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-20210464SW0000777C9D
स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/464/2020

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-82/2020-21**
दिनाँक Date : 24.03.2021 जारी करने की तारीख Date of Issue : 01.04.2021

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

ग Arising out of Orders-in-Original No. CGST-VI/Dem-04/GSEC/DC/DRS/2020-21 dated 31.08.2020 passed by the Deputy Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad South Commissionerate.

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

M/s GSEC Ltd.,
2nd Floor, Gujarat Chamber of Commerce Building,
Ashram Road,
Ahmedabad-380009.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

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

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

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

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

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पाद 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 should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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 an appeal filed by M/s GSEC Ltd., 2nd Floor, Gujarat Chamber of Commerce Building, Ashram Road, Ahmedabad-380009 (in short '*appellant*') against the Order-in-Original No.CGST-VI/Dem-04/GSEC/DC/DRS/2020-21 dated 31.08.2020 (in short '*impugned Order*') passed by the Deputy Commissioner, Central GST & Central Excise Division-VI, Ahmedabad South (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant is engaged in providing taxable services and was holding Service Tax Registration No.AAACG7985RST001. During the course of audit of their financial records by the Department for the period from October, 2013 to June, 2017, it was observed that the appellant had booked income of Rs.1,50,00,000/- on 31.01.2016 in their books of account which was on account of the 'Settlement Agreement' executed on 09.01.2016 between the appellant and M/s Kiri Industries Ltd. (hereinafter referred to as '*KIL*' for the sake of brevity). As per facts revealed from the said agreement, the appellant had placed several purchase orders for Synthetic Organic Dyes with KIL, but KIL had failed to supply the ordered products as per the orders of the appellant and had breached the terms and conditions of the agreement. Due to failure on the part of KIL in supplying the Synthetic Organic Dyes to the appellant as required, the GSEC could not supply the same further to their customers and has suffered loss of business, loss of profit as well as loss of reputation in the market. Acknowledging the irreparable loss caused to the appellant due to non-performance of the contractual obligations, KIL has agreed to compensate appellant for the loss so caused to it and settle the dispute amicably.

2.1 The audit observed that in the instant case, the appellant had tolerated an act of non-supplying of goods from KIL under the obligation of Contract/Agreement and has received compensation in return for the same and therefore, the transaction between the appellant and KIL is squarely covered under 'declared services' of tolerating an act as envisaged under the provisions of Section 66E(e) of the Finance Act, 1994 [hereinafter referred to as *'the Act'*] and the appellant was required to pay service tax on the income so received as compensation in this regard at applicable rate along with interest and penalty.

2.2 Accordingly, a Show Cause Notice (in short '*SCN*') dated 06.05.2019 was issued to the appellant proposing for recovery of service tax amounting to Rs.21,75,000/- payable on compensation of Rs.1,50,00,000/- received from KIL for order cancellation as per the agreed terms by way of tolerating an act, along with interest under Section 75 of the Act and imposition of penalty under Section 78 of the Act. The said SCN was adjudicated vide the impugned order wherein the adjudicating authority has confirmed the demand along with interest and has also imposed penalty on the appellant.

3. Aggrieved with the impugned order, the appellant has filed the present appeal mainly on the following grounds:

(a) The amount under dispute has been compensation of loss due to non-taking delivery of the goods. It has not been against any such cause forbearance to act, agreeing to an obligation to refrain from an act or to tolerate an act within the purview of declared service;

(b) Entry at Section 66(E)(e) of the Act covered the activities relating to refrain from an act, tolerate an act or a situation and do an act. In case of compensation of loss, nothing of these sort takes place. The damage comes without an agreement to obligation. It is a consequence of a breach which was neither agreed to nor obligated. The compensation is not a result of any action or inaction on the part of service provider i.e., receipt of damage;

(c) Further Clause (VI) of sub-rule (2) of Rule 6 of the Service Tax (Determination of Value) Rules, 2006, excludes accidental damages due to unforeseen actions not relatable to the provision of service from the ambit of the value of taxable services. This covered consideration or amount arising out of two situations – there is no provision of service and there exists unforeseen actions. Compensation was outcome of these two situations;

(d) So from the supra it has been clear that compensation of loss were not falling under Section 66(E)(e) of the Act, so proposition for the service tax on such consideration was not sustainable;

(e) The extended period of limitation cannot be invoked in the present case since there is no suppression, wilful mis-statement on the part of the appellant. The show cause notice has entirely failed to make out any case of suppression, wilful statement on the part of the appellant;

(f) Penalty under Section 78 of the Finance Act, 1994 is not imposable in the present case as the appellant has not suppressed any information from the department and there was no wilful mis-statement on the part of the appellant. No case has been made out on the ground of suppression of facts or wilful mis-statement of facts with the intention to evade the payment of service tax. The appellant is entitled to entertain the belief that their acitivities were not taxable. That cannot be treated as suppression from the department. They rely on Hon'ble Gujarat High Court decision in case of Steel Cast Ltd.[2011 (21) STR 500 (Guj).]; and

(g) The issue involved in the present case is of interpretation of statutory provisions. For that reason also, penalties cannot be imposed. They relied on three case laws in this regard.

4. Personal hearing in the matter was held on 20.01.2021 through virtual mode. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum. He subsequently submitted on 21.01.2021 an additional submission vide letter dated 19.01.2021 wherein he had re-iterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and evidences available on records. I find that the issue to be decided in this case is whether the compensation amount agreed to be paid by KIL to the appellant in terms of Settlement Agreement between them for KIL's failure to supply goods ordered by the appellant, can be termed as consideration and hence liable for service tax or otherwise.

5.1 It is observed that the amount under dispute in the present case has been agreed upon between the appellant and KIL in term of the Settlement Agreement dated 09.01.2016 executed between them. The relevant extracts of the said agreement reads as under:

"WHEREAS:

1. *Parties to this settlement agreement has executed Memorandum of Understanding on 16.01.2013 to support KIL in Export Business which was last extended for a period of 1 (one) year w.e.f. 16th January, 2015.*

2. *Following to the Memorandum of Understanding as referred in Clause 1 above, GSEC and KIL had entered into the Purchase/Sale Contract dated 16.02.2015 for supply of goods to their overseas customers under which KIL was supposed to supply the goods as per the order and requirement of GSEC.*

3. *As per the Agreement, GSEC has placed several order requests with KIL for Synthetic Organic Dyes. But, KIL has failed to supply the ordered product per the orders of GSEC and thus have breached the terms and conditions of the Agreement.*

4. *Due to the failure on the part of KIL in supplying Synthetic Organic Dyes to the GSEC as required, the GSEC could not supply the same*

further to their customers and has suffered loss of business, loss of profit as well as loss of reputation in the market.

5. *Acknowledging the irreparable loss caused to GSEC due to the non-performance of the contractual obligations, KIL do hereby agree to compensate GSEC for the loss so caused to it and settle the dispute amicably.*

6. *Both the parties agree to settle the dispute with mutual consent by making the payment of agreed compensation of Rs.1,50,00,000/- (Rupees One Crore Fifty Lacs Only) to GSEC by KIL.*

7. *KIL will make payment of compensation to the customer within period of 3 months from the date of this memorandum of understanding.*

8. *Any dispute, controversies and difference which may arise between the parties in relation to or in connection with this Memorandum of Understanding or any breach thereof shall be mutually settled amicably by the parties, by making a reference of dispute to Managing Director or any other Authorised Representative of the parties within a period of 7 (seven) days from the date of receipt of a written notice of such dispute by the party from the other party."*

From the terms of the Settlement Agreement as discussed above, it is clear that the amount in dispute was agreed to be paid to compensate the irreparable loss caused to GSEC due to the non-performance of the contractual obligations by KIL. Thus, there is no dispute to the fact that the income earned by the appellant in the present case is in the nature of compensation only.

6. After going through the facts of the case, views of the adjudicating authority and the contentions raised in the appeal memorandum, I find that the first point to be decided in the instant case is as to whether the amount of compensation paid to the appellant would amount to a consideration as envisaged in the service tax law or not and then only the question of taxability arises in the matter. The adjudicating authority has observed that the said amount is nothing but a consideration for tolerating an act of non-supplying of goods from KIL under the obligation of contract/agreement. It is undisputed that there was a purchase/sale agreement between the appellant and KIL, as per which KIL was required to supply goods viz. Synthetic Organic Dyes as per the Order and requirement of appellant, and there was a failure on the part of KIL to comply with the contractual obligation when they could not supply the goods as per requirement to the appellant. Due to the non-performance of contractual obligations by KIL, the appellant

had suffered irreparable loss by way of loss of business, loss of profit as well as of loss of reputation in the market as they could supply the goods further to their customers. It is in this context that both the parties have agreed upon for a compensation, which was in terms of Section 53 of the Indian Contract Act. The relevant Section 53 of the Indian Contract Act reads as under:

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

From the above legal provision, it is amply clear that what is provided therein is the entitlement of a compensation to the party who was prevented from performing the contract for any loss which he may sustain as a consequence of the non-performance of the contract. The nature of relief envisaged in the said provision is clearly defined as a compensation for the affected party for any loss which may sustain on account of the act of the other party. Such a compensation need not emanate from a civil court proceedings. It can even be agreed upon by the two parties involved even while entering into an agreement or by a separate settlement agreement as in the present case. Merely because there is a mutual consent on the amount of compensation receivable in the event of a breach of promise/agreement, the compensation does not take the colour of consideration, as contended by the audit/ adjudicating authority. What is to be understood is the fine distinction between the terms "consideration" and "compensation". Consideration is not defined under service tax law but as per provisions of Indian Contract Act, it means a promise made by the promisee in reciprocation. Whereas the compensation is something which is awarded to the sufferer on account of breach of the contract/promises by the other party. Needless to mention that the consideration involves desire of the promisor whereas compensation involves breach. It is not disputed that definition of the term 'service" as given in Section 65B(44) of the Act envisages "consideration" and not "compensation". It is also not the case of the department in the present case that the amount agreed to pay to the appellant is not in the nature of a compensation. In fact, the nature of transaction in the case is very explicit as compensation in the Settlement Agreement.

6.1 It is the contention of the appellant that the agreement between them and KIL became void as KIL failed to supply the goods as promised or agreed and it is against the breach of this promise on the part of KIL that the compensation amount was agreed upon. The department has not disputed this contention of the appellant. Thus, it is a fact not in dispute that the compensation was necessitated out of breach of promise and the amount

so agreed to pay was in lieu of the irreparable loss the appellant had suffered in consequence of the act of the supplier, KIL. When that being so, such a transaction is clearly in the nature as envisaged in Section 53 of the Indian Contract Act and hence the amount so received would definitely amount to a compensation. Mere receipt of money which is in the nature of a compensation can not be treated as consideration for any activity.

6.2. Further, when it is established that the transaction in the case was in the nature of compensation against a breach of promise as envisaged in Section 53 of the Indian Contract Act, the contention that there was an act of tolerating the act of non-supplying of goods from KIL does not stand on merits especially when the compensation intended in terms of Section 53 of the Indian Contract Act has been made good by the appellant and the supplier by way of a mutual consented Settlement Agreement between them without the intervention of any legal forums. The Settlement Agreement which provides for compensation in the case unambiguously states at clause (5) & (6) that the compensation agreed upon was towards the irreparable loss caused to the appellant due to the non-performance of the contractual obligations. The Settlement Agreement in the case actually flows from the initial purchase/sale agreement of goods between the appellant and KIL and in fact does not have any element of service in it. The compensation in the case was for the loss caused to appellant by the act of KIL and not for tolerating the act of KIL. Agreement for a compensation by the parties involved in an agreement in terms of Section 53 of the Indian Contract Act would not fall under the purview of declared services specified at Section 66(E)(e) of the Act as contended by the department.

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

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

> *25. We also find a considerable force in the contention raised by the learned Advocate that the compensation received by the Appellant from the cultivators*

and M/s AML, the debt in present and future, which as per Transfer of Property Act in the category of Actionable Claim placing reliance on the decision of Hon'ble Supreme Court in case of ***Kesoram Industries and Sunrise Association(Supra)***

> *13. A careful reading of the Settlement Agreement in question clearly show that the land owners have agreed to pay a definite sum, that is, an ascertained amount to the Appellant developer to resolve all claims of settlement. The settlement agreements have resulted in creation of a debt in favour of the Appellant. Under the said circumstances a debt is clearly created and the said amount would fall within the scope and ambit of an actionable claim within the meaning of Section 3 of the Transfer of Property Act, 1882 and hence excluded from the definition of ' service' as per Section 65B(44).*
>
> *14. It is submitted that the amount in question is an ' actionable claim' which is not liable for any service tax under the provisions of the 1994 Act. The meaning, nature and scope of actionable claim has been dealt with in detail by the Constitution Bench of the Hon'ble Supreme Court of India in case of Sunrise Association vs. Govt. of NCT of Delhi reported in (2006) 5 SCC 603.*

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

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

7. In view of the above discussions and the above decision of the Hon'ble Tribunal, it is to be held that the impugned order confirming demand in the matter fails to survive

on merits before law and hence deserves to be set aside. When demand fails, there can not be any question of interest or penalty.

8. Accordingly, the impugned order is set aside being not legal and proper and the appeal of the appellant is allowed.

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

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

(**Akhilesh Kumar**)
Commissioner (Appeals)

Date: 24.03.2021

Attested

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

BY SPEED POST TO:

M/s GSEC Ltd.,
2nd Floor, Gujarat Chamber of Commerce Building,
Ashram Road,
Ahmedabad-380009.

Copy to:-

1. The Chief Commissioner, Central GST & Central Excise , Ahmedabad Zone.
2. The Principal Commissioner, Central GST & Central Excise, Ahmedabad South.
3. The Deputy Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad South.
4. The Asst. Commissioner (System), Central GST & Central Excise, Ahmedabad South. (for uploading the OIA)
5. Guard File.
6. P. A. File.