service Tax law. The after sales service so provided by them included service of products under warranty period. For the services provided under warranty period they were not charging anything from their clients as the company was under obligation to provide such services free cost to customers in terms of the contract of sale with them. However, the respondent was paid a sum of Rs.380/- to Rs.440/- per machine depending upon the model sold, by their manufacturing unit at Goa as a financial support towards the cost of provision of services during the warranty period. The respondent was not paying any service tax on the amount so received from their Goa Unit. The department contended that since the respondent and the manufacturing unit at Goa were registered separately under service tax, they are to be considered separate legal entities/persons and service tax was payable on the amount so received by the respondent from their Goa Unit as the same being towards rendering Warranty services. They further relied on CBEC Circular No.59/8/2003-ST dated 20.06.2003 in support of the service tax liability.

7.2 After going through the facts and evidences available on records, it is observed that the services under warranty period were provided by the respondent to their customers on behalf of their manufacturing unit who were obliged to provide free services during warranty period for products sold by them to customers in terms of the contract of sale. Thus, for the warranty services under dispute, three parties are involved viz. manufacturer, their service centre (the Respondent) and the customer who is availing the benefit of warranty service. In the situation, so far as the customer is concerned, he is getting the warranty services in terms of the contract of sale with the manufacturer and therefore for the customer, the service provider is the manufacturing unit who is under obligation to provide such services. The customer is contacting the respondent for warranty services on being directed by the manufacturer who is supposed to provide the said services. In other words, the customer in this case is only concerned with warranty services obliged to be provided by the manufacturer and it is immaterial for him who actually provides the service. For the said service received by the customer, he is not charged or paid specifically for the said services except for the cost of warranty paid by them at the time of purchase of goods. The amount charged or paid towards cost of warranty is a component of the transaction value of the product on which excise duty is payable. Thus, the amount recovered from the customer towards cost of warranty at the time of purchase of goods was already subjected to levy of excise duty and

when that being so, the same amount cannot be taxed again under service tax law as that would lead to double taxation on the same activity. It is not the case of the department that duty paid transaction value of the product did not include the cost of warranty recovered from the customer.

7.3 Now so far as the services provided by the respondent during the warranty period is concerned, he is providing the services to the customers on behalf of the manufacturing unit. The service is provided to the customers for whom the manufacturer is under obligation to provide such services. In other words, for the service to be provided by the manufacturer to the customer, the respondent is providing the service. Thus, in fact in the case, the manufacturing unit is the actual service recipient of the service provided by the respondent and it is for that the amount is paid by them as financial support towards cost of provision of service. However, the said transaction between the manufacturing unit and the respondent does not qualify as a service to be taxable 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. It is settled law that when one renders service to oneself, there does not arise question of leviability of service tax. Merely because the respondent is separately registered and IFB Industries Ltd. is not centrally registered under service tax law, the respondent cannot be considered as a separate legal entity for the levy of service tax, as it was mandatory as per sub-rule 3A of Rule 4 of the Service Tax Rules, 1994 to have a separate registration and service tax registration for both the units were given based on the same PAN that of the company. Further, it is observed that the CBEC Circular No.59/8/2003-ST dated 20.06.2003 relied in the SCN does not have any relevance whatsoever with the present case as the Circular envisages payment of service tax in cases of products under warranty only if the same is repaired by a third party i.e. dealer or any authorized person whereas in the instant case the sale of goods and the taxable service provided during the warranty period were both carried out in the name of the said corporate entity namely IFB Industries Ltd. In view thereof, I am of the considered view that the amount received by the respondent in the form of financial support from their manufacturing unit at Goa towards cost of provision of services provided by them under warranty period, is not leviable to service tax. Accordingly, I do not find any legal infirmity in the impugned order passed by the adjudicating authority in this regard.

7.4 The contention in the appeal that SCN has been issued for services provided by dealer to client i.e. customer of equipment and in the case consideration has been prepaid by the service recipient to the manufacturer which was later reimbursed by the manufacturer to dealer for providing service to client, even for the sake of argument if accepted, does not create any tax liability as the amount of consideration paid by the client/customer to the manufacturer at the time of purchase of goods, was already stand subjected to levy of excise duty as discussed in the previous para and therefore the same cannot be taxed again as such a

situation would lead to double taxation, which is not the intent of law. It is more so, when there is no denial to this fact by the department.

7.5 Further, it is observed 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 the demand on the issue under the SCN dated 21.10.2011 was dropped by the adjudicating authority. There is nothing on records to suggest the said order has been challenged by the department and accordingly, the said order of the adjudicating authority seems to have been accepted by the department. Besides, the demand on similar issue based on similar facts for the past period from 2005-06 2009-10 and 2011-12 also stand finally settled in favour of the respondent as the departmental appeals against the Commissioner (Appeals) Orders setting aside demands on the issue for the said past periods have been dismissed by the Hon'ble Tribunal as withdrawn/not maintainable in terms of Government's Litigation Policy.

7.6 In view of the above discussions, I do not find any merit in the contentions raised by the appellant department in the appeal and therefore, I do not find any reason to interfere with the decision taken by the adjudicating authority vide the impugned order and accordingly, I uphold the same and reject the appeals filed by the appellant being devoid of merits.

8. 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 :

The Assistant Commissioner, Appellant
Service Tax Division – I,
Service Tax Commissionerate,
Ahmedabad.
[now CGST & C.Excise Division-VII, Ahmedabad South.]

M/s IFB Industries Ltd., Respondent
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 Assistant Commissioner (System), CGST HQ, Ahmedabad South. (for uploading the OIA)
4. Guard file.
5. P.A. File