



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Ambawadi, Ahmedabad-380015  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240264SW0000000DDE

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3544/2023 / 1248-52
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-252/2023-24 and 30.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.02.2024
(ङ)	Arising out of Order-In-Original No. 166/AC/Star Instrument/Div-II/A'bad. South/JDM/2022-23 dated 21.02.2023 passed by The Assistant Commissioner, Central GST & Excise, Division-II, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Star Instrument Services, 6, Harikrupa Society, Nr. Kailash Park, Opp. P.D. Pandya College, Vatva, Ahmedabad-380 050.

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

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

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

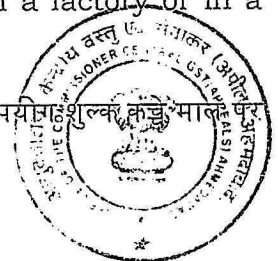
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 :-

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

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.

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



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।

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

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

One copy of application or O.I.O. as the case may be, and the order of the 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) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 उत्पादन शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा संबंधित अपील में प्रहले 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.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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

The present appeal has been filed by M/s Star Instrument Services, 6, Harikrupa Society, Nr. Kailash Park, Opp. P.D. Pandya College, Vatva, Ahmedabad-380 050 (hereinafter referred to as "the appellant") against Order-in-Original No. 166/AC/Star Instrument/Div-II/A'bad. South/JDM/2022-23 dated 21.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST & Excise, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant, registered under service tax with Registration No. AZTPS9379LST001, provided taxable services as per Section 65B(44) of the Finance Act, 1994. During the course of audit for the period from April 2013 to June 2017, the Central Tax Audit Commissionerate, Ahmedabad scrutinized their records, as a result of which one Revenue Para in which the appellant were disagreeing with the objection remained unsettled.

**2.1 Revenue Para 1:** Short payment of service tax on taxable services under Section 65B(44).

2.2 The appellant were subsequently issued Show Cause Notice bearing No. VI/1(b)-78/C-I/AP-I/Audit/Ahd/2018-19 dated 04.04.2019 wherein:

(i) Demand and recovery of Rs. 23,04,085/- for the period from April 2011 to June 2017 under the provision of Section 73 of the Finance Act, 1994 (hereinafter referred to as '*the Act*') and interest under Section 75 of the Act.

(ii) Impose penalty under the provisions of Section 78 of the Act.



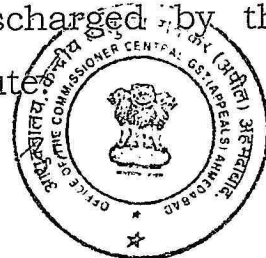
(iii) Impose penalty under the provisions of Rule 7C of Service Tax Rules, 1994 for delay in filing of ST-3 returns.

3. The SCN was adjudicated vide the impugned order wherein the adjudicating authority had passed the order as under:

- a) The demand of service tax amounting to Rs. 23,04,085/- was confirmed under section 73(1) of the Act for the period from April 2011 to June 2017 along with interest under section 75 of the Act.
- b) Penalty amounting to Rs. 23,04,085/- was imposed under 78 of the Act.
- c) The demand of late fee at the appropriate rate was imposed on the appellant under Rule 7C of the Service Tax Rules, 1994 for delay in filling ST-3 Returns.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- Service tax on Maintenance service has been duly paid.
- Service provided by the appellant falls under Manpower Supply Agency Service.
- The appellant relies on the CBIC Circular No. 190/09/2015-Service Tax dated 15<sup>th</sup> December 2015.
- The appellant has already paid service tax by classifying the service under Manpower supply agency Service.
- No double Taxation can be levied under Service tax law. Service tax demand cannot be imposed on the appellant as the said liability has already been discharged by the Service Recipients on the income under dispute.



- Notwithstanding anything contained above revenue to the Government remains neutral.
- When no tax is payable the question of penalty does not arise.

5. Personal Hearing in the case was held on 13.12.2023. Shri Amrin Alwani and Shri Foram Dhury, Chartered Accountants, appeared on behalf of appellants for the hearing and reiterated the contents of the written submission in the appeal and requested to allow the appeal.

6. I find that the appellant submitted various documents in support of their claim for fulfilling the following two elements required for being covered under the definition of the "supply for manpower service", *(1) Supply of manpower, temporarily or otherwise, (2) Supply to another person to work under his superintendence or control.* The appellant submits that the adjudicating authority has reproduced specific condition from the agreement between the appellant and GSECL, emphasizing that the appellant's service does not fall under 'Manpower Supply Service'. The appellant asserts that the clauses relied upon in the impugned order are reproduced as under:

- ❖ The contractor has to complete the work as per time schedule and has to interact with Engineer-in-charge for permit to work, work instruction, return of permit and successful trial run.
- ❖ It will be the responsibility of contractor to make familiar all his workmen with all the location of maintenance area before commencement of this contract.
- ❖ During the contact period, if the performance of contractor is found unsatisfactory the contact shall be terminated and work shall be got carried out through other agency at the contractor's risk and cost.
- ❖ Contractor shall also carry out maintenance and overhauling of various instruments as per time schedule given by GSECL during annual/scheduled shut down of the unit

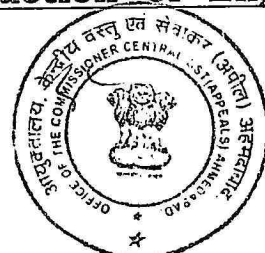


- ❖ The contractor has to carry out quality work to ensure the smooth functioning of calibrated instruments for the minimum defect liability period.
- ❖ Quality shown in work order is approximate and is liable to change. Payment will be made according to actual quality of work done only.
- ❖ You have to complete work within 11 months otherwise any delay that may take place in supply and/or erection, testing and commissioning activities beyond contractual cut-off data/stipulated period in the order shall be subjected to penalty (non-liquidated damages) at the rate of 0.5% of the contract price/order price per week or part thereof.
- ❖ The rate has been fixed in respect of number of days for which such agreed upon task is performed and the rate has not been fixed on man-hour basis in respect of each of the labour supplied by the appellant.

6.1. The appellant asserts that in the event that the service provided by the appellant does not covered within the definition of 'Manpower Supply Service' the adjudicating authority omitted to specify the category under which the service provided by the appellants falls exactly. The appellant presented relevant points from scope of work of the above said agreement establishing that the service is 'Manpower Supply Service'. The same are as under:

"Subject: Order for Rate contract for providing manpower for the work of removing, cleaning, testing, overhauling and reinstallation of various instruments, coal flame scanners and DP transmitters of furnace headers of unit 1. 2. 3 & 4 at KLTPS for the period of eleven montns.

- ❖ Point no. 3 - Complete cleaning and checking of impulse lines and 'y' pieces of related transmitters and line flushing work with proper isolation of transmitter, impulse line with 'y' pieces should be flushed as per instruction of engineer in charge daily or as per requirement.
- ❖ Point no 5-cleaning of UPS main batteries, plastic covering of field instruments etc. as per instruction of Engineer in Charge.



- ❖ Point no 7 - Routine cleaning & Servicing of panel instruments such as recorders, indicators, analogue & digital meters, temperature scanners, vibration monitors, fire system etc. in Supervision of GSECL Engineers.
- ❖ Point no 11 - The damaged / replaced instruments/ cables/all type of instruments scrap etc. Would be loading, unloading and crediting the same in store as per instruction of Engineers in Charge.
- ❖ Point no 18 - Contractor's manpower shall be engaged for the work of Minor medication, instruments cable testing, loop checking as per plant emergency and instruction of Engineer in charge.
- ❖ Point no 19 - Every work to be planned, carried out, recorded and maintained as per prevailing ISO System and as per direction of Engineer in Charge.
- ❖ Point no 20- Checking / replacement of Turbine/Generator /HT auxiliaries bearing/ winding Temperature elements, metal temperature measurement elements, Combustor thermo wells and thermocouples as and when required, will be done by contractor under the supervision of GSECL technician.
- ❖ Point no 21 - Any C& I system or instruments not included in above, put as a part of hole plant the same will be maintained, trouble shooted, repaired by the contractor as per instruction of Engineer in Charge.
- ❖ Point no 22- Any other work related to C& I maintenance to be carried out by the contractor as per instruction of Engineer In charge.

6.2. Hence, in view of the aforementioned paragraph of the agreement the appellant asserts that the manpower supplied by the contractor is mandated to work in accordance with instructions and under the direct supervision of the Engineers appointed by the service recipient. From the above, it appears that the adjudicating authority has not considered the agreement made between the appellant and GSECL in totality.



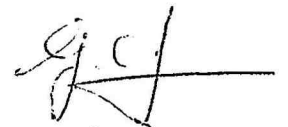


7. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to examine the case on merits and also to consider the claim of the appellant for exemption from the service tax. The appellant is directed to submit all the records and documents in support of their claim, for fulfilling the two elements required for being covered under the definition of the "supply for manpower service" before the adjudicating authority. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

8. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

9. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।


The appeal filed by the appellant stands disposed of in above terms.



ज्ञानचंद जैन  
आयुक्त (अपील्स)

Date : 30.01.2024

Attested



(अमरेंद्र कुमार)

अधीक्षक (अपील्स)

सी. जी. एस. टी, अहमदाबाद



**By RPAD / SPEED POST**

To,  
M/s Star Instrument Services,  
6, Harikrupa Society, Nr. Kailash Park,  
Opp. P.D. Pandya College,  
Vatva, Ahmedabad-380 050

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, Central GST, Div.-II Ahmedabad South
- 4) The Deputy/Assistant Commissioner (RRA), Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South ( For uploading the OIA)
- 6) Guard File
- 7) PA file

