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-20210464SW000000FF18

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/576/2020/1201 To 1205

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-85/2020-21**
दिनाँक Date : 30.03.2021 जारी करने की तारीख Date of Issue : 26.04.2021

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

ग Arising out of Orders-in-Original No. 02/DC/Div-I/MK/2020-21 dated 17.08.2020 passed by the Deputy Commissioner, Central GST, Division-I, Ahmedabad South Commissionerate.

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

M/s BTI Tex Pvt. Ltd.,
Shrine Cooperative Industrial Estate,
B/h Gujarat Bottling Co., Rakhial,
Ahmedabad-390023.

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 बारें 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 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 BTI Tex Pvt. Ltd., Shrine Cooperative Industrial Estate, B/h Gujarat Bottling Co., Rakhial, Ahmedabad-380023 (in short '*appellant*') against the Order-in-Original No.02/DC/Div-I/MK/2020-21 dated 17.08.2020, issued on 20.08.2020, (in short '*impugned Order*') passed by the Deputy Commissioner, Central GST, Division-I, Ahmedabad South Commissionerate (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant was engaged in the manufacture of Textile Weaving Machines and Parts thereof falling under Chapter 84 of the First Schedule to Central Excise Tariff Act, 1985 and was holding Central Excise Registration bearing No.AACCB5856CXM001 for the same. During the course of audit of their financial records by the Department for the period from April, 2016 to June, 2017, it was observed that the appellant had forfeited an amount of Rs.42,44,250/- during the year 2016-17 and Rs.50,000/- for the year 2017-18 (upto June, 2017) and shown the same as 'other income' in their books of account. On verification, it was observed that the amount forfeited by them were advance amounts received from the customers against purchase orders and such advance received had been forfeited on account of cancellation of orders by the customer. The audit was of the view that the appellant has tolerated the act of cancellation of order by the customer and has forfeited the amount towards tolerating this act of cancellation of order.

2.1 The audit observed that in the instant case, the appellant and the customers have entered into an agreement whereby the appellant have agreed to supply the requisite goods at the price fixed upon and the customers have agreed to purchase such goods and as token of acceptance of such agreement, the customers have made the advance payment to the appellant as agreed upon and that by cancelling the order placed, the customers prevented the appellant from performing the contract and for that reason the appellant became entitled for receiving compensation from the customers as provided for under Section 53 of the Indian Contract Act, 1972; that however, the appellant had chosen not to seek such compensation by way of filing a civil suit with the appropriate forum and instead have forfeited the advance amount paid by the customers and that in other words, the appellant had refrained from filing a civil suit seeking compensation against forfeiture of the advance received; and that the act of refraining from seeking compensation from the customer by the appellant was covered under the ambit of Section 66E(e) of the Finance Act, 1994 (in short '*the Act*') which declares the event of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' as a service and the amount of advances forfeited in the case was the consideration against the said service. Therefore, it was concluded that the appellant was liable to pay service tax on the said income booked on account of forfeiture of advances in respect of cancellation of orders.

2.2 Accordingly, a Show Cause Notice (in short '*SCN*') dated 28.03.2019 was issued to the appellant proposing for recovery of service tax amounting to Rs.6,44,138/- against an income of Rs.42,94,250/- shown in their financial records on account of forfeiture of advances in respect of cancellation of orders, 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 equal to the amount of service tax on the appellant under Section 78 of the Act.

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

(a) The adjudicating authority has simply reproduced the facts mentioned in the show cause notice and that there appears to be no proper application of mind as the contentions raised by the appellant as well as the clarifications, circulars and case laws relied upon by the appellant have not been considered as there are no specific findings on the same in the impugned order in original;

(b) The adjudicating authority grossly erred in not appreciating the fact that the act in question could not, in any case, be termed as an act of tolerance which would be covered within the meaning of "declared service" as defined in Section 66(E)(e) of the Finance Act, 1994. In fact, the advances received by the appellant were towards the security of orders placed by the customers which advances were forfeited in case such customers cancelled orders at a later stage or did not lift the machinery manufactured by the appellant specifically for such customers. This in any case would not fall within the four corners of the aforesaid definition whereby the impugned order is not sustainable;

(c) The adjudicating authority grossly erred in not appreciating that the advances forfeiture was penal in nature and that it has time and again been clarified that any amount of fine/penalty received cannot be considered as a service and no service tax is payable thereon. In Education Guide 2012 issued by the Department, it has been clarified in para 2.3.1 that any amount of fine or penalty received is not service and no service tax is payable thereon. This apart, it has further been clarified therein that amount received towards settlement of dispute is not consideration of services but service tax would be leviable only if the dispute pertains to consideration relating to service. In Circular No.121/2/2010-ST dated 26.04.2012, it has been clarified that detention charges are not income from services which at best be called penal recovery on which no service tax can be charged. This view has also been reiterated in instructions No.137/25/2011-ST dated 03.08.2011.

(d) The aforesaid clarifications which have a binding effect on the adjudicating authority totally cover the issue in favour of the appellant inasmuch as the forfeiture of advances is penal in nature whereby there arises no question of recovery of any service tax on such amount;

(e) The adjudicating authority grossly erred in not appreciating the ratio laid down by the Hon'ble CESTAT in its judgment in the case of M/s Lemon Tree Hotel [2020 (34) GSTL 220] wherein it has been held that amount retained upon cancellation is not liable to

service tax under Section 66E(e) of the Finance Act, 1994. The ratio laid down in the said judgment squarely applies to the present case; and

(f) Imposition of penalty and recovery of interest are also not sustainable in view of the demand itself being unsustainable.

4. Personal hearing in the matter was held on 04.03.2021 through virtual mode. Shri Uday Madhukar Joshi, Advocate, appeared on behalf of the appellant. He re-iterated 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 advance amount forfeited by the appellant in case of cancellation of orders in terms of agreement is consideration and hence is liable to for service tax or otherwise.

5.1 It is observed from the case records that the advance amounts given by the customers were forfeited by the appellant on account of cancellation of orders placed by the said customers at a later stage or when the customers did not lift the machinery manufactured by the appellant specifically for such customers for which orders were placed. This is undisputed. As per facts revealed from records, the appellant manufacture capital machinery, which is a 'tailor-made' goods, always got manufactured as per needs and requirements of particular customer. Such tailor-made machinery manufactured is suitable to the need of a particular customer and if he refuses to lift the said machinery, the machine manufactured is of no use to any other person and the appellant has to suffer huge losses on account of such cancellation. The advance amounts in dispute were forfeited to compensate the financial loss the appellant had suffered towards engineering efforts and material as a result of cancellation of orders and is in the nature of penalty to the customer for cancellation of confirmed purchase order. Thus, the income earned by the appellant from the act of forfeiture is in the nature of compensation/penalty 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 advances forfeited by the appellant would amount to a consideration as envisaged in the service tax law or not and then only the question of taxability arises in the matter. The department is contending that the said amount is nothing but a consideration for refraining from an act of filing civil suit against the buyer which was available to the appellant in terms of the provisions of Section 53 of the Indian Contract Act. The relevant Section 53 of the Indian Contract Act reads as under:

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

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

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

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

it is evident that the appellant has simply chosen to claim compensation by way of forfeiture of advance amounts deposited by the buyer.

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

6.5 Having found no merit in the contention of department for raising demand in the matter as discussed above, I am not going into the merits of appellant's other contentions in the matter.

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

30th March, 2021.

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

Attested

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

Date: 30.03.2021.

BY SPEED POST TO:

M/s BTI Tex Pvt. Ltd.,
Shrine Cooperative Industrial Estate,
B/h Gujarat Bottling Co., Rakhial,
Ahmedabad-390023.

Copy to:-

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