Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10536 of 2015- DB

(Arising out of OIO-SUR-EXCUS-001-COM-065-14-15 dated 26/12/2014 passed by Commissioner of Central Excise-SURAT-I)

Kiran Gems Pvt Ltd **.....Appellant**
Plot No 217-218, Tarabaug Estate,
Opposite Jivandhara Hotel
Varacha Road
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-i **.....Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

WITH

(i) Service Tax Appeal No. 12940 of 2014- DB (Shree Ramkrishna Exports Pvt Ltd)
(ii) Service Tax Appeal No. 10391 of 2015- DB (Vinodkumar Diamonds Pvt Ltd)
(iii) Service Tax Appeal No. 11203 of 2015- DB (Kapu Gems)
(iv) Service Tax Appeal No. 11634 of 2015- DB (Hari Krishna Exports Pvt Ltd)
(v) Service Tax Appeal No. 11030 of 2019- DB (Munjani Brothers)

[(Arising out of OIO-SUR-EXCUS-001-COM-011-14-15 dated 13/05/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I), (Arising out of OIO-SUR-EXCUS-001-COM-063-14-15 dated 26/11/2014 passed Commissioner of Commissioner of Central Excise-AHMEDABAD), (Arising out of OIO-SUR-EXCUS-001-COM-001-15-16 dated 09/04/2015 passed Commissioner of Central Excise, Customs and Service Tax-SURAT-I), (Arising out of OIA-CCESA-VAD-APP-II-VK-301-2016-17 dated 17/10/2016 passed Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)]

APPEARANCE:
Shri J C Patel,Shri Hardik Modh & Shri Amit Laddha, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10494-10499/2024

DATE OF HEARING: 25.10.2023
DATE OF DECISION: 26.02.2024

RAMESH NAIR

The common issue involved in all these appeals, hence all the appeals are taken together for disposal.

1. The brief facts of the case are that the Appellants are engaged in the export of cut and polished Diamonds. In the impugned order the Learned

Commissioner (Appeals) upheld that the Appellants are liable to pay Service Tax under Reverse charge mechanism in terms of Section 68 (2) of the Finance Act, 1994 read with Rule 2(1) (d) of Service Tax Rules, 1994 on the services received from foreign country.

1.2 The following two issues are involved in the present appeals:-

(i) Whether the Appellants as a recipient of service are liable to pay service tax under reverse charge mechanism when the foreign service provider has supplied services to the Appellants through the service provider's Indian subsidiary and such subsidiary is therefore treated as having establishment in India under Section 66A (Explanation 1) of the Finance Act 1994.

(ii) Whether the extended period of limitation has been rightly invoked for issuance of show cause notice.

2. Shri J. C. Patel, Shri Hardik Modh and Shri Amit Laddha, Learned Counsels appearing on behalf on the Appellants submits that the Appellants are engaged in the business of importing rough diamonds and exporting them only after cutting and polishing for which they require diamond processing machines that run on a specific type of software – HASP. He further submits that all activities including marketing & promotion, being the sole point of interaction, placing order, raising of invoice, advancing of payments, installation, repairs and maintenance and training of employees in furtherance of setting up of these machines for use are conducted by none other than Sarin Technologies India Pvt. Ltd. which is a wholly owned subsidiary company of Sarin, Israel. That Sarin Israel and Galatea Ltd. are foreign companies incorporated under the laws of Israel and the latter is also a wholly owned subsidiary company of Sarin Israel.

2.2 Without any prejudice to above he submits that Galatea Ltd. has a permanent establishment in India which is evidenced by the fact that they are holding a PAN in India viz AADCG8396D. He further submits that all companies of the said Sarin Group are working under common management and that fixed – assets and all other major consumable required for installation of software and conducting all the core activities are provided by Sarin and Galatea Israel to Sarin India and that he takes the support of the

audit report of Sarin India to establish that Sarin Israel is the holding company upon reflection of the terms "where control exists". He takes the support of the case of Customs and Excise Commissioners vs DFDS 1997 (1) WLR 1037 wherein it was held that subsidiary or auxiliary company is a part of the parent and when an agreement exists between parent company and the subsidiary company, the subsidiary company will have no effective independence from the parent in conduct of the business.

2.3 He further submits that from the legal structure, rendering of different services and audit report of Sarin India it can be established that Sarin Israel has been providing services to the Appellants in India through their permanent establishment functioning under Sarin Technologies India Pvt. Ltd and therefore by applicability of Section 66A of the Finance Act, the Appellants shall be discharged of the demand raised against them for recovery of Service Tax. He has relied upon Circular B1/6/2005 – TRU dated 27.07.2005 in support of the same.

2.4 As regards to the second issue, he submits that the Department was unable to adduce evidence in support of their claim to invoke section 73 that could establish that the Appellants had malafide intentions to evade their duty of paying tax thereby not fulfilling basic conditions required under the said provision before applying it. That a mere omission would not constitute suppression of facts when under given circumstances the Appellants were under bonafide belief that there was no liability to pay Service Tax. He has placed reliance on the following judgments in support of their claim: -

- Uniworth Textiles Ltd. vs CCE 2013 (288) ELT 161
- Simplex Infrastructures Ltd. vs Commissioner of Service Tax 2016 (42) STR 634
- Delhi International Airport Ltd. vs Commissioner of CGST 2019 (24) GSTL 403
- Binjrajka Steel Tubes Ltd. vs Comissioner of C. Ex. 2016 (342) ELT 302
- Roma Henny Security Service Pvt. Ltd. vs Commissioner of Service tax 2018 (8) GSTL 239

3. Shri R. R. Kurup, learned Superintendent (AR) on behalf on the Revenue reiterates findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. It is clear to us that the Appellants have business establishment in India that they are purchasing goods from a foreign country and using them as a part of their business activities. It is also very clear to us that they are receiving various types of services in respect of the said goods such as installation, marketing, promotions etc. It is abundantly clear to us that the goods are provided by companies situated outside India whereas services with respect to the same are being consumed in India having been provided by service providers situated in India. Under these circumstances we have to examine whether the Appellants are liable to pay tax under section 68 (2) of the Finance Act or not under terms of provisions of Section 66A of the Finance Act, 1994. Given the facts and circumstances of the present case it is asserted by the Appellants that service tax was not payable by them under the scope of Section 66A [Explanation 1] of the Finance Act 1994 as Reverse charge mechanism cannot be made applicable to them in the event a permanent establishment of the foreign company exists in India. It is worthwhile to look into the provisions of Section 66A as with satisfaction of the said provision only the rules containing taxable services provided from outside India and received in India could be scrutinized. The relevant provision has been reproduced below:

> ***"Section 66A - (1) Where any service specified in clause (105) of section 65 is,-***
>
> *(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and*
>
> *(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,*
>
> *such service shall, for the purposes of this section, be the taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:*
>
> *Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:*
>
> *Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the*

provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

***Explanation 1**.- A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country. (emphasis applied)*

***Explanation 2.**-Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally consulted.]"*

The rationale behind the scheme of levy of service tax is that such tax should be levied on the value of taxable services that is provided by the service provider and received by the service recipient within the territory of India. The insertion of Section 66A of the Finance Act by the law makers embodies an exception to this general rule. Section 66A is an independent charging provision which in its simplest understanding provides for the levy of service tax in India on such services that are provided or to be provided by a person located outside India and such service having been received by a person located in India. Section 66A lays down that such services {specified in clause (105) of Section 65 of the Act} shall be treated as having been provided in India by the recipient of such services. This deeming provision of Section 66A makes the Indian recipient liable under the scheme of Reverse charge Mechanism unless in the event where such foreign company has their representation in India by way of a permanent establishment then that establishment will be the service provider in the eyes of law and not the recipient.

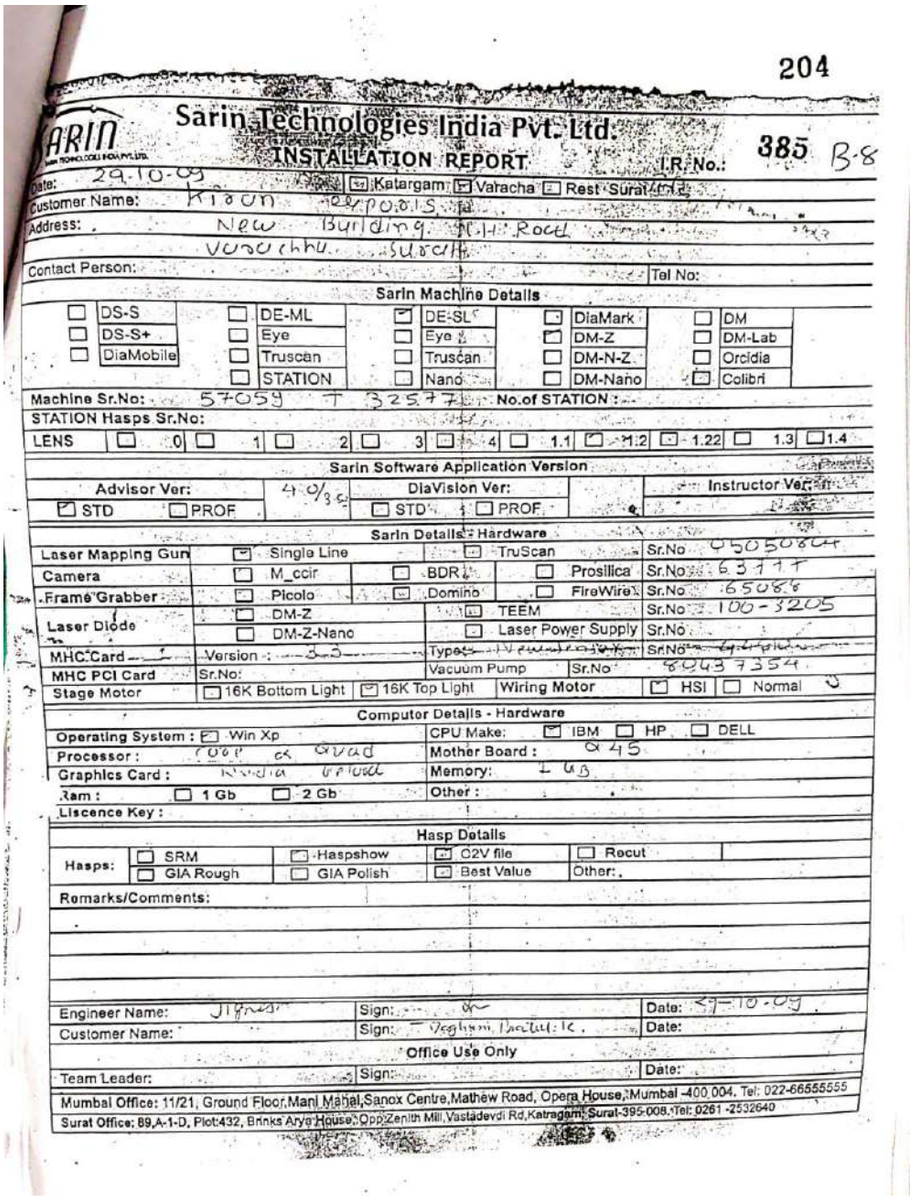
4.2 On a close scrutiny of Section 66A under clause 1 & 2 read with Explanation 1 we observe that The Sarin Ltd & Galatea Ltd. are companies situated and incorporated in Israel thereby fulfilling the condition as envisaged under clause 1 with regards to having their permanent address in a country other than India. Furthermore, while examining the statements recorded during investigation of Shri Gilad Hassid, Head of Operations and Shri Rahul Jolapara, Customer Support Manager (Legacy) of M/s Sarin Technologies India Pvt. Ltd it has been observed that the core activities with respect to rendering of services in relation to the imported products were

received by the Appellants through Sarin Technologies India. Sarin India's office is coordinating various activities with regards to services for the said product like installation, execution of purchase order, issue of invoice to Indian clients, payments, training, repairs and maintenance, promotion, marketing on behalf of Sarin Ltd, Israel. Based on the types of services being provided by Sarin India, it can be inferred that the point of contact in India for rendering the services in furtherance of those required by their products is Sarin India Technologies and therefore by fulfilling these essential trading and service activities on behalf of Sarin Israel, it has been acting as an agent of Sarin Israel.

4.3 For more clarity about the activities of Sarin India, the details of such activities for the appellants is given below:

1. The Engineers from Sarin India brought software alongwith them for installation into the machines imported from Sarin Israel. Sarin India does not merely facilitate Sarin Israel towards the sale of software but also undertakes all the major activities independently, which are listed as follows:
    - Marketing & Promotion: By way of demonstrations or through telephone, Sarin India markets and promotes the said software to the clients in India;
    - Point of interaction: Sarin India acts as the sole point of interaction to the Indian Clients for any information / price / terms and conditions, etc. of the software;
    - Order: The Indian client places the purchase order to Sarin Indiaand Sarin India further send the same purchase order to Sarin Israel;
    - Invoice: After receipt of such order of purchase, invoice for the said softwaresare sent under the name of Sarin Israel to the Indian Client;

- Payments: Payments were made to Sarin Israel upon instruction and details given by Sarin India;
- Installation: The software is carried by Engineer of Sarin India on CD / Pen Drive and then installed at the Indian Client's place; As apparent from the Invoice of Sarin (**See page 177 of Appeal for example**), the prices include onsite installation and training. It is evident from the Installation reports (**Pages 204 to 230 of the Appeal**) that the installation and training are carried out in India by engineers of Sarin India. The sample copies of Invoice of Sarin Israel and Installation report are scanned below evidencing the above stated fact:



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Sarin Technologies India Pvt. Ltd.

INSTALLATION REPORT I.R.No.: 385 B-8

Date: 29.10.09 Katargam Varacha Rest Surat

Customer Name: Kiran Opto's Pvt. Ltd.

Address: New Building, M.I. Road, Varachha, Surath

Contact Person: Tel No:

Sarin Machine Details

DS-S	DE-ML	DE-SL	DiaMark	DM	
DS-S+	Eye	Eye	DM-Z	DM-Lab	
DiaMobile	Truscan	Truscan	DM-N-Z	Orcidia	
	STATION	Nano	DM-Nano	Colibri	

Machine Sr.No: 57059 T 32577 No.of STATION :

STATION Hasps Sr.No:

LENS 0 1 2 3 4 1.1 1.2 1.22 1.3 1.4

Sarin Software Application Version

Advisor Ver:		DiaVision Ver:		Instructor Ver:
STD PROF	4.0/3.6	STD PROF		

Sarin Details - Hardware

Laser Mapping Gun	Single Line	TruScan		Sr.No 050508
Camera	M_ccir	BDR	Prosilica	Sr.No 63177
Frame Grabber	Picolo	Domino	FireWire	Sr.No 6508.8
Laser Diode	DM-Z	TEEM		Sr.No 100-3205
	DM-Z-Nano	Laser Power Supply		Sr.No
MHC Card	Version : 3.3	Type :		Sr.No
MHC PCI Card	Sr.No:	Vacuum Pump	Sr.No	80437354
Stage Motor	16K Bottom Light	16K Top Light	Wiring Motor	HSI Normal

Computor Details - Hardware

Operating System : Win Xp		CPU Make: IBM HP DELL	
Processor : 1000 ex Quad		Mother Board : Q45	
Graphics Card : Nvidia Quad		Memory: 2 GB	
Ram : 1 Gb 2 Gb		Other :	
Liscence Key :			

Hasp Details

Hasps:	SRM	Haspshow	C2V file	Recut
	GIA Rough	GIA Polish	Best Value	Other:

Remarks/Comments:

Engineer Name: Jignesh Sign: Date: 29-10-09

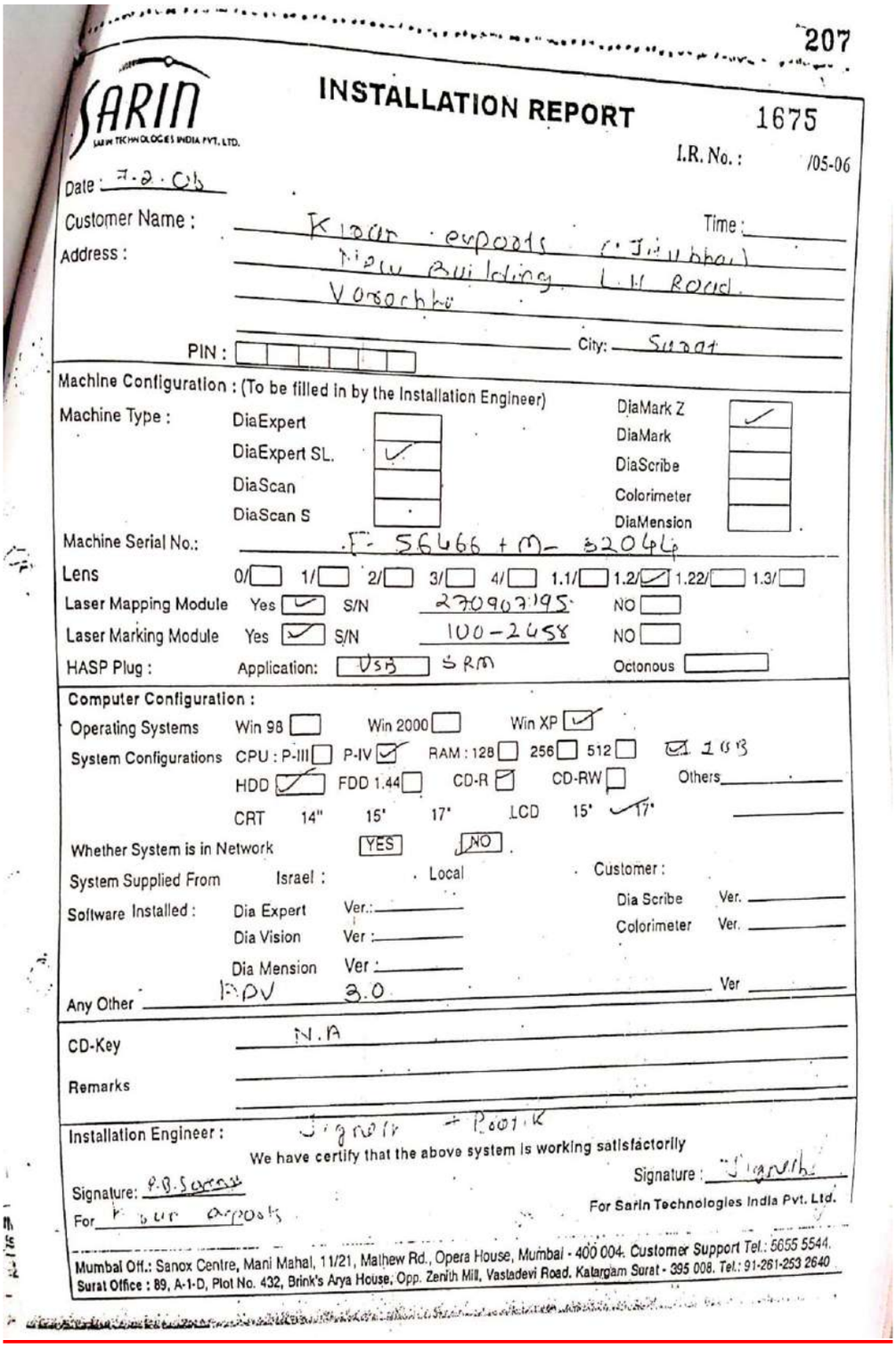
Customer Name: Sign: Date:

Office Use Only

Team Leader: Sign: Date:

Mumbai Office: 11/21, Ground Floor,Mani Mahal,Sanox Centre,Mathew Road, Opera House,Mumbai -400 004. Tel: 022-66555555

Surat Office: 89,A-1-D, Plot:432, Brinks Arya House, Opp:Zenith Mill,Vastadevdi Rd,Katragam, Surat-395-008.Tel: 0261 -2532640



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SARIN
SARIN TECHNOLOGIES INDIA PVT. LTD.

INSTALLATION REPORT 1675

I.R. No. : /05-06

Date : 7.2.06

Customer Name : Kiran exports (Jibhai) Time :

Address : New Building, L.H. Road, Varachha

PIN : City: Surat

Machine Configuration : (To be filled in by the Installation Engineer)

Machine Type : DiaExpert [ ] DiaExpert SL. [✓] DiaScan [ ] DiaScan S [ ]

DiaMark Z [✓] DiaMark [ ] DiaScribe [ ] Colorimeter [ ] DiaMension [ ]

Machine Serial No.: F-56666 + M-52046

Lens 0/[ ] 1/[ ] 2/[ ] 3/[ ] 4/[ ] 1.1/[ ] 1.2/[✓] 1.22/[ ] 1.3/[ ]

Laser Mapping Module Yes [✓] S/N 27090795 NO [ ]

Laser Marking Module Yes [✓] S/N 100-2658 NO [ ]

HASP Plug : Application: USB SRM Octonous [ ]

Computer Configuration :

Operating Systems Win 98 [ ] Win 2000 [ ] Win XP [✓]

System Configurations CPU : P-III [ ] P-IV [✓] RAM : 128 [ ] 256 [ ] 512 [ ] [✓] 1 GB

HDD [✓] FDD 1.44 [ ] CD-R [✓] CD-RW [ ] Others

CRT 14" 15" 17" LCD 15" [✓] 17"

Whether System is in Network YES [ ] NO [✓]

System Supplied From Israel : Local Customer :

Software Installed : Dia Expert Ver.: Dia Scribe Ver.

Dia Vision Ver : Colorimeter Ver.

Dia Mension Ver :

Any Other IDV 3.0 Ver

CD-Key N.A

Remarks

Installation Engineer : Jignesh + Pankaj

We have certify that the above system is working satisfactorily

Signature: P.B.Sarma Signature : Jignesh

For Kiran exports For Sarin Technologies India Pvt. Ltd.

Mumbai Off.: Sanox Centre, Mani Mahal, 11/21, Mathew Rd., Opera House, Mumbai - 400 004. Customer Support Tel.: 5655 5544.
Surat Office : 89, A-1-D, Plot No. 432, Brink's Arya House, Opp. Zenith Mill, Vastadevi Road. Katargam Surat - 395 008. Tel.: 91-261-253 2640

SARIN TECHNOLOGIES INDIA PVT. LTD.

Sarin Technologies India Pvt. Ltd.

Galaxy Installation Report

I. R. No.: 027

Date & Day	29-8-2012		
Customer Name	Kiran		
Address	Gitanjali		
	Varachha Rd		
City	Surat		
Contact Person	Dharmesh Bhai	Tel. No.:	
Machine Details	☑ Galaxy 1000	☐ Solaris 100	☑ Galaxy 500
Machine Sr. No.	2093		
Setup Details	☐ Expert (ML)	☐ Expert Eye	☐ Expert Eye (ML)
	☐ DiaMark	☐ DiaMark-Nano	☐ DiaMark - Z
Setup Sr. No.			
Computer Details	CPU: C2D		RAM: 2 GB
	Graphics Card:		
Exhauster Details	☐ Klepp 120227/4	☐ Any Other	
Exhauster Sr. No.			

Software	Gal Manager	Gal Scan	Gal Setup	Gal 3D	Gal Viewer
Version	3.5	2.5.2	2.8	3.5	3.5

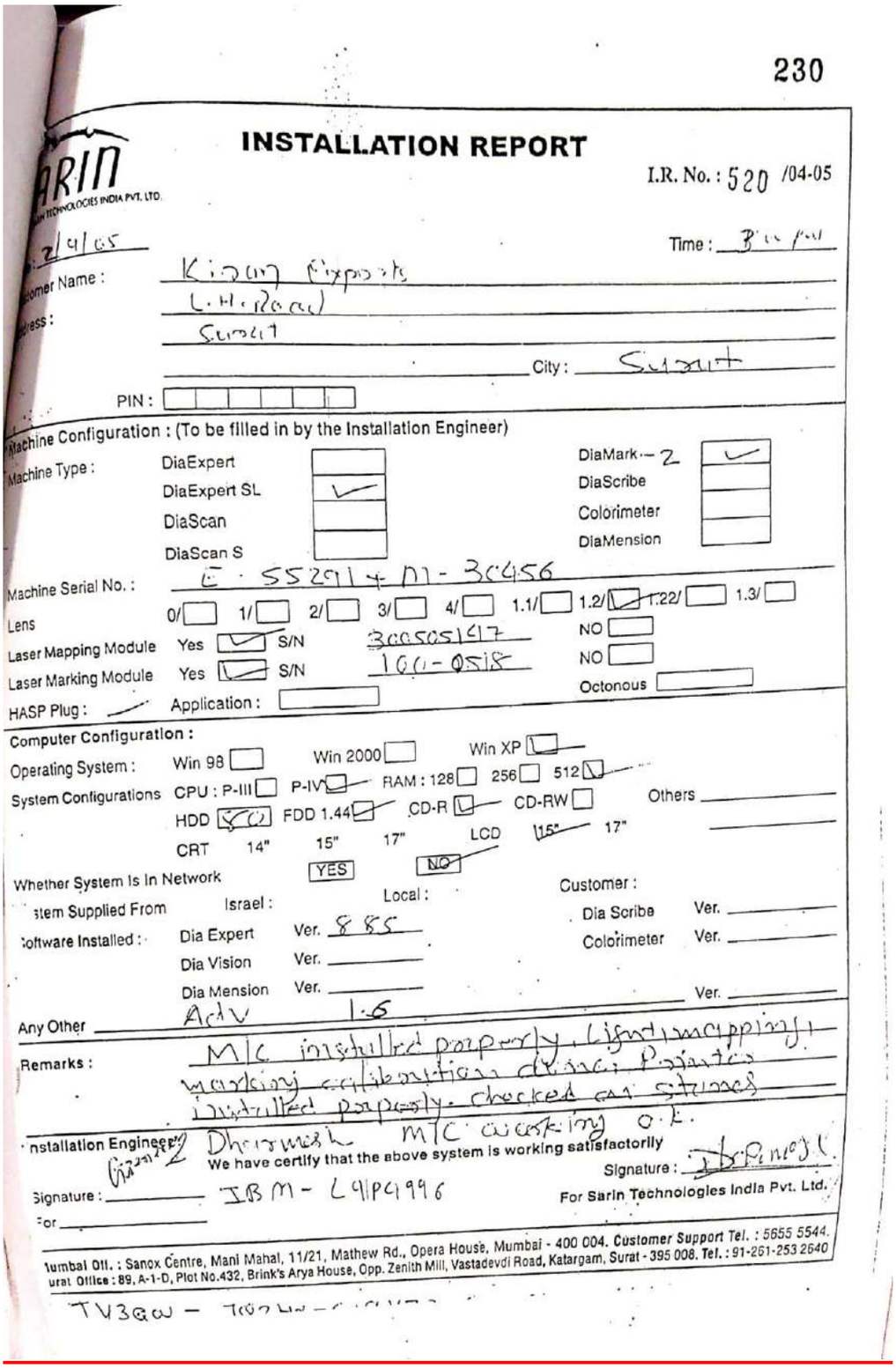
Internet Details	Main Internet Provider - Blaze Net Pvt. Ltd.	
	Optional Internet Provider -	
	☐ Broadband	☑ Lease Line
	Download Speed 0.512 MBPS	Upload Speed - 2.18 MBPS
Helium Details	Helium tank Ltr. 47 Ltr	
	Purity 99.99	
UltraSonic Details	Make	
	Temp	
Alarm Details	☑ Alarm Configured	
	Alarm I/p - 192.168.15.3	DNS - 192.168.0.13
	Subnet Mask - 255.255.255.0	Default Gateway - 192.168.15.200
	Phone No - 9825153110	

Final Remark: m/c configured

Sig.

For.

Hasps:	☑ SRM	☑ Hasp Show	☑ C2V File
Mum any part missing / Surat Damaged			
Engineer Name	Ah...	Sign:	
Customer Name		Sign:	
Manager		Sign:	



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INSTALLATION REPORT

I.R. No. : 520 /04-05

SARIN TECHNOLOGIES INDIA PVT. LTD.

Date : 2/4/05 Time : 3 p.m.

Customer Name : Kiran Exports

Address : L.H. Road

Surat

City : Surat

PIN :

Machine Configuration : (To be filled in by the Installation Engineer)

Machine Type : DiaExpert ☐ DiaExpert SL ☑ DiaScan ☐ DiaScan S ☐

DiaMark – 2 ☑ DiaScribe ☐ Colorimeter ☐ DiaMension ☐

Machine Serial No. : E-55291 & M1-3C456

Lens 0/☐ 1/☐ 2/☐ 3/☐ 4/☐ 1.1/☐ 1.2/☑ 1.22/☐ 1.3/☐

Laser Mapping Module Yes ☑ S/N 3CC5C51617 NO ☐

Laser Marking Module Yes ☑ S/N 100-0518 NO ☐

HASP Plug : — Application : ☐ Octonous ☐

Computer Configuration :

Operating System : Win 98 ☐ Win 2000 ☐ Win XP ☑

System Configurations CPU : P-III ☐ P-IV ☑ RAM : 128 ☐ 256 ☐ 512 ☑

HDD ☑ FDD 1.44 ☑ CD-R ☑ CD-RW ☐ Others

CRT 14" 15" 17" LCD 15" 17"

Whether System Is In Network YES NO

System Supplied From Israel : Local : Customer :

Software Installed : Dia Expert Ver. 8.85 Dia Scribe Ver.

Dia Vision Ver. Colorimeter Ver.

Dia Mension Ver. Ver.

Any Other Adv 1.6

Remarks : M/C installed properly. Light mapping & marking calibration done. Points installed properly. checked on 5 stones

Installation Engineer : Dharmesh M/C working O.K.

Signature : IBM-L9IPC1996 We have certify that the above system is working satisfactorily

Signature : For Sarin Technologies India Pvt. Ltd.

For

Mumbai Off. : Sanox Centre, Mani Mahal, 11/21, Mathew Rd., Opera House, Mumbai - 400 004. Customer Support Tel. : 5655 5544.
Surat Office : 89, A-1-D, Plot No.432, Brink's Arya House, Opp. Zenith Mill, Vastadevdi Road, Katargam, Surat - 395 008. Tel. : 91-261-253 2640

TV3GW –

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Sarin Technologies Ltd.
Ayr Yeda St., Kfar-Saba, Israel 44643 Israel
Tel.: 972-9-7903500 Fax: 972-9-7903501
VAT Number: 557405941
Exporter Number: 511332207

SARIN
SARIN TECHNOLOGIES LTD.
URL: www.sarin.com
E-mail: sarin@sarin.com

To:
Kiran Gems Pvt. Ltd
109 Prasad Chambers,
Opera house
Mumbai
India
Attn: Jitubhai / Vashrambhai
Tel.: 9122 23676341

Plot No. 9,
Near Affil Tower,
L.H.Road,
Varachha
Surat
India

Date: 11-Sep-2011
Print Date: 15-Dec-2011

Proforma no. CQ11001436 - Software - Original

Item	Part Description	Quantity	Unit price	Total Price USD
1	DiaExpert SL (1 Lens) System SOFTWARE Including:	2	21,760.51	43,521.01
	- Advisor software			
	- Laser Marking Z Software			
	- SL Software Infrastructure			
	- As part of Bulk Discount 2010/2011	-2	5,440.00	-10,880.00
TOTAL				32,641.01

Expiry Date: 31-Dec-2011
Your RFQ: 905/11
Terms of payment: Prepaid in advance
Terms of shipment: CIP Mumbai Apt/Email
Customer Number: 20680

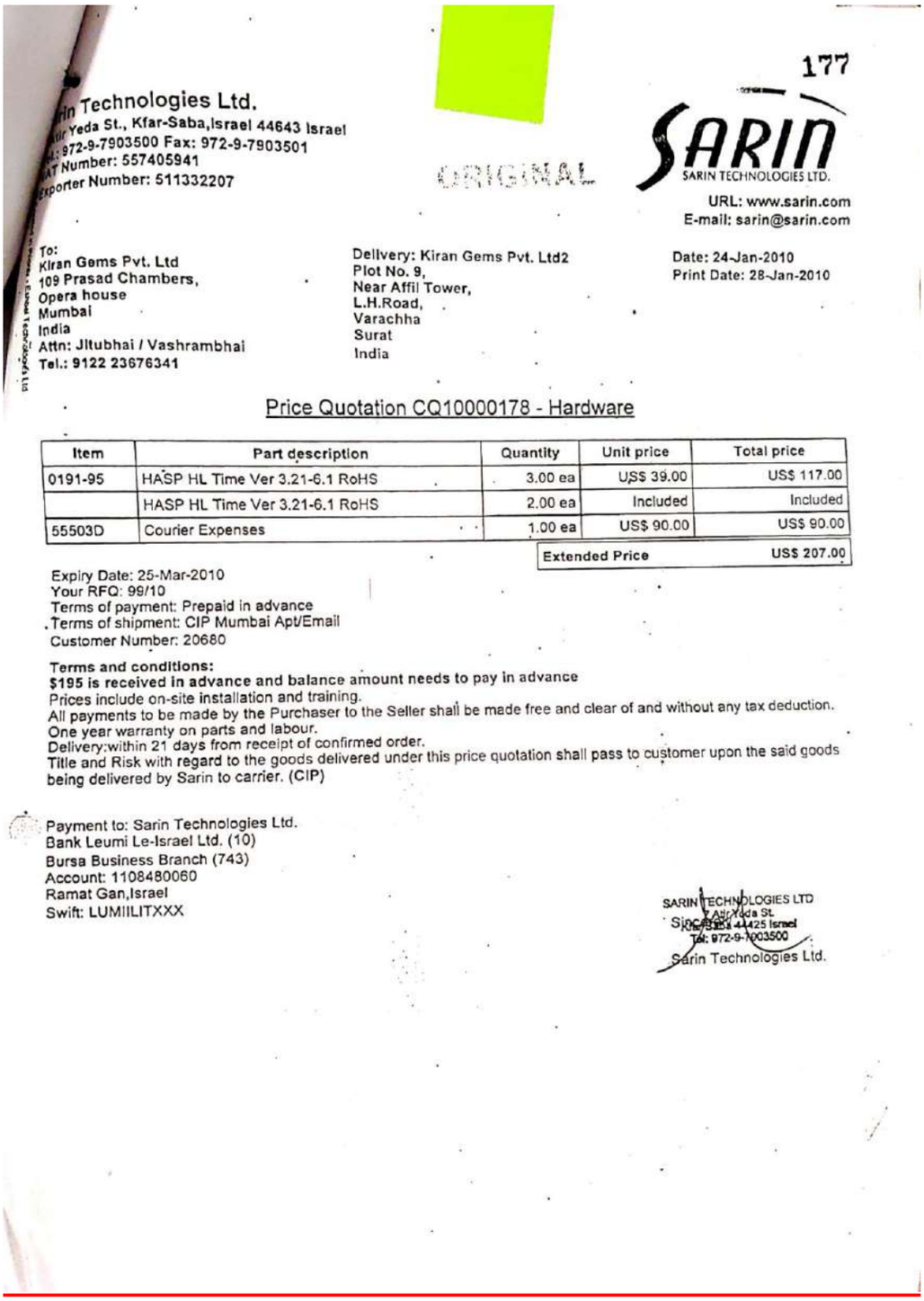
Terms and conditions:
Prices include on-site installation and training.
All payments to be made by the Purchaser to the Seller shall be made free and clear of and without any tax deduction.
One year warranty on parts and labour.
Delivery:within 21 days from receipt of confirmed order.
Title and Risk with regard to the goods delivered under this price quotation shall pass to customer upon the said goods being delivered by Sarin to carrier. **(CIP)**

Payment to: Sarin Technologies Ltd.
Bank Leumi Le-Israel Ltd. (10)
Bursa Business Branch (743)
Account: 1108480060
Ramat Gan,Israel
Swift: LUMIILITXXX

Sincerely,
Dikla Vaisman

SARIN TECHNOLOGIES LTD
Ayr Yeda St.
Kfar Saba 44425 Israel
Tel: 972-9-7903500

Sarin Technologies Ltd.



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rin Technologies Ltd.
ir Yeda St., Kfar-Saba,Israel 44643 Israel
: 972-9-7903500 Fax: 972-9-7903501
AT Number: 557405941
Exporter Number: 511332207

ORIGINAL

SARIN
SARIN TECHNOLOGIES LTD.
URL: www.sarin.com
E-mail: sarin@sarin.com

To:
Kiran Gems Pvt. Ltd
109 Prasad Chambers,
Opera house
Mumbai
India
Attn: Jitubhai / Vashrambhai
Tel.: 9122 23676341

Delivery: Kiran Gems Pvt. Ltd2
Plot No. 9,
Near Affil Tower,
L.H.Road,
Varachha
Surat
India

Date: 24-Jan-2010
Print Date: 28-Jan-2010

Price Quotation CQ10000178 - Hardware

Item	Part description	Quantity	Unit price	Total price
0191-95	HASP HL Time Ver 3.21-6.1 RoHS	3.00 ea	US$ 39.00	US$ 117.00
	HASP HL Time Ver 3.21-6.1 RoHS	2.00 ea	Included	Included
55503D	Courier Expenses	1.00 ea	US$ 90.00	US$ 90.00
			Extended Price	US$ 207.00

Expiry Date: 25-Mar-2010
Your RFQ: 99/10
Terms of payment: Prepaid in advance
Terms of shipment: CIP Mumbai Apt/Email
Customer Number: 20680

Terms and conditions:
$195 is received in advance and balance amount needs to pay in advance
Prices include on-site installation and training.
All payments to be made by the Purchaser to the Seller shall be made free and clear of and without any tax deduction.
One year warranty on parts and labour.
Delivery:within 21 days from receipt of confirmed order.
Title and Risk with regard to the goods delivered under this price quotation shall pass to customer upon the said goods being delivered by Sarin to carrier. (CIP)

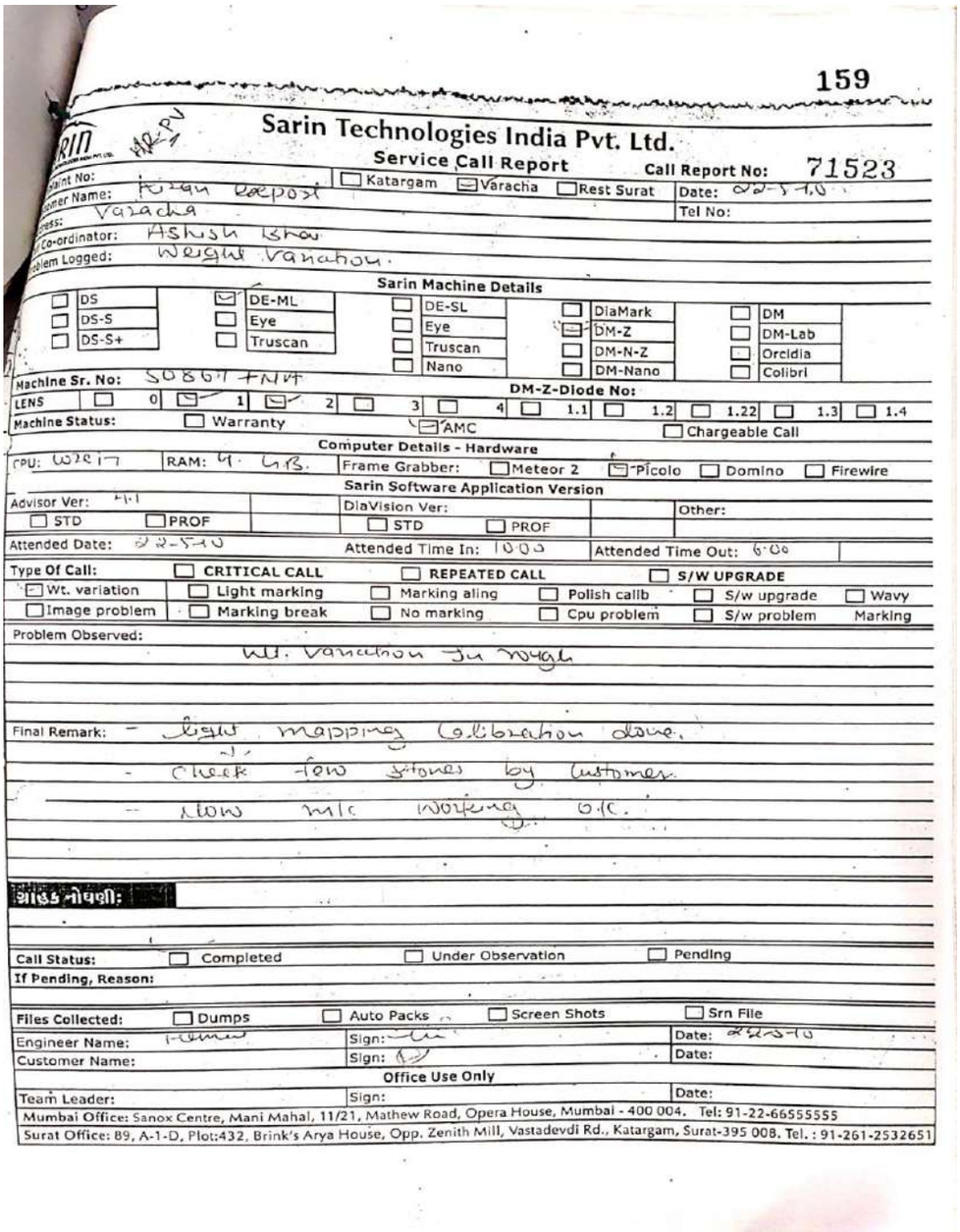
Payment to: Sarin Technologies Ltd.
Bank Leumi Le-Israel Ltd. (10)
Bursa Business Branch (743)
Account: 1108480060
Ramat Gan,Israel
Swift: LUMIILITXXX

SARIN TECHNOLOGIES LTD
7 Abir Yeda St.
Kfar Saba 44425 Israel
Tel: 972-9-7903500
Sarin Technologies Ltd.

- Training to employees: Post-Installation training to employees of the Indian Client, regarding the usage of the software is also provided by Sarin India;
- Repairs & maintenance -
  - AMC with Sarin Israel: Sarin India also performs the requisite repairs and maintenance on behalf of Sarin Israel free of cost, if AMC is entered into between Sarin Israel.

- AMC not entered with Sarin Israel: Sarin India performs such activities independently and invoices were issued under its own name.

Copies of Demo call report given by Sarin India, email conversations between the Appellant and Sarin India with regard to price quotation of product, preparation of purchase order, price negotiation, installation report generated by Sarin India, Service call report given by Sarin India etc. samples of the said documents are scanned below:



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Sarin Technologies India Pvt. Ltd.

Service Call Report Call Report No: 71523

Katargam ☑ Varacha Rest Surat Date: 02-5-10

Client No: Tirupur Depost Tel No:

Customer Name: Varacha

Address:

Co-ordinator: Ashish Ishar

Problem Logged: Weight Variation.

Sarin Machine Details

☐ DS	☑ DE-ML	☐ DE-SL	☐ DiaMark	☐ DM
☐ DS-S	☐ Eye	☐ Eye	☐ DM-Z	☐ DM-Lab
☐ DS-S+	☐ Truscan	☐ Truscan	☐ DM-N-Z	☐ Orcidia
		☐ Nano	☐ DM-Nano	☐ Colibri

Machine Sr. No: 50867+N/A DM-Z-Diode No:

LENS ☐ 0 ☑ 1 ☑ 2 ☐ 3 ☐ 4 ☐ 1.1 ☐ 1.2 ☐ 1.22 ☐ 1.3 ☐ 1.4

Machine Status: ☐ Warranty ☑ AMC ☐ Chargeable Call

Computer Details - Hardware

CPU: W2R17 RAM: 4 GB. Frame Grabber: ☐ Meteor 2 ☑ Picolo ☐ Domino ☐ Firewire

Sarin Software Application Version

Advisor Ver: 4.1 DiaVision Ver: Other:

☐ STD ☐ PROF ☐ STD ☐ PROF

Attended Date: 02-5-10 Attended Time In: 10.00 Attended Time Out: 6.00

Type Of Call: ☐ CRITICAL CALL ☐ REPEATED CALL ☐ S/W UPGRADE

☑ Wt. variation ☐ Light marking ☐ Marking alng ☐ Polish calib ☐ S/w upgrade ☐ Wavy

☐ Image problem ☐ Marking break ☐ No marking ☐ Cpu problem ☐ S/w problem Marking

Problem Observed:

Wt. Variation in rough

Final Remark: - light mapping calibration done.

- Check few stones by customer.

- Now m/c working O.K.

ગ્રાહક નોંધણી:

Call Status: ☐ Completed ☐ Under Observation ☐ Pending

If Pending, Reason:

Files Collected: ☐ Dumps ☐ Auto Packs ☐ Screen Shots ☐ Srn File

Engineer Name: Hemant Sign: Date: 02-5-10

Customer Name: Sign: Date:

Office Use Only

Team Leader: Sign: Date:

Mumbai Office: Sanox Centre, Mani Mahal, 11/21, Mathew Road, Opera House, Mumbai - 400 004. Tel: 91-22-66555555

Surat Office: 89, A-1-D, Plot:432, Brink's Arya House, Opp. Zenith Mill, Vastadevdi Rd., Katargam, Surat-395 008. Tel. : 91-261-2532651

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Sarin Technologies India Pvt. Ltd.
Service Call Report — Call Report No: 33307

Client No:	☐ Katargam ☑ Varacha ☐ Rest Surat	Date: 7/10/2011
Customer Name:	Kiran Gems	Tel No:
Address:	Narachhai	
Co-ordinator:	Paresh	
Problem Logged:	Truscan Gun Install as a Demo purpose	

Sarin Machine Details

☐ DS	☑ DE-ML	☑ DE-SL	☐ DiaMark	☐ DM
☐ DS-S	☐ Eye	☐ Eye	☑ DM-Z	☐ DM-Lab
☐ DS-S+	☐ Truscan	☐ Truscan	☐ DM-N-Z	☐ Orcidia
		☐ Nano	☐ DM-Nano	☐ Colibri

Machine Sr. No: 50869 + N.A — DM-Z-Diode No:

LENS: ☐ 0 ☑ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 1.1 ☐ 1.2 ☐ 1.22 ☐ 1.3 ☐ 1.4

Machine Status: ☐ Warranty ☐ AMC ☐ Chargeable Call

Computer Details - Hardware

CPU: C2D | RAM: 4 GB | Frame Grabber: ☐ Meteor 2 ☑ Picolo ☐ Domino ☐ Firewire

Sarin Software Application Version

Advisor Ver: 4.3 ☑ STD ☐ PROF	DiaVision Ver: ☐ STD ☐ PROF	Other:

Attended Date: 7/10/2011 | Attended Time In: 5.30 | Attended Time Out: 6.30

Type Of Call: ☐ CRITICAL CALL ☐ REPEATED CALL ☐ S/W UPGRADE

☐ Wt. variation ☐ Light marking ☐ Marking aling ☐ Polish calib ☐ S/w upgrade ☐ Wavy Marking

☐ Image problem ☐ Marking break ☐ No marking ☐ Cpu problem ☐ S/w problem

Problem Observed: Truscan Gun Install as a Demo purpose
Truscan : 30069044
Singleline : 90307026

Final Remark: Remove Customer Singleline Gun & Install Truscan
Demo mapping Ethelon Calibration
Check few Stone by Customer
New mic Working ok

ગ્રાહક નોંધણી: Customer Laser Model with I.M.G. Given to H.R.

Call Status: ☑ Completed ☐ Under Observation ☐ Pending

If Pending, Reason:

Files Collected: ☐ Dumps ☐ Auto Packs ☐ Screen Shots ☐ Srn File

Engineer Name: Jagdish	Sign: [signature]	Date: 7/10/2011
Customer Name:	Sign: [signature]	Date:

Office Use Only

Team Leader:	Sign:	Date:

Mumbai Office: Sanox Centre, Mani Mahal, 11/21, Mathew Road, Opera House, Mumbai - 400 004. Tel: 91-22-66555555
Surat Office: 89, A-1-D, Plot:432, Brink's Arya House, Opp. Zenith Mill, Vastadevdi Rd., Katargam, Surat-395 008. Tel.: 91-261-253265

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Sarin Technologies India Pvt. Ltd.
Demo Call Report — Call Report No. 3488

Client No.	SURAT	Date: 17/1/12	
Customer Name: Kiran Export			
Address:			
Contact Person: H.R. Bhai	Designation		Tel. No.
Call Attended by Co-ordinator:	Call Start Time: 3:40		Call end time:
Purpose: ☐ Demo	☐ Training	☐ Feature request	☑ Call

Training Call

Training given on the following

Software type	Version	#operators name	Signature of Operators

Comments :

We are satisfied with today's training. If we feel any difficulty to operate the software, we will call you.

Training Required Next Day ☐ Yes ☐ No

Department Head Name : | Signature of Head of the Department

Other Calls (Bugs, Requests, Other)

Machine No. 51358 | Machine Type: S.L | Software: Adv - 4.5

Purpose of Call : Stone Not open

Problem Observed : [illegible Gujarati handwriting] Stone
[illegible Gujarati handwriting]

Solution Provided :-

Customer Remark / Suggestion :-

Files_Collected :

Call Status : ☑ Complete ☐ Under Observation ☐ Pending

Customer Name : H.R. Bhai	Sign: [signature]	Date : 17/1/12
Demo Executive : Mahendra. Rajput	Sign: [signature]	Date :

OFFICE USE ONLY

Co-ordinator :	Sign :	Date :
Team Leader :	Sign :	Date :
Demo Head :	Sign :	Date :
Remark :		

Mumbai Office : 11/21, Ground Floor, Mani Mahal, Sanox Centre, Mathew Road, Opera House, Charni Road, Mumbai - 400 004. Tel. : 6655 5555
Surat Office : 89, A-1-D, Plot No.432, Brink's Arya House, Opp. Zenith Mill, Vastadevdi Road, Katargam, Surat - 395 008. Tel. : 91-261-253 2640

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Sarin Technologies India Pvt. Ltd. 8581

Service Call Report Call Report No:

Katargam / ☑ Varacha / Rest Surat — Date: 26/10/12

Name: Kiran Exports — Tel No:

Address: L.H. Rd

Co-ordinator:

Problem Logged: To perform Auto calib

Sarin Machine Details

DS / DS-S / DS-S+	☑ DE-ML / Eye / Truscan	DE-SL / Eye / Truscan / Nano	DiaMark / ☑ DM-Z / DM-N-Z / DM-Nano	DM / DM-Lab / Orcidia / Colibri

Machine Sr. No: 50634 + 31347 — DM-Z-Diode No: 100-1759

LENS: 0 / 1 ☑ / 2 / 3 / 4 / 1.1 / 1.2 / 1.22 / 1.3 / 1.4

Machine Status: Warranty / ☑ AMC / ☑ Chargeable Call

Computer Details - Hardware

CPU: T2 — RAM: 4GB — Frame Grabber: Meteor 2 / ☑ Picolo / Domino / Firewire

Sarin Software Application Version

Advisor Ver: 4.5 / 5.0 — ☑ STD / PROF — DiaVision Ver: STD / PROF — Other:

Attended Date: 26/10/12 — Attended Time In: 12:30 — Attended Time Out: 1:00

Type Of Call: ☑ CRITICAL CALL / REPEATED CALL / S/W UPGRADE

Wt. variation / Light marking / Marking aling / Polish calib / S/w upgrade / Wavy Marking
Image problem / Marking break / No marking / Cpu problem / S/w problem

Problem Observed: As Above

Final Remark: Performed Auto calib in laser diode 100-1759 calibration fail

Is-recalibration Message - Too Low power level, cannot calibrate

Diode fail

So need to change diode

Call Status: ☑ Completed / Under Observation / Pending

If Pending, Reason:

Files Collected: Dumps / Auto Packs / Screen Shots / Srn File

Engineer Name: Brijesh Patel — Sign: — Date: 26/10/12

Customer Name: — Sign: — Date:

Office Use Only

Team Leader: — Sign: — Date:

Mumbai Off. : A-704, Tanvi's Diamoda Indl. Premises Co-op. Soc. Ltd., Novelty Silk Mill Compound, S.V. Road, Dahisar (E), Mumbai - 400068. Tel: 91-22-88555555
Surat Office : 89, A-1-D, Plot:432, Brink's Arya House, Opp. Zenith Mill, Vastadevdi Rd., Katargam, Surat-395 008. Tel. : 91-261-2532651

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Sarin Technologies India Pvt. Ltd.

Demo Call Report — Call Report No. 4144

SURAT — Date: 9-3-12

Name: Kiran Ex

Contact Person: H.R

Attended by Co-ordinator: — Designation — Tel. No.

Purpose: Demo / Training / Call Start Time: / Call end time: / Feature request / Call

Training given on the following — Training Call

Software type	Version	#operators name	Signature of Operators

Comments:

We are satisfied with today's training. If we feel any difficulty to operate the software, we will call you.

Training Required Next Day: Yes / No

Department Head Name: — Signature of Head of the Department

Other Calls (Bugs, Requests, Other)

Machine No. — Machine Type: — Software:

Purpose of Call:

Problem Observed: cloud Demo [illegible] 909-908-905 00647 - 00644 [illegible] CPU [illegible]

Solution Provided: [illegible]

Customer Remark / Suggestion:

Files Collected:

Call Status: Complete / Under Observation / Pending

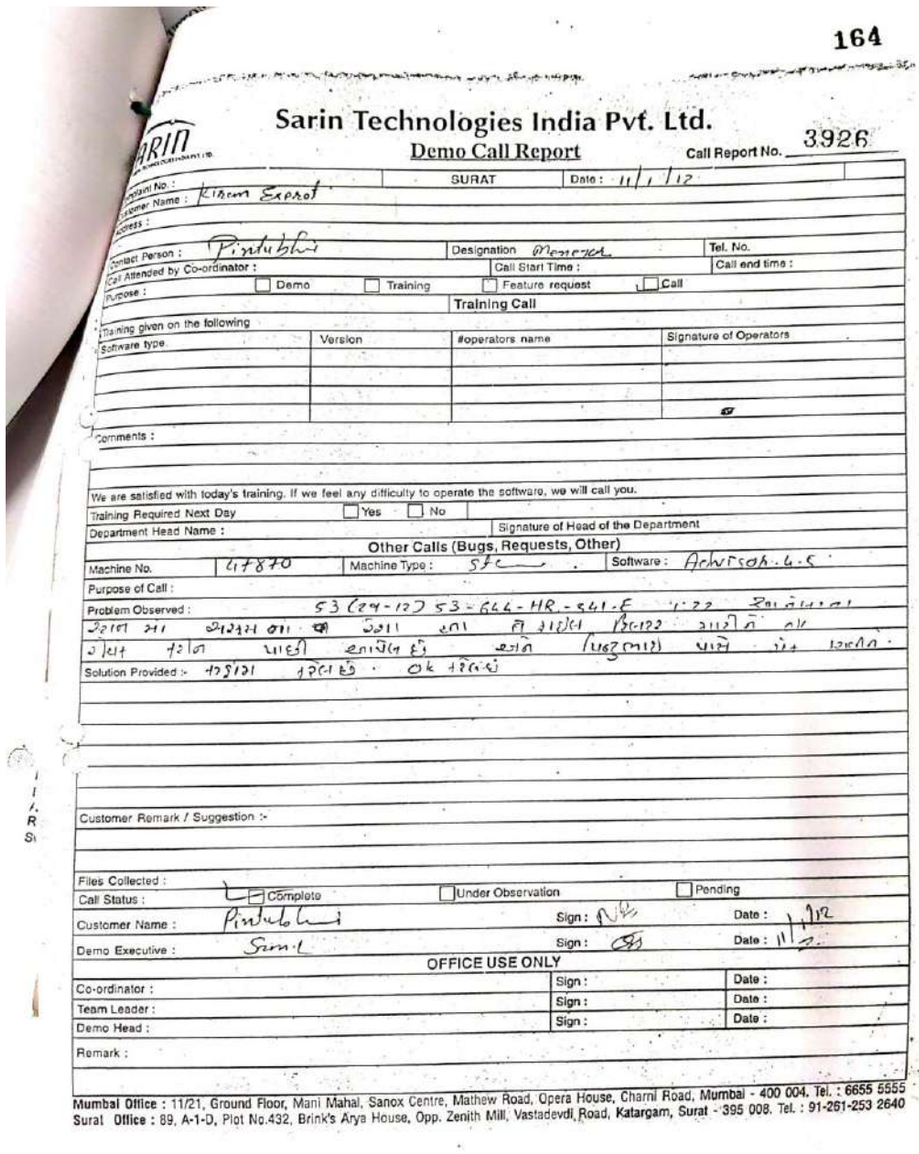
Customer Name: H.R — Sign: — Date:

Demo Executive: Altaf / Sunil — Sign: — Date:

OFFICE USE ONLY

Co-ordinator: — Sign: — Date:
Team Leader: — Sign: — Date:
Demo Head: — Sign: — Date:
Remark:

Mumbai Office : 11/21, Ground Floor, Mani Mahal, Sanox Centre, Mathew Road, Opera House, Charni Road, Mumbai - 400 004. Tel. : 6655 5555
Surat Office : 89, A-1-D, Plot No 432, Brink's Arya House, Opp. Zenith Mill, Vastadevdi Road, Katargam, Surat - 395 008. Tel. : 91-261-253 2640



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Sarin Technologies India Pvt. Ltd.

Demo Call Report

Call Report No. 3926

Complaint No. :
Customer Name : Kiran Export
Address :
SURAT Date : 11/1/12
Contact Person : Pintubhai Designation Manager Tel. No.
Call Attended by Co-ordinator : Call Start Time : Call end time :
Purpose : ☐ Demo ☐ Training ☐ Feature request ☐ Call
Training Call

Training given on the following

Software type	Version	#operators name	Signature of Operators

Comments :

We are satisfied with today's training. If we feel any difficulty to operate the software, we will call you.
Training Required Next Day ☐ Yes ☐ No
Department Head Name : Signature of Head of the Department

Other Calls (Bugs, Requests, Other)

Machine No. 47870 Machine Type : STC Software : Achrsoh.6.5
Purpose of Call :
Problem Observed : 53(24-12) 53-644-HR-541-E 1.22
Solution Provided :-

Customer Remark / Suggestion :-

Files Collected :
Call Status : ☐ Complete ☐ Under Observation ☐ Pending
Customer Name : Pintubhai Sign : Date : 11/1/12
Demo Executive : Sunil Sign : Date : 11/1/12

OFFICE USE ONLY

Co-ordinator :	Sign :	Date :
Team Leader :	Sign :	Date :
Demo Head :	Sign :	Date :
Remark :		

Mumbai Office : 11/21, Ground Floor, Mani Mahal, Sanox Centre, Mathew Road, Opera House, Charni Road, Mumbai - 400 004. Tel. : 6655 5555
Surat Office : 89, A-1-D, Plot No.432, Brink's Arya House, Opp. Zenith Mill, Vastadevdi Road, Katargam, Surat - 395 008. Tel. : 91-261-253 2640

From the above activities carried out by Sarin India for the appellants on the fact which is supported by the various documents, there is no iota of doubt that all the activities, for which appellants made the payments against the invoice of software issued by Sarin Israel, were indeed carried out by Sarin India purely as agent of their principal viz. Sarin Israel, particularly when Sarin India did not charge to the appellant a single penny for bundle of services for the obvious reason that Sarin India is not doing charity to the appellants but acting as a pure agent for and on behalf of Sarin Israel. This clearly establish that the Sarin Israel has its business establishment in India in the title of

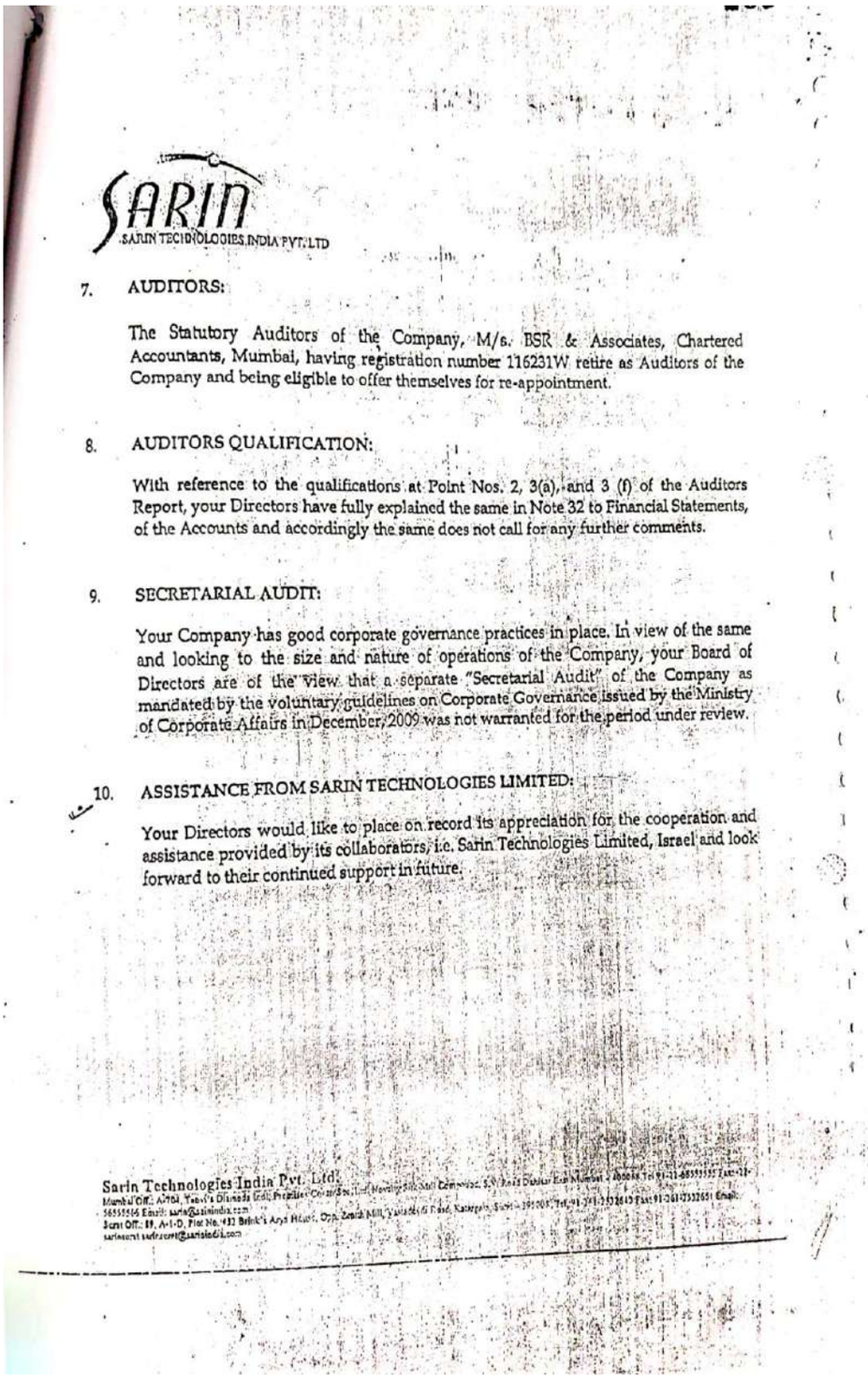
'Sarin India' in terms of Section 66A read with explanation 1 attached thereto.

2. Explanation 1 to Section 66A of the Finance Act 1994 provides that if a person is carrying on business in India, through an agency or branch in India, such person shall be treated as having business establishment in India. It would therefore follow that in respect of services provided in India by such person, since such person has establishment in India, that person as provider of service is liable to pay service tax in India and not the recipient of service in India. The recipient of service would be liable only when the service provider does not have a business establishment in India. In view of the said provision, Sarin India is to be considered as an Agency carrying on business in India for Sarin Israel and Galatea Israel and therefore, service tax is liable to be paid by the service provider and not by the service recipient.

3. It is observed that Sarin India was performing all the activities in regard to supply of software, starting from placing of order till installation, upgradation and maintenance of software, installation and other relevant processes. Sarin India is an extension of business activities of Sarin Israel, which has been carried out in India and hence, it can be termed as fixed establishment through which business of Sarin Israel was conducted in India.

4. As submitted by the appellants which is not under dispute that all the companies of Sarin Group are working under the common management which reveals from the audited financial statements of Sarin India:

- In Director's Report, director recorded their appreciation stating that *"Your directors would like to place on record its appreciation for the corporation and assistances provided by its collaborators i.e. Sarin Technologies Ltd. Israel and look forward to the continued support in future."* This statement clearly states that Sarin India, Sarin Israel and Galatea Israel work jointly and are associates/collaborators of each other. For ready reference relevant extract of Director's report is scanned below:



SARIN

SARIN TECHNOLOGIES INDIA PVT. LTD

7. AUDITORS:

The Statutory Auditors of the Company, M/s. BSR & Associates, Chartered Accountants, Mumbai, having registration number 116231W retire as Auditors of the Company and being eligible to offer themselves for re-appointment.

8. AUDITORS QUALIFICATION:

With reference to the qualifications at Point Nos. 2, 3(a), and 3 (f) of the Auditors Report, your Directors have fully explained the same in Note 32 to Financial Statements, of the Accounts and accordingly the same does not call for any further comments.

9. SECRETARIAL AUDIT:

Your Company has good corporate governance practices in place. In view of the same and looking to the size and nature of operations of the Company, your Board of Directors are of the view that a separate "Secretarial Audit" of the Company as mandated by the voluntary guidelines on Corporate Governance issued by the Ministry of Corporate Affairs in December, 2009 was not warranted for the period under review.

10. ASSISTANCE FROM SARIN TECHNOLOGIES LIMITED:

Your Directors would like to place on record its appreciation for the cooperation and assistance provided by its collaborators, i.e. Sarin Technologies Limited, Israel and look forward to their continued support in future.

Sarin Technologies India Pvt. Ltd.

- Further, from Related Party disclosure in audit report of Sarin India, it is clearly established that fixed-assets and all major consumable required for installation of software and conducting all the core activities related with software were provided by Sarin Israel and Galatea Israel. Also,in relationship explained in report it is clearly stated that Sarin Israel is the holding company and "where control Exists".

- Audit Report of Sarin India had been signed by Board of Directors out of which four directors / key management person were also Key Managerial Person of Sarin Israel and Galatea Ltd. Name of those directors are 1) Zev Kessler, 2) David Block, 3) UzviLevami and 4) Oded Ben Shmuel. Also, from profile of such three directors it can be said that they were not appointed for carrying out only Pre and/ or post sales activities but also, they provided all the core activities on behalf of Sarin Israel / Galatea Israel in India.

4.4 Considering the above undisputed fact, we find that in the instant case the Appellants have received goods from entities located outside India whereas the services in respect of the said goods have been provided to the Appellants by the parent company’s branch in India by the nature of the services rendered like placing & processing of order, negotiation done with customers by Sarin India on behalf of Sarin Israel, installation of the HASP software etc. it can be observed that Sarin India are entrusted with providing such services of higher order that are integral to the smooth functioning of the machines used by the Appellants. As it is entrusted with such crucial responsibilities it cannot be denied that Sarin India operates in the capacity of an Agent/ Branch office of that of Sarin Israel. In this regard we accept the submissions made by the Appellants towards the legal structure and discharge of essential trading activities conducted by Sarin Israel making it manifestly clear that Sarin Isarel has through its

agent/branch in India been providing services for the products sent by it. Thereby fulfilling conditions as enumerated under clause 2 read with Explanation 1 of Section 66A.

4.5 Our above view is supported by the decision of Nagarjuna Oil Corporation Ltd. v CCE Puducherry, 2017 (47) STR 96 (Chennai) wherein this Tribunal has taken the following view:

> *"5. The only point for determination is the Appellants's liability to service tax on reverse charge basis in terms of Section 66A. The admitted facts are that there is an agreement between the Appellants and NOC BV, Netherlands. NOC BV, Netherlands has an establishment in India recognized by various authorities in terms of applicable regulations. The Indian establishment of NOC BV, Netherlands have registered themselves with the service tax department and remitted the full tax liability with reference to the impugned contract. The original authority while taking cognizance of the existence of NOC BV in India, proceeded to confirm the service tax demand on the basis that the agreement is with NOC BV, Netherlands and the consideration is paid in foreign exchange. We find that Explanation 1.- under Section 66A stipulated that "a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country." In the instant case, NOC BV Netherlands is admittedly having a business establishment in India recognized by various law. The service is rendered through such establishment in India. This much has been recognized by the original authority in para 20 of his order. The reliance placed by the original authority on Board's Circular dated 06.05.2011 is misplaced. The said Circular is not on the scope of Section 66A. We find that the original authority has misdirected in his finding despite of his recognition of the Indian establishment of NOC BV as service provider.*
>
> *6. Considering the above discussions and findings, we find no merit in the impugned order and accordingly set aside the same. The appeal is allowed."*

4.6 The Tribunal in the case of M/s Lakshmi Electrical Drives Ltd. v Commissioner of CCE & ST, Coimbatore 2023 VIL 406 CESTAT- CHE- ST has held a similar view while discharging the Appellants' liability involving issue under similar circumstances wherein the Department had confirmed the demand against the Appellants under reverse charge mechanism when a 100% owned subsidiary of the parent company was already established in India rendering all such services as directed by the parent company situated in Canada. The relevant portions of the judgment have been produced herewith:-

> *"A perusal of the provisions of Section 66A of the Finance Act, 1994, reveal that the service recipient is held accountable for payment of service tax when the*

services are received from a Foreign Service Provider whose usual place of residence or whose permanent address is located other than in India. Explanation-1 to this Section clearly says that a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country. In this appeal, facts clearly indicate that M/s. CSA International, Canada has its 100% Subsidiary viz. M/s. CSA Private Limited, Bangalore, who is registered with Service Tax R.C. No, AABCC2605FST001."

…….At the same time, in his findings at para-20 and 21, it was mentioned as under: -

"20. It may be a fact that the service provider (Canadian Establishment) has an establishment in Bangalore as per extract copy of the Ministry of Corporate Affairs provided by them during the personal hearing. But no records were brought forth by "M/s. LEDL" to show that they had received such services from the Bangalore establishment. All the invoices pertaining to the receipt of services had been duty issued by the service provider viz. M/s. CSA International, Canada, whose establishment (Canadian Establishment) is found in Foreign Country.

21. In terms of second proviso to Section 66A (1) (b), which reads as "where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided". It is observed that M/s. LEDL is liable to pay the service tax for the services received by them in as much as they had no direct connection with Bangalore establishment (i.e. M/s. CSA India Private Ltd., Bangalore) whereas the direct connection with M/s. CSA International, Canada is quite obvious from records."

……The lower appellate authority made contrary observations that the Foreign Service provider did not have any office in India. Whereas in his findings, he has fastened liability to pay service tax on the Appellants basing on the fact that the services received by the Appellants had no direct connection with the Bangalore establishment and had direct connection only with M/s. CSA International, Canada, which is factually incorrect.

……Whereas, the Appellants relies on the Explanation-1 to Section 66A to drive his point that RCM cannot be made applicable to him as M/s. CSA International, Canada is having its 100% Subsidiary Branch Office operating as M/s. CSA Private Ltd., at Bangalore. Whereas, the revenue relies on sub-section-2 of Section 66A, to fasten the tax liability on the Appellants which states that where a person is carrying on a business through a permanent establishment in India and through a permanent establishment other than India, such permanent establishment shall be treated as separate persons. However, the records clearly reveal that the inspection service got performed in India though the certificate was issued by M/s. CSA International, Canada. As M/s. CSA International, Canada has got its 100% Subsidiary in Bangalore, invoking the provisions of Section 66A of the Finance Act and fastening the tax liability on the Appellants on RCM basis is not legally sustainable and as such, we hold that the Appellants succeeds on merits.

4.7 We note that in the present case the payments made to the Parent Company only by the Appellants for the purchases were inclusive of the services with respect to installation and functioning whereas the said services were provided by the Indian subsidiary to the Appellants. The fact that no invoice has been raised to the Appellants by Sarin India shows that the latter was discharging the services of the Parent Company situated in Israel in the capacity of an Agent having its permanent establishment in India. This undisputed fact also makes it abundantly clear that the Sarin India is pure agent of the Sarin Israel.

4.8 In the light of varied literature available towards interpretation of 'permanent establishment' we observe that interpretations under the following instances hold persuasive value. In the landmark decision *of CIT Vs. Vishakhapatnam Port Trust [(1983), 144-ITR-146 (AP)]* on the subject of "Permanent Establishment", the Andhra Pradesh High Court has observed as under:

> *"The words "Permanent Establishment" postulate the existence of a substantial element of an enduring or permanent nature of a foreign enterprise in another, which can be attributed to a fixed place of business in that country. It should be of such a nature that it would amount to a virtual projection of the foreign enterprise of one country onto the soil of another country."*

Article 5 of the DTAA entered into between Israel and India has been referred to by the Appellants in their submissions. It reads as under:-

> "*Article 5 - **Permanent Establishment***
>
> *1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.*
>
> *2. The term "permanent establishment" includes especially:*
>
> *(a) a place of management;*
>
> *(b) a branch;*
>
> *(c) an office;*
>
> *(d) a factory;*
>
> *(e) a workshop;*
>
> *(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;*
>
> *(g) a sales outlet;*

(h) a warehouse in relation to a person providing storage facilities for others; and

(i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities last more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character."

In view of the aforementioned, we note that a branch office is covered under the scope of permanent establishment. Since Sarin India is a wholly owned subsidiary of Sarin Israel carrying out and coordinating essential trading activities it would be safe to say that Sarin India is in itself a branch office of the Israel company. Therefore, just for the sake of levy of service tax liability under section 68 *ibid*, it cannot be denied that Sarin India is not a permanent establishment of Sarin Israel. Therefore, we note that it was erroneous conclusion on the part of the department to allege that Sarin India will not be considered a Permanent Establishment of Sarin Israel. It can be observed from the records that Sarin had head office in Israel and that Sarin India Technology Ltd. was operating as an agency to carry out business of trading in a different country that in the instant case is, India and by flow of that we are of the considered view that by way of Section 66A discharge of liability of service tax cannot be made applicable to the Appellants. Therefore there is no second thought required to be arrived at

the conclusion that the Appellants had received goods from a foreign country and services in its extension from service provider in India through the said foreign company's Branch office at that time one of which is located in India thereby sufficiently establishing that they have a permanent establishment hence the Appellants cannot be fastened with the liability of service tax for being a recipient of service under section 68(2) of the Finance Act read with rules 2(1)(d) as a 'deemed service provider' in India.

4.9 As regards the second issue, the Learned Counsel for the Appellants has made submissions on the grounds of both revenue neutrality and limitation.

4.10 It is observed from records that there was no intention on the part of the Appellant to evade Service tax which can be proved by the fact that the Appellant was entitled to avail CENVAT credit of Service tax paid under the Reverse Charge mechanism and claimed refund of unutilized amount of service tax paid under Rule 5A of CENVAT Credit Rules, 2004 on export of the goods as the Appellant export 86.89% of cut and polished diamonds out of total turnover during the disputed period i.e. 16.05.2008 and 31.08.2013. Since this was a clear case of revenue neutrality, there could have been no incentive or benefit accruing to the Appellant to evade payment of Service tax and therefore the larger period ought not to have been invoked. Eligibility of the appellants' refund is supported by the following judgments:

- Repro India Ltd. Versus Union of India - 2009 (235) E.L.T. 614 (Bom.)
- Jet Airways (I) Ltd. Vs. C.S.T, 2016 (44) STR 465 (Tri-Mumbai)
- Commissioner Of Central Excise Versus Drish Shoes Ltd., 2010 (254) E.L.T. 417 (H.P.)

4.11 We also find from the show cause notices as well as from impugned orders that the essential ingredients of proviso to section 73 were not fulfilled in the present case to invoke larger period of limitation. Further, there was no clinching evidence brought on record by the Respondent to show that there was any *malafide* intention on the part of Appellant to evade Service tax.

4.12 The extended period of limitation can be invoked only where the non payment of tax has been committed by the suppression, omission or failure to disclose wholly or truly all material facts required for verification of assessment by the Appellant or where the Appellant had an intention to evade the payment of tax, whereas in the present case, none of the ingredients for invoking larger period in satisfied as held in the following decisions:

- Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, 2016 (42) S.T.R. 634 (Cal.)

- Delhi International Airport Ltd. Vs. Commissioner of CGST-2019(24) GSTL 403 (T).

- Binjrajka Steel Tubes Ltd. Vs. Commissioner of C. Ex., 2016 (342) EL T 302 (T)

- Roma Henny Security Service Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi, 2018 (8) G.S.T.L. 239 (Del.)

4.13 From the entire facts, we do not find any deliberate intention on the part of the Appellant to either not disclose correct information or to evade the payment of any tax. There was no positive act on the part of the Appellant to evade the payment of any Service tax nor had any proof towards this end been adduced by the Revenue. It is settled that mere omission would not constitute suppression of facts and the Appellant was under bona fide belief that there was no liability to pay Service tax.

This proposition is supported by Hon'ble Apex Court judgment in ***Uniworth Textiles Ltd. v. CCE, Raipur reported in 2013 (288) E.L.T. 161 (S.C.)***, wherein it was held that the extended period of limitation is not invokable for mere non-payment and requires a deliberate default on the part of the assessee, is also applicable.

4.14 It is trite law that the extended period of limitation can be invoked only if there is an allegation of collusion, willful misrepresentation or suppression of facts against the Appellant. It is an admitted position that the Appellant filed the statutory returns providing all relevant details therein. The Appellant submits that the payment made to Sarin Israel,

Galatea Israel and Diamsoft Company Inc. of UAE were shown as capital goods (Tangible Assets) under the Plant & Machinery and the Appellant was claiming depreciation on them. Further, the amount paid to foreign company towards usage of software i.e. Pay Per Carat (PPC supplied by M/s. Galatea Israel) has been shown in Labour Optimizing expenses under the manufacturing expenses in Profit and Loss Account. The above-mentioned evidences also reveal that there was no willful suppression of facts on the part of the Appellant, and therefore, there is no basis for invoking the extended period of limitation in the present case. Accordingly, since the demand for duty is beyond the statutory period, the same is unsustainable. In this regard the following judgments relied upon by the appellants support their case of demand being time bar:

- Commissioner Of C. Ex., Ahmedabad vs. Satia & Company reported at 2010 (262) E.L.T. 530 (Tri. - Ahmd.)

- H. Kumar Gadecha vs. Commissioner Of Customs, Ahmedabad reported at 2009 (243) E.L.T. 248 (Tri. - Ahmd.)

4.15 We find that the Appellant had disclosed all the material facts in their Service Tax returns and didn't suppress any fact from the department. In the case of ***Commissioner v/s. Meghmani Dyes & Intermediate Ltd.[2013 (288) ELT 514 (Guj.)],*** the Hon'ble Gujarat High Court has held that extended period is not invocable if the details/information provided by him were in accordance to the format prescribed in the returns. The relevant para is reproduced hereunder:

> *"32….. Further, the format of ER-2 Returns is prescribed by the Government and, therefore, an assessee cannot be accused of suppression of facts if the details and information were provided by him in accordance with the format of the Return unless he provides any wrong information in the Return which is not the case as set-up by the Revenue."*

4.16 In the case of **Pahwa Chemicals Private Limited vs. CCE, Delhi [2005 (189) E.L.T. 257 (S.C.)]**, the Hon'ble Supreme Court held that:

> *"It is settled law that mere failure to declare does not amount to willful mis-declaration or willful suppression. There must be some positive act on the part of the party to establish either willful mis-declaration or willful suppression."*

4.17 It is well settled law as laid down in **Steelcast Ltd v CC- 2009 (14) STR 129** and upheld by the High Court in **CC v Steel Cast Ltd- 2011 (21) STR 500 (Guj)** and in the other judgments contained in the Compilation tendered at the hearing, that where complete records are maintained and the issue is one of legal interpretation, the larger period of limitation cannot apply.

4.18 It is also fact on record that statements authorized signatory were recorded from time to time. The statements were exculpatory in nature to the extent that no one stated that the Appellant had any intention to evade the liability for payment of Service Tax. In such circumstances, when the Appellant has no *malafide* intention to evade the payment of Service Tax, larger period of limitation is not invocable.

4.19 We also find force in the submissions on behalf of the appellants that the issue involved is an interpretational issue and the *bonafide* interpretation of the Appellants was that they were not liable to pay Service tax as the suppliers were providing service through their Indian arm having a fixed establishment in India and therefore, based on a strict reading of the provisions of law, the Appellant was not liable to pay Service Tax. Being similar circumstances involved, the following case laws support the appellants' case:

- Tata Consultancy Services Vs. Commissioner, 2018 (18) GSTL 478
- Hindalco Industries Ltd. Vs. CCE,2018 (10) TMI 392 - CESTAT New Delhi
- Uni Ads Ltd. Vs. CCE, [2016 (42) STR 547 (Tri. Bang.)]

4.20 This is pertinent to note that the entire diamond industry did not pay Service tax on value of software installed in the computer on the basis of the *bonafide* belief that there was no liability of service tax under reverse charge mechanism and the Appellant being part of the said industry,

followed industry practice and did not pay any service tax. It is submitted that the entire diamond industry could not have had an intention to evade service tax and therefore, it is a fit case for not invoking extended period of limitation.

4.21 In view of the discussion made herein above in this regard, we find no merit in the claim of the Department that there was willful suppression of facts on the part of the Appellants. Therefore, demand beyond normal period in those show cause notices issued invoking extended period cannot sustain. Hence the Appellants succeed on limitation as well.

5. In view of the above discussion and finding, we are of the considered view that under the purview of Section 66A of the Finance Act,1994 when a permanent establishment of the foreign service provider exists in India the recipient of service in India cannot be made liable to pay service tax under reverse charge mechanism. Accordingly, we hold that the impugned orders are not sustainable in law and in fact. Therefore, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Pronounced in the open court on 26.02.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Raksha