



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/53/Ahd-I/2017-18  
Stay Appl.No. NA/2017-18

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1548

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-342-2017-18  
दिनांक Date : 22-02-2018 जारी करने की तारीख Date of Issue

17/3/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. SD-01/06/AC/Interactive/2017-18 दिनांक: 11/5/2017 issued  
by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Interactive Manpower Solutions Pvt.Ltd  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।  
Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

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

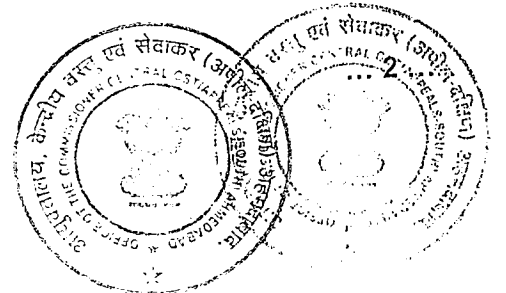
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case,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

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

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

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

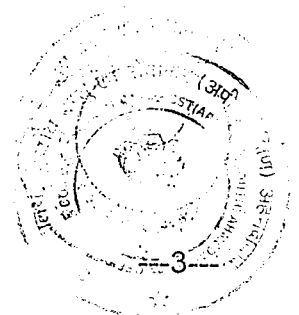
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

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

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

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

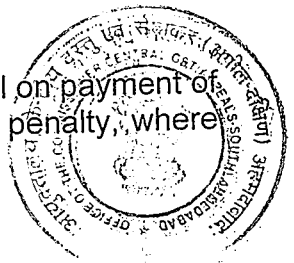
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

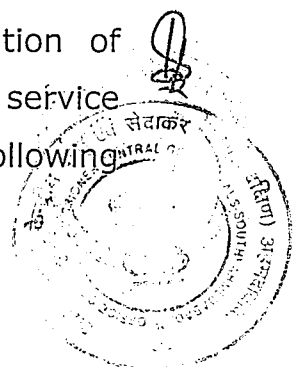


**ORDER IN APPEAL**

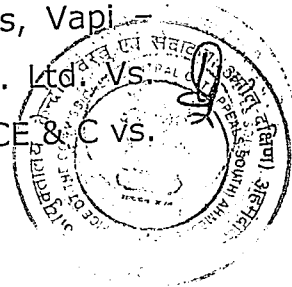
M/s Interactive Manpower Solutions Pvt. Ltd., 4-Saujanya Row House, Near Darpan Six Road, Ahmedabad (henceforth, "appellants") have filed the appeal against the Order-in-Original No. SD-01/06/AC/Interactive/2017-18 dated 11.05.2017 (henceforth, "impugned order") passed by the Assistant Commissioner of Service Tax, Division-I, Ahmedabad (henceforth, "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellants were registered with the service tax in the category of 'Manpower Recruitment Agency'. An enquiry was conducted at their three business premises and it was found that the appellants had incurred expenditure in foreign currency towards various services i.e. 'business support service', 'online information and database access or retrieval service' and 'intellectual property service' during the financial years 2010-11 to 2014-15. Since the appellants are situated in India, the appellants were liable to pay service tax under Reverse Charge Mechanism in terms of Section 65A of the Finance Act, 1994 (for brevity 'the Act'). Further in case of expenses towards royalty, it appeared that the same were paid to foreign companies towards use of brand name of foreign company and as per introduction of Place of Provision of Service Rules, 2012 (for brevity 'the POP'), the same was taxable in view of the Rule 3 of the POP. In view of this, a show cause notice dtd. 16.10.2015 was issued to the appellant for recovery of service tax of Rs. 45,87,946/- and seeking appropriation of Rs. 14,10,314/- paid by the appellants. Interest thereon was also demanded with proposal for imposition of penalties under various sections of the Finance Act, 1994. The adjudicating authority, vide the impugned order, confirmed the demand of service tax of Rs. 28,54,853/- on business support service and ordered appropriation of the amount of Rs. 28,54,853/- paid willingly by the appellants; dropped the demand for service tax of Rs. 17,33,094/- on job board description and also ordered that the royalty expenses would not be considered as taxable. Penalty of Rs. 10,000/- was imposed upon them under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved by the impugned order of confirmation of demand of service tax of Rs. 28,54,853/- on business support service and penalty, the appellants have filed this appeal on the following grounds:



- a) That the services of commissioner agent are classifiable under "Business Auxiliary Services" taxable under clause (zzb) of Section 65 (105) of the Act as the foreign consultants/agents are engaged in promotion and marketing of their services abroad;
- b) That they had deposited an amount of Rs. 28,54,853/- "under protest" on 14.04.2016 towards the service tax demand;
- c) That the entire situation is revenue neutral;
- d) That the demand has been confirmed ignoring the mandate of Section 64 (1) of the Act;
- e) That the import of services rules relied upon in the order cannot override the provisions of the act since the rules militate against Section 64 (1) of the Act; They rely on the Supreme court's decision in Laghu Udyog Bharti vs. UOI, 1999 (112) ELT-365 (S.C.), Infosys Ltd. vs. CST, 2015 (37) STR-862 (T.), KPIT Cummins Infosystems Ltd. Vs. CCE, 2013-TIOL-1568-CESTAT-Mum., Torrent Pharmaceuticals Ltd. Vs. CST, 2015 (39) STR-97 (T);
- f) That they are entitled for cenvat credit of service tax paid on input services as they were used in providing output services. They rely on the CBEC Circular issued from F.No. B1/4/2006-TRU, dtd. 18.04.2006 wherein it was clarified that persons who are liable to make payment of service tax under reverse charge by virtue of Section 66A are allowed to claim credit of such service tax;
- g) That they rely on the case laws of CCEx, Bolpur vs. Ratan Melting & Wire Industries - 2008 (12) STR-416 (S.C.), CCEx, Bhavnagar vs. Ultratech Cement Pvt. Ltd. - 2014 (302) ELT-334 (Guj.), Ambuja Cements Ltd. vs. UOI - 2009 (14) STR-3 (P&H), K P Varghese vs. ITO - 1981 (131) ITR-597 (S.C.), CCEx, Bolpur vs. Ratan Melting & Wire Industries - 2008 (12) STR-416 (S.C.) and many more;
- h) That their main source of revenue is export of service and as per Rule 5 of the Cenvat Credit Rules, 2004, they are eligible for refund of unutilized cenvat credit and they rely on the case laws of Syntel International Pvt. Ltd. Vs. CCE, Pune - 2013 (30) STR-679 (Tri.), Texyard International vs. CCE, Trichy- 2015 (40) STR-322 (Tri.), Castrol India Ltd. Vs. CCE & Customs, Vapi - 2014 (311) ELT-71 (Tri.-Ahm.), Kohinoor Printers Pvt. Ltd. Vs. CCE, Pondicherry - 2015 (311) ELT-456 (Tri.-Chen), CCE & C vs.



Textile Corp., Marathwada Ltd. – 2008 (231)ELT-195 (S.C.) and many more;

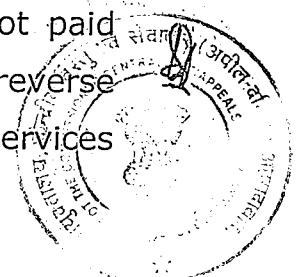
- i) That the services provided by foreign consultants/agents are in the nature of promotion and marketing of the services provided by them;
- j) That the adjudicating authority has not provided any justification as to how the services received by the appellants from foreign consultants/agents fall under the category of "Business Support Service" as the findings in the impugned order about classification are vague and full of ambiguity;
- k) That they rely on the case of M/s Orient Crafts Ltd. Vs. UOI & Anr – 2006-TIOL-HC-DEL-ST wherein it was held that services of commission agents are taxable under "Business Auxiliary Services";
- l) That extended period of limitation is not invocable as there was no fraud or suppression. In view of this, no penalty is imposable and no interest is recoverable from them.

4. The personal hearing in the case was held on 22.01.2018 in which Shri Bishan Shah, Chartered Accountant appeared on behalf of the appellants. He reiterated the grounds of appeal. He submitted that the duty has been deposited and refund has been allowed and it is a revenue neutral situation. In such situation penalty should not be imposed. He said that additional submission would be submitted soon but has not submitted so far. In view of this, I take up this case for decision.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions.

6. The issue to be decided whether the service tax not paid by the appellants has been correctly demanded or not in view of the provisions of Taxation of Service (Provided from Outside India and Received in India) Rules, 2006.

7 I find that on an enquiry and search, it was found that the appellants were paying commission and remitting other charges to their foreign based consultants/agents and based on their accounts statements and other records, it was found that they had not paid service tax on that amount which they were liable to pay on reverse charge basis. The adjudicating authority has held that the services



received by them from their consultants/agents situated abroad are correctly classifiable under clause (zzzq) of Section 65 (105) under "business support services". From the records it is evident that the main activity of the appellants was to provide manpower to their foreign based clients for which they had consultants/agents abroad. This fact has been recorded in the statements recorded and discussed in the show cause notice. Considering their main activity of providing support to the business in form of providing manpower, I hold that the adjudicating authority has correctly held it correctly classifiable under clause (zzzq) of Section 65 (105) under "business support services".

8. I have carefully gone through the provisions of the Taxation of Service (Provided from outside India and received in India) Rules, 2006 ('the Rules, 2006' for brevity). Their service tax liability arises in view of the provisions of clause (iii) of Rule 3 of the Rules, 2006. I therefore find no reason to interfere with the impugned order to the extent of confirming the demand of Rs. 28,54,853/-

9. There is no dispute about the fact that the appellants have failed to provide the information about the taxable service received from place outside India and hence I find that the penalty under Section 77(2) is justified and I uphold the same.

11. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

3/1/2018

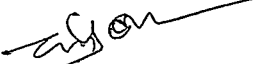
(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक: 22/2/2018

सत्यापित



(धर्मेश उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

**By R.P.A.D.**

To:

M/s Interactive Manpower Solutions Pvt. Ltd.,  
4-Saujanya Row House,  
Near Darpan Six Road,  
Ahmedabad

**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Astt. Commissioner, CGST, Div.-VII, A'bad (South),
- (4) The Dy./Astt. Commissioner (Systems), CGST, A'bad (South),
- (5) Guard File,
- (6) P.A.File.

