प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST , Commissionerate- Ahmedabad South,
छठी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
6th Floor, GST Bhavan, 380015

फा.सं. STC/04-19/IFB/OA-1/2018-19 **DIN- 20220664WS000000D044**

आदेश की तारीख: Date of Order: 27.06.2022

जारी करने की तारीख: Date of Issue : 27.06.2022

द्वारा पारित / Passed by: Shri Nalin Bilochan , JOINT COMMISSIONER

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मूल आदेश सं./Order-In-Original No.: 04-06/CGST/Ahmd-South/JC/NB/2022-23

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यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए नि:शुल्क प्रदान की जाती है ।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त (अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आंबावाड़ी, अहमदाबाद–15 को प्रारूप **एस.टी.–4** में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए 2.00/- केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारुप सं. एस.टी.–4 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति ।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त(अपील) में शुल्क के 7.5% जहा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे मे विवाद है उसका भुकतान करके अपील की जा सकती है ।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. STC-09/O&A/SCN/IFB/D-III/12-13 dated 15.05.2014 2) No. WS07/SCN-06/O&A/IFB/2017-18 dated 22.03.2018 3) No. STC/04-19/IFB/OA-I/2018-19 dated 18.01.2019 issued to M/s. IFB Industries Ltd., 202, Maruti Crystal,2nd Floor, S.G. High way, Bodakdev, Ahmedabad 380015 .

Brief facts of the case:-

M/s IFB Industries Limited, having their registered office at 14, Taratolla Road, Kolkata 700 088, are a manufacturer of Washing Machines and Microwave Ovens. For marketing their products in the territory of Gujarat State, the Company have established an Office in Ahmedabad in the name and style of IFB Limited, Ahmedabad. For rendering the post sales repair and warranty period repair service to their clients in the state of Gujarat, their Ahmedabad branch Office (IFBL, Ahmedabad) was independently registered with Service Tax Commissionerate, Ahmedabad for providing taxable services under the category of "Management, Maintenance and Repair" as defined under clause (105) (zzg) of Section 65 of the Finance Act, 1994. The registration so taken was limited to the repair activities carried out in the state of Gujarat and it was considered as an independent entity, as far as service tax provisions are concerned.

2. During the course of Service tax audit, it was observed that while IFBL, Ahmedabad, (the registered entity) were providing maintenance and repair services of the Company's products under warranty period, they were not collecting any charges, or the cost of parts used for such repair, from the clients of IFB Industries Ltd. However, they were getting warranty income for the services rendered, from its head office on which service tax was not paid. Whereas in terms of Circular No. 59/8/2003 dated 20.06.2003, in cases where during the guarantee period, the services are provided to the buyer of the goods while payment for the same are received from the supplier of the goods, irrespective of the fact that the receiver of the service is different from the person making payment for such services, service tax is leviable on the services provided towards maintenance and repair. Therefore, for the services provided during the warranty period, by the dealer or any authorised persons, service tax would also be leviable on any amount received by such dealer or such other authorised person from the manufacturer of such goods. In the present case, M/s IFBL, Ahmedabad, were getting warranty period repair/maintenance charges from the manufacturing unit M/s IFB Industries Ltd, Goa, and were also getting reimbursement of cost of parts used towards service in the warranty period.

3. M/s IFBL, Ahmedabad were also availing Cenvat credit of inputs used during service under warranty period. Further, the assessee had their office in Ahmedabad under which some franchisees elsewhere in Gujarat State were also rendering repair /warranty period service on behalf of M/s IFBL. These franchisees were raising Bills on IFBL, Ahmedabad, towards service rendered to the clients of the Company IFB Ltd, at Ahmedabad. M/s IFBL, Ahmedabad were availing benefit of Cenvat credit on the bills raised by those franchisees who provided services on behalf of IFBL. M/s IFBL, Ahmedabad contested the audit objection stating that whatever is earned from Goa factory were expenses of their main branch; that they were not centrally registered for service tax and therefore, they were considered as separate entity as far as service tax administration is concerned. However, not agreeing with the submissions of the IFBL, Ahmedabad, show cause notices were issued proposing to recover from M/s IFB Industries Ltd, Maruti Crystal, 202, S.G Highway, Opp. Rajpath Club, Ahmedabad, Service tax under the category of management, maintenance or repair service, in respect of warranty period service. It was also proposed to

demand and recover Cenvat credit wrongly availed on the parts used for the maintenance and repair during warranty. The following Show Cause Notices were issued.

Sr. No.	SCN file No. and date	Period involved
1	STC-37/O&A/SCN/IFB/ADC/10-11 dated 12.10.2010	2005-06 to 2009-10
2	STC/527/Dem/IFB/D III/11-12 dated 21.10.2011	2010-11
3	STC/24/O&A/SCN/IFB/ADC/D-III/2012-13 dated 20.09.2012	2011-12
4	STC-09/O&A/SCN/IFB/D-III/2012-13 dated 15.05.2014	April, 2012 to September, 2013 (Rs 14,87,789 and Rs 1,82,858)
5	STC/04-32/O&A/ADC/D-II/15-16 dated 19.10.2015	October, 2013 to March, 2015

The Show Cause Notices, at serial number 1, 2, 3 and 5 in the above table were adjudicated and Orders-in-Original passed. However, the SCN at serial number 4 above was not adjudicated so far. It is now being taken up for adjudication.

4. M/s IFBL, Ahmedabad continued with the practice of not paying Service tax on the warranty period service even though reimbursement was made by the factory at Goa and they had also continued to avail Cenvat credit of duty paid on parts used for such warranty service repair. Subsequently, two Show Cause Notices were issued to said M/s IFBL, Ahmedabad, in terms of Section 73 (1A) of the Finance Act, 1994.

Thus, total three SCNs are being taken for adjudication which are as follows:

1. The Show Cause Notice No. STC-09/O&A/SCN/IFB/D-III/12-13 dated 15.05.2014, which is listed at serial no. 4 in the above table, issued by the Additional Commissioner, Service Tax, Ahmedabad but which was left to be adjudicated is taken up for adjudication now. It was proposed therein as to why:

(a) The services rendered by them during the F.Y 2012-13 and from April, 2013 to September, 2013, should not be considered as taxable service under the category of "Management, Maintenance and Repair Service" as defined under Section 65 (105) (zzg) of the Finance Act, 1994 and with effect from 01.07.2012, providing taxable service which are not falling under negative list of services as defined under Section 66D of the Finance Act, 1994..

(b) The amount of taxable value of Rs 1,20,37,128/- received by them for providing services under the category of "Management, Maintenance and Repair" and with effect from 1.7.2012 providing taxable service which are not falling under the negative list of services as defined in Section 66D of Finance Act, 1994 from M/s IFB Industries, Goa, should not be considered as taxable value.

(c) Service tax amounting to Rs 14,87,789/- on the total taxable value of Rs 1,20,37,128/- not paid by them should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

(d) Interest at the prescribed rate on the Service tax demanded at Serial number (II) above, should not be recovered from them under Finance Act, 1994.

(e) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 in as much as they failed to pay Service tax within the stipulated time frame as mentioned above.

(f) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994.

(g) Cenvat credit amounting to Rs 1,82,858/- wrongly availed by them by contravention of Rule 3(1) of the Cenvat Credit Rules, 2004, should not be demanded and recovered from them under the provisions of rule 14 of the Cenvat Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994.

(h) Interest at the prescribed rate should not be recovered from them on the amount of Cenvat Credit demanded.

(i) Penalty should not be imposed upon them under Rule 15(1) of Cenvat Credit Rules, 2004 in as much as they have contravened the provisions of rule 3 of the Cenvat Credit Rules, 2004 (as amended)

(j) Penalty should not be imposed upon them under Rule 15(3) of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

(k) Penalty under Section 77(2) of the Finance Act, 1994 as amended should not be imposed upon them as they failed to pay appropriate Service tax and did not file correct Service Tax Returns under the provisions of Section 68(1) and section 70 read with rule 7(1) and (2).

2. Show Cause Notice No. WS07/SCN-06/O&A/IFB/2017-18 dated 22.03.2018, issued by the Assistant Commissioner, Central GST, Division VII, Ahmedabad South, proposing as to why:

(a) The services rendered by them during the F Y 2015-16 should not be considered as taxable service under the category of "Management, Maintenance and Repair Service" as defined under Section 65 (105) (zzg) of the Finance Act, 1994.

(b) The amount of Rs 1,22,77,705/- received being warranty income from M/s IFB Industries, Goa, should not be considered as taxable value under the category of "Management, Maintenance and Repair Service".

(c) The service tax amounting to Rs 17,78,552/- on the above mentioned warranty income of Rs 1,22,77,705/- should not be demanded and recovered from them under Section 73 of the Finance Act, 1994.

(d) Interest at the prescribed rate on the Service tax liability as mentioned hereinabove, should not be recovered from them in terms of the provisions of Section 75 of the Finance Act, 1994.

(e) Penalty under Section 76 of the Finance Act, 1994 should not be imposed upon them in as much as they failed to pay service tax payable by them within the stipulated time frame.

(f) Penalty under Section 77 of the Finance Act, 1994 as amended should not be imposed upon them as they failed to self assess the correct taxable value of the services rendered by them and report the same in the statutory ST-3 returns.

(g) Cenvat credit amounting to Rs 11,41,050/- wrongly availed by them should not be demanded and recovered along with interest from them under the provisions of rule 14 of the Cenvat Credit Rules, 2004 read with Section 73 of the Finance Act, 1994 and

(h) Penalty should not be imposed upon them under Rule 15(1) of Cenvat Credit Rules, 2004 in as much as they have contravened the provisions of rule 3 of the Cenvat Credit Rules, 2004 (as amended)

The repeal and saving under Sections 142 and 174 of the Central GST Act, 2017 were mentioned in the SCN.

3. Show Cause Notice, bearing No. STC/04-19/IFB/OA-I/2018-19 dated 18.01.2019, issued by the Joint Commissioner, CGST Ahmedabad South, proposing as to why:

(a) The services rendered by them during the period from April, 2016 to June, 2017 should not be considered as taxable service under the category of "Management, Maintenance and Repair Service" as defined under Section 65 (105) (zzg) of the Finance Act, 1994.

(b) The amount of Rs 2,27,84,793/- received being warranty income from M/s IFB Industries, Goa, should not be considered as taxable value under the category of "Management, Maintenance and Repair Service".

(c) The service tax amounting to Rs 34,04,908/- on the above mentioned warranty income of Rs 2,27,84,793/- should not be demanded and recovered from them under Section 73 of the Finance Act, 1994.

(d) Interest at the prescribed rate on the Service tax liability as mentioned hereinabove, should not be recovered from them in terms of the provisions of Section 75 of the Finance Act, 1994.

(e) Penalty under Section 76 of the Finance Act, 1994 should not be imposed upon them in as much as they failed to pay service tax payable by them within the stipulated time frame.

(f) Penalty under Section 77 of the Finance Act, 1994 as amended should not be imposed upon them as they failed to self assess the correct taxable value of the services rendered by them and report the same in the statutory ST-3 returns.

(g) Cenvat credit amounting to Rs 19,29,806/- wrongly availed by them should not be demanded and recovered along with interest from them under the provisions of rule 14 of the Cenvat Credit Rules, 2004 read with Section 73 of the Finance Act, 1994 and

(h) Penalty should not be imposed upon them under Rule 15(1) of Cenvat Credit Rules, 2004 in as much as they have contravened the provisions of rule 3 of the Cenvat Credit Rules, 2004 (as amended)

The repeal and saving under Sections 142 and 174 of the Central GST Act, 2017 were mentioned in the SCN.

Defence submissions:-

5. Two written submissions have been filed by the noticee vide letters dated 18.04.2018 and 18.02.2019, reproduced below, in brief.

5.1 From 01.07.2012, the term "Service" has been defined under Section 65 (44) of the Finance Act, 1994 to be any activity carried out by a person for another for a consideration. From the definition, it transpires that in order to be taxable, service has to be provided to any person by another person. As a corollary, if recipient of a service is not a different person than the service provider, service tax would not be applicable on such services.

5.2 The manufacturing Unit in Goa and the Service Division of the Ahmedabad Branch are very much the integral part of the same Company, i.e IFB Industries Ltd, having a single certificate of incorporation under the Companies Act, 1956. As such, all the commercial transactions and activities of the Goa Unit and the Service Division of the Ahmedabad Branch are finally consolidated and reflected in the overall financial statements of IFB Industries Ltd as a whole. Amount received by the Noticee from Goa Unit as financial support against cost of free service during warranty are knocked off in the final accounts. As the Service Division of the Ahmedabad branch of IFB, the Noticee and its manufacturing Unit in Goa are two independent profit centres and as the billing and accounting are not maintained centrally, as per sub rule 3A of rule 4 of the Service Tax Rules, 1994, it was mandatory for the Noticee to have separate registration. By obtaining 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 the 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 the said Units been different persons in the eyes of law. According to the corporate policy, the service division of 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 division to the Noticee in terms of the corporate policy cannot be equated with the consideration for the taxable service provided by the Noticee to the Goa Unit.

5.3 The Circular No. 59/8/2003 dated 20.06.2003, does not have any relevance as the said Circular has dealt with a situation where the manufacturer and the dealer /service provider are two different entities altogether, whereas in the present case, the manufacturing Unit in Goa and the Ahmedabad Branch, the noticee, are part of the same corporate entity namely IFB Industries Ltd. The Circular dated 20.06.2003 envisages payment of Service tax in cases of products under warranty only if the same is repaired by a third party. As the sale of goods and provision of taxable service during warranty were both carried out in the name of the said corporate entity IFB Industries Ltd, the applicability of the said Circular falls ab initio.

5.4 When one renders service to oneself, as in the present case, there is no question of leviability of Service tax. They finally submitted that the sum received from Goa Unit, during the material period cannot be subjected to the levy of service tax.

5.5 It was further submitted that on similar facts, in their own case, Show Cause Notice dated 21.10.2011 was adjudicated by the Assistant Commissioner, Service Tax Division III, Ahmedabad vide Order-in-Original No. STC/69/N Ram/AC/D III/11-12 dated 31.01.2012 who upheld the basic legal principles and dropped the demand. The department has not gone in appeal against the above Order-in-Original.

5.6 Further, in their own case and on similar facts covering the period from 2005-06 to 2009-10 and 2011 – 2012, the learned Commissioner (Appeals-IV), Central Excise, Ahmedabad, vide Orders in Appeal No. 99/2013 (STC) SKS/Commr (A) /Ahd dated 31.05.2013 and No. AHM-SV TAX -000-APP -384-13-14 dated 10.03.2014 set aside the Orders-in-Original No. 64/STC-AHD/ADC(MKR) /2011-12 dated 06.03.2012 and OIO No. 53/STC- AH D/ADC (AS)/2012-13 dated 22.02.2013. While setting aside those Orders, the learned Commissioner (Appeals-IV), Ahmedabad, upheld the basic legal principles and contentions of the Noticee in so far as they are applicable to the present case.

5.7 In their own case and on similar issue, the learned Assistant Commissioner, Service Tax Division- I, Ahmedabad, vide Order-in-Original No. SD-01/18/AC/IFB/2016-17 dated 06.02.2017, has dropped the demand of Rs 18,86,255/- under Management, Maintenance or Repair service upholding the basic legal principles and contentions of the noticee.

5.8 The following citations, were relied on where the Tribunal held that service provided to its own units would be considered to be self service and no service tax is payable for self service.

a) Precot Mills Ltd Vs Commissioner of Central Excise 2006 (2) STR 495 (Trib Bang)

b) Commissioner of Service Tax, Delhi I Vs ITC Hotels Ltd 2012 (27) STR 145 (Trib Delhi)

c) Indian Oil Corporation Ltd Vs Commissioner of Central Excise, Patna 2007 (8) STR 527 (Trib -Kolkata)

5.9 On similar facts and issue, for its Bangalore factory, the Joint Commissioner, Service Tax, Bangalore, vide Order-in-Original No. 24/2005-JCSTB dated 27.12.2005 held that no Service tax is payable for services provided to its own units/branches.

5.10 On the issue of admissibility of Cenvat Credit availed on inputs used for providing repair and maintenance service during warranty period, it was submitted that spare parts procured from the Goa factory through Stock Transfer are being used for the following three main purposes:

a) For use in providing repair maintenance services during warranty period,

b) For use in providing repair maintenance services to the customers covered under AMC and Extended Warranty and

c) For use in providing repair maintenance services to the customers who are not covered under Warranty, AMC or extended warranty.

In the case of services provided under clause (c) above, the spares are billed to the customers and appropriate Cenvat credit attributable to those spares are always been reversed while booking such sale of spares. In regard to the use of spares for providing services in situations mentioned in clauses (a) and (b) above, they never reversed the credit as such spares are considered to be inputs used for providing taxable output services under the category of Management Maintenance or Repair Service.

5.11 Quoting rule 2 (e) of Cenvat Credit Rules, 2004, it was submitted that the services of Maintenance and repair, rendered during warranty period cannot be considered as exempted service and in terms of rule 2 (k) (ii) of the Cenvat Credit Rules, 2004, goods used for providing free warranty service for final products are also inputs. On the basis of the facts and the legal position above, the Cenvat credit of duty paid on inputs used for providing warranty period service cannot be denied to the noticee.

5.12 The following two case laws involving their own company have been cited:

a) Final Order No. A/60021/2018-CU (DB) dated 11.01.2018, passed by Division Bench, CESTAT, Chandigarh

b) Final Order No. 56363/2016-CU (SM) dated 23.12.2016, passed by Principal Bench of CESTAT, New Delhi.

In both the cases, the proposal to disallow credit of inputs used for maintenance and repair during warranty period has been set aside.

5.13 In terms of paragraph 11.5 of Circular No. 1052/2/2017-CX dated 10.03.2017, as the adjudicating authority competent to decide the case involving highest amount of Service tax, I have taken up all the three Show Cause Notices for adjudication.

Personal Hearing:

6. Shri Bikash Gupta, Authorised Representative, Shri Anirban Ganguly, Head, Indirect Tax, IFB, Arijit Ghosh, Deputy Manager, Samir Agarwal, Branch Accountant and Ashish Gupta, Branch Service Accountant of the Noticee joined the virtual hearing held on 05.04.2022 and presented their submissions. They had also filed written submissions during the hearing, reiterating the submissions already filed.

Discussion and findings:

7. I have carefully gone through the facts of this case and the submissions made by the noticee. I find that the demand has been raised mainly on the grounds that for providing warranty period maintenance and repair service, they were getting warranty income from their manufacturing Unit in Goa, on which service tax was not paid. There is another demand on the Cenvat credit availed of inputs used in service during the warranty period.

8. In so far as the demand for tax on services rendered during the warranty period is concerned, it is the submission of the Noticee that the service provider who is registered with Service tax and their manufacturing Unit in Goa, the source of warranty income, are part of one and the same company, and therefore, the activity amounted to rendering self service for which there cannot be any tax.

9. It would be prudent to look into the legal provisions so as to understand what constitutes the taxable service in this case. Definition of taxable service of Management, maintenance or repair, given in Section 65 (105) (zzg) of the Finance Act, 1994, is reproduced below:

"Any service, provided or to be provided to any person by any person, in relation to management, maintenance or repair"

From the above definition, it is obvious that there has to be a minimum of two persons, i.e a service provider and the other, who would be a recipient of that service, required for the activity to be called as management, maintenance or repair service.

10. As per the Show Cause Notices, it is evident that the income received by the Ahmedabad Branch Office, in relation to the maintenance or repair service is from the manufacturing Unit of the same Company, IFB Industries Limited. I find the term 'person' has been defined in Finance Act, 1994. The clause (37) of Section 65B of Finance Act, 1994, defines the term "person" as under:

(37) "person" includes,—

- *(i) an individual,*
- *(ii) a Hindu Undivided Family,*
- *(iii) a company,*
- *(iv) a society,*
- *(v) a limited liability partnership,*
- *(vi) a firm,*
- *(vii) an association of persons or body of individuals, whether incorporated or not,*
- *(viii) Government,*
- *(ix) a local authority, or*
- *(x) every artificial juridical person, not falling within any of the preceding sub-clauses;*

The definition above suggests that a company is a person, and even if they have multiple branch offices, are to be considered as single person. In view of the above discussion, by taking the definition of "person" reproduced above, I find both the service provider and the service recipient in this case are two units or offices of the same person and therefore, the condition implied in the definition of taxable service of Management Maintenance or Repair service, of there being two persons, a service provider and a service recipient, is not satisfied. In the instant case, Ahmedabad Branch of IFB has provided service on behalf of their manufacturing unit at Goa and hence it is obvious that the service is provided to self. In view of the above, I find that the services of maintenance or repair, carried out by the Noticee in this case, do not attract service tax.

11. I find that SCN has been issued on the basis of the Circular No. 59/8/2003 dated 20.06.2003 where it is clarified that for the services provided during the warranty period, by the dealer or any authorised persons, service tax would also be leviable on any amount received by such dealer or such other authorised person from the manufacturer of such goods., The above Circular refers to warranty period service being provided by dealers or authorised persons who are appointed by the manufacturing company. The dealers who sell the white goods manufactured by manufacturing Companies and the authorised persons competent to carry out the mandatory repairs or maintenance, on behalf of the manufacturer are persons distinct from the manufacturer and in that context, the Circular states that such different persons, whether dealer or authorised service centres, who provide warranty period service, would require to pay service tax on the consideration received from the manufacturing Companies and they cannot claim exemption on the grounds that the beneficiary of such service (buyer of the goods), do not make any payment. In the present case, the situation is different. There is no inflow of consideration from any other person in the instant case so as to fall under the definition of taxable service under Section 65 (105) (zzg) of the Finance Act, 1994 and to attract levy of service tax. Therefore, I am of the considered view that service tax cannot be demanded from the assessee on the basis of above Circular. I find support in the case of *Precot Mills Ltd -2006 (2) STR 495 (Trib Bang)*, where in identical case, Hon'ble Tribunal has held that:

> **5.** *We have gone through the records of the case carefully. While dropping the proceedings against the appellants, the Asst. Commissioner in his order dated 27-6-2002 has taken into consideration the following facts :-*
>
> *(i) The service provider and the service receiver belong to the same Corporate entity known as Precot Mills Ltd. with a single certificate of incorporation.*
>
> *(ii) Share holding is for the Corporate body and balance sheet is prepared for the whole entity and not unit-wise.*
>
> *(iii) For service tax to be leviable, the provider and the client of Management Consultancy Services need to be two separate legal entity as construed from Section 65(72) of the Act which is not the situation in the instant case.*
>
> *(iv) It is usual practice that for internal accounting purposes and apportioning cost inter unit book adjustment are made in a corporate body. The Commissioner has not accepted the contention of the appellants and held that the internal accounting system of the appellants will not have any bearing on the payment of service tax. In our view, for the leviability of service tax, there should be a service providers and service receiver. As held by the Original authority (Asst. Commissioner) in the present case both the service provider and the service receiver are part of the corporate entity which is known as M/s. Precot Mills Ltd. It was emphasised that the debit note was issued only to evaluate the performance of Dyeing Unit as each unit is a separate profit center. In the case laws cited by the learned Chartered Accountant, the Hon'ble High Court of Calcutta has held that*

when the club space is allowed to be occupied by any member or his family members or by his guest for a function by constructing a mandap, the club cannot be called as 'mandap keeper' for the purposes of service tax. It was held that principally there should be existence of two sides/entities for having transaction as against consideration. In a member's club, there is no question of two sides. Members and Club both are the same/entity. One may be called as principal when the other may be called as agent, therefore, such transaction in between themselves cannot be recorded as income, sale or service as per applicability of the revenue tax of the country. Hence, members club are not liable to pay service tax in allowing its members to use its space as mandap. The ratio of the above case law is clearly applicable to the present case. M/s. Precot Mills Ltd. is a Corporate entity. It has got various units which function as separate profit centers. When service is rendered by one unit to the other, debit note is raised for the value of service in order to evaluate the performance of a particular unit. Ultimately there is only one Balance sheet for the legal entity for M/s. Precot Mills Ltd. and not for the separate unit. In other words, the appellants, M/s. Precot Mills Ltd. do not receive any valuable consideration for services rendered by one unit of the appellant to the other unit, in view of the fact that the each unit is part of the same legal entity which is the appellant. To put it differently, when one renders service to oneself, as in the present case, there is no question of leviability of service tax. The Asst. Commissioner's order is correct and legal. Hence we do not find any merit in the impugned orders of the Commissioner which ignore the main point that there is no client relationship in the present transactions. In these circumstances, no penalty is leviable. Thus we allow the appeal with consequential relief.

12. I also find that Show Cause Notices issued in the past on the same issue have been decided by the appellate authorities dropping the demand. Commissioner (Appeals IV), Ahmedabad, in 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, held that there is no service provider-client relationship between IFB Industries Ltd, Goa and its branch at Ahmedabad (the appellant) and therefore, Service tax cannot be levied. These Orders-in-Appeal have reached finality, the appeals filed in Tribunal against them having been dismissed by Hon'ble CESTAT on monetary grounds. The revenue appeal against OIA No. 99/2013(STC) SKS/Commr(A)/Ahd dated 31.05.2013 was dismissed by the Tribunal vide Final Order No. A/12050/2019 dated 28.10.2019 as withdrawn in view of low monetary effect. Similarly, the Order-in-Appeal No. AHM-SVTAX-000-APP-384-13-14 dated 10.03.2014 was dismissed under Final Order No. A/11976-12018/2018 dated 20.09.2018 on monetary grounds. Though the department has accepted the said orders on monetary grounds, I am obligated to follow the ratio of the same being a subordinate officer as per the principles of judicial discipline settled by Hon'ble Supreme Court in the following case laws:

12.1 In the case of *Kamlakshi Finance Corporation Ltd-1991 (55) E.L.T. 433 (S.C.)* Hon'ble Supreme Court held that;

6. Sri Reddy is perhaps right in saying that the officers were not actuated by any *mala fides* in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual *mala fides* but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

12.2 In the case of *Sterlite Industries (India) Ltd*-2006 (193) E.L.T. 284 (Guj.) and *Toplan Engines Pvt. Ltd*-2006 (199) E.L.T. 209 (Guj.) Hon'ble Gujarat High Court has made the following observation.

> As to what is the legal effect of an order of a higher forum has been elaborately laid down by this Court recently in a judgment rendered on 18th March, 2005 in case of *Milcent Appliances Pvt. Ltd.* v. *Union of India*, in Special Civil Application No. 16067 of 2004, by applying the decisions of the Apex Court in case of *Bhopal Sugar Industries Ltd.* v. *Income Tax Officer, Bhopal*, (1960) 40 ITR 618, and *Union of India* v. *Kamlakshi Finance Corporation Ltd.*, 1991 (55) E.L.T. 433 (S.C.). Suffice it to state that the principles of judicial discipline require that the orders of higher authority are required to be followed unreservedly by the subordinate authority; even if an appeal is filed, it cannot furnish a ground for not following the order of the superior forum unless the operation of the order has been stayed by a competent higher forum.

12.3 Since higher appellate authorities have held that when the service is rendered by one unit of a company to another unit within the company, there would be no Service tax liability as it is a case of rendering service to one self and there is no client-principal relationship involved. Respectfully following the appellate decisions cited in above paragraphs, I conclude that Service tax is not payable on the warranty period service, performed by the Ahmedabad branch of IFB Ltd.

13. Even otherwise, for argument sake, if it is considered that IFB, Goa and IFB, Ahmedabad are two separate persons, there is no consideration towards service rendered as there is only one consolidated balance sheet. The manufacturing Unit in Goa and the Service Division of the Ahmedabad Branch are very much the integral part of the same Company, i.e IFB Industries Ltd, having a single certificate of incorporation under the Companies Act, 1956 and all the commercial transactions and activities of the Goa Unit and the Service Division of the Ahmedabad Branch are finally consolidated and reflected in the overall financial statements of the IFB Industries Ltd as a whole. Amount received by the Noticee from Goa Unit as financial support against cost of free service during warranty are knocked off in the final accounts. As per Section 67 of the Finance Act 1994, service tax is payable on the consideration received. In the instant case, there is no value of service and hence no service tax is leviable on this count also. In this regard, I find support in the decision of Hon'ble Gujarat High Court in the case of *Larsen and Toubro Ltd*-2016 (44) S.T.R. 391 (Guj.) wherein it is held that;

> ***18.*** *The question of charging service tax however, needs to be looked from a slightly different angle. Section 66 of the Finance Act, 1994, as noted, provides for levy of taxes at the rate of prescribed percentage of the value of taxable services referred to in various sub-clauses of clause (105) of Section 65. For applicability of this charging section, therefore, what is needed is to ascertain the value of taxable service. In other words, service tax can be levied only if the service is provided, even if it is otherwise, a taxable service, carries a certain value. If the value of service provided is nil, there would be no occasion for charging the service tax. In essence, thus, Section 66 aims at collecting service tax when a certain service is provided for a value. To put it conversely, when the service is provided but no value thereof is charged, there would be no question of collecting service tax. No provision has been brought to our notice in the Finance Act, 1994 under which though the service provider has not charged any value for service, service tax thereon still can be levied on its deemed value, be it market value or fair value. It is a different matter altogether if the departmental authority disbelieves that though service was provided but no charge was collected and in such a case, the authority would have ample power to inquire into the matter and come to appropriate conclusion on the basis of available materials on record. However, if the department proceeds on the premise that a certain service though otherwise a taxable service, the service provider did not collect any charge for the same from the service recipient, in our opinion, it would simply not be possible for the authority to collect any service tax on such service.*
>
> ***19.*** *We may notice that explanation to Section 65 states as under :*
>
> *"For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons, to a member thereof, for cash, deferred payment or any other valuable consideration."*
>
> ***20.*** *Thus, the term taxable service has a direct relation to the consideration either paid in cash or by way of deferred payment or by mentioning of any other valuable consideration. This would reinforce our*

belief that when no charge was collected for providing the service, there would be no question of applying a rate of tax on the value of such service.

21. *In this context, we may recall, according to the assessee, providing of service by its SEZ unit to its DTA unit was merely for the purpose of convenience and SEZ unit had not collected any charge for such service from its DTA unit. Though the Assessing Officer in his order has made a brief reference to the SEZ unit receiving consideration for such service, we do not find any basis for such a conclusion. In fact, the case of assessee all along has been that invoices were raised for such services merely for the purpose of convenience and in fact, since promotional programmes were being organised, which would benefit the entire company and its different units, there was no question of charging a particular unit by SEZ unit for such service and that raising of invoices was merely for the purpose of convenience. If that be so, in our opinion, no service tax could be levied not on the Principle of Mutuality but, as noted, on the ground that service provided carried no actual value.*

14. On the question of taking Cenvat credit of inputs used in warranty period maintenance and repair, it was contended by the Noticee that since such warranty period repairs cannot be considered as exempted, and the items used for such service qualified for the definition of inputs, Cenvat credit cannot be denied. Two Orders passed by Appellate Tribunal involving their own company, were cited in their favour.

14.1 In this regard, I find that the value of these services is included in the cost of the goods sold by them and it is the condition of the sale of their product that they will provide free service of maintenance and repair during the period of warranty. In view of the above, even though the service is not charged to the buyer, since the cost of service is already included in the sale price, the credit of inputs used in maintenance and repair becomes admissible. In other words, since the cost of goods and services utilised during warranty period being part of the value of the final products sold, such service is no longer a free or exempted service. Further, definition of 'input' as provided under rule 2(k) of Cenvat Credit Rules, 2004, includes any goods used for providing free warranty for final products. Rule 2(k) reads as under:

[(k) "input" means -
(i) all goods used in the factory by the manufacturer of the final product; or
(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
(iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or
(iv) all goods used for providing any [output service, or];
[(v) all capital goods which have a value upto ten thousand rupees per piece.]
but excludes –
(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

[(B) any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

[(C) capital goods, except when,-

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;]

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. *- For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;]*

14.2 In view of the above provisions of law, when the goods used in providing free warranty are specifically included in the definition of 'input', the proposition made in the show cause notice to deny cenvat credit is not sustainable. Further, as per proviso to Rule 3(5) of Cenvat Credit Rules, 2004, no reversal of credit is required when inputs are removed outside factory for providing free warranty for final products. Rule 3(5) of Cenvat Credit Rules 2004 reads as under:

5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9 :

Provided *that such payment shall not be required to be made where any inputs [or capital goods] are removed outside the premises of the provider of output service for providing the output service :*

[Provided *further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products.*

14.3 I also find that the issue of admissibility of Cenvat credit was considered in the Orders-in-Appeal No. 99/2013 (STC) /SKS/Commr(A)/Ahd dated 03.06.2013 and No. AHM-SVTAX-000-APP-384-13-14 dated 10.03.2014 in the Noticee's own case and the Commissioner (Appeals), held that Cenvat

credit of excise duty on spares used for taxable output service under the head repair and maintenance provided during warranty cannot be denied to the appellant as per the proviso to rule 3(5) of Cenvat Credit Rules, 2004. As already mentioned, these orders are binding on me.

14.4 It is further observed that admissibility of Cenvat credit of inputs used in warranty period has been discussed in the two final Orders of Tribunal, passed in the case of Noticee and held in favour of them.

a) Final Order No. A/60021/2018-CU (DB) dated 11.01.2018, passed by Division Bench, CESTAT, Chandigarh

b) Final Order No. A/56363/2016-CU SM (BR) dated 23.12.2016, passed by Principal Bench of CESTAT, New Delhi.

14.5 In the case at b) above, quoting paragraph 10 of *M/s Carrier Air conditioning & Refrigeration Ltd Vs CCE, Gurgaon*, reported at *2016 (41) S.T.R. 1004 (Tri. – Del)*, it was held that Cenvat credit is admissible. I quote:

> ***10.*** *The Cenvat credit demand of Rs. 9,82,03,090/- is in respect of the service received from the dealers who had provided repair and maintenance service during warranty period on behalf of the appellant to the customers. The sale price of the air conditioners sold by the appellant to their consumers during the period of dispute included the warranty charges. There is no dispute that Central Excise duty had been paid on the value which included the warranty charges. During the warranty period, the appellant were under obligation to provide free repair and maintenance services to the consumers, who had purchased the air conditioners from them. However, instead of providing the free repair and maintenance service directly in discharge of their obligation, the appellant roped in the dealers who provided free repair and maintenance to the consumers on their behalf and the dealers for providing this service on behalf of the appellant, received the payment from the appellant and on that amount, they paid the service tax. The point of dispute is as to whether the service provided by the dealers to the appellant is an input service and whether the appellant would be eligible for Cenvat credit in respect of the same. The service received by the appellants from their dealers is Business Auxiliary Service which has to be treated as an input service for the appellant used in or in relation to manufacture of their final products, as free warranty repair and maintenance during warranty period, has enriched the value of the goods. This issue stands decided in favour of the appellant by the Tribunal's judgment in the case of Danke Products (supra) and Gujarat Forgings (supra) and also in the case of Zinser Textile Systems Pvt. Ltd. (supra). In view of this, this Cenvat credit demand is also not sustainable*

14.6 In view of the above discussions, I have no hesitation to conclude that the demand for disallowing Cenvat credit requires to be vacated. As demand raised on both counts is vacated, there is no cause for interest or imposition of penalty. In consideration of above discussion and findings, I pass the following Order.

ORDER

15. I vacate the demand raised in the Show Cause Notices No. STC-09/O&A/SCN/IFB/D-III/12-13 dated 15.05.2014, issued by the Additional Commissioner, Service Tax, Ahmedabad 2) No. WS07/SCN-06/O&A/IFB/2017-18 dated 22.03.2018 issued by the Assistant Commissioner, Central GST, Division VII, Ahmedabad South, 3) No. STC/04-19/IFB/OA-I/2018-19 dated 18.01.2019, issued by the Joint Commissioner, CGST Ahmedabad South.

(**Nalin Bilochan**)
Joint Commissioner,
CGST, Ahmedabad South.

F. No. STC/04-19/IFB/OA-I/2018-19 Dated: 27.06.2022

To,
M/s IFB Industries Ltd,
202, Maruti Crystal, 2nd Floor,
S.G High way, Bodakdev,
Ahmedabad, 380015.

Copy to :

(1) The Principal Commissioner, Central GST, Ahmedabad South
(2) The Deputy/Assistant Commissioner, GST Division VII, Ahmedabad South.
(3) The Superintendent, CGST, Range-I, Division-VII, Ahmedabad South
(4) The Assistant Commissioner (TRC) Ahmedabad South.
(5) The Superintendent (System), CGST, Ahmedabad South.
(6) Guard File.