



::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN - 20210364SX00004934DC

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	V2/26/RAJ/2020	2/JC(AKS)/2019-20	29.11.2019

ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-006-2021**

आदेश का दिनांक / Date of Order:	<b>25.02.2021</b>	जारी करने की तारीख / Date of issue:	<b>08.03.2021</b>
------------------------------------	-------------------	--	-------------------

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित/  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals),  
Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपयुक्तलिखित जारी मूल आदेश से सृजित: / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

**M/s. I Tech Advance Inspection Services, Survey No. 245, Plot No. N, Near Pragati Steel Scrap, Opp Gram Swaraj Mandal, Shapur (Veraval), Rajkot.**

इस आदेश (अपील) से ब्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। / Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। / Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। / The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। / To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। / 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.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। / The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनवेट जमा की ली गई गलत राशि
  - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
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  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पत्रो कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)



**:: ORDER-IN-APPEAL ::**

M/s I Tech Advance Inspection Services, Rajkot (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/26/RAJ/2020 against Order-in-Original No. 2/JC(AKS)/2019-20 dated 29.11.2019 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central GST & Central Excise, Rajkot (*hereinafter referred to as "adjudicating authority"*).

2. The facts of the case, in brief, are that the Appellant was engaged in providing 'Technical Inspection and Certification Agency Services' and was registered with Service Tax department under Registration No. AACFI8307EST001. Investigation carried out against the Appellant revealed that they had carried out radiographic testing process on various metallic components and had charged and collected service tax from their clients but had short paid / not paid service tax in Government Account during the period from January, 2013 to June, 2017. The investigation further revealed that the Appellant had also failed to file ST-3 Returns for the said period.

2.1 Investigation culminated into issuance of Show Cause Notice No. V.ST/AR-VII/DIV-RJT-II/ADC(RKC)/5/2018-19 dated 7.9.2018 calling the Appellant to show cause as to why Service Tax amount of Rs. 89,40,454/- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act'*) along with interest under Section 75 and also proposing imposition of penalty under Sections 76, 77 and 78 of the Act. The notice also proposed recovery of late fee under Section 70 read with Rule 7C of the Service Tax Rules, 1994 for failure to file ST-3 Returns.

2.2 The above Show Cause Notice was adjudicated vide the impugned order, which confirmed demand of Service Tax of Rs. 89,40,454/- under proviso to Section 73(1) and ordered for its recovery along with interest under Section 75 of the Act and also imposed penalty of Rs. 89,40,454/- under Section 78 of the Act, penalty of Rs. 2,00,000/- under Section 70 and penalty of Rs. 10,000/- each under Section 77(1)(b), Section 77(1)(c), Section 77(1)(e) and Section 77(2) of the Act.

3. Being aggrieved, the Appellant has preferred the present appeal on various grounds, *inter alia*, as under:-

- (i) The adjudicating authority has erred in confirming service tax demand of Rs. 89,40,454/-; that the adjudicating authority erred in valuation of taxable service provided by them for the period under reference.



(ii) The adjudicating authority has erred in not allowing them the benefit of Notification No. 25/2012-ST dated 20.6.2012 and Notification No. 214/86-CE dated 25.3.1986.

(iii) The adjudicating authority has erred in imposing penalty under Sections 70, 77 and 78 of the Act; that the adjudicating authority has erred not taking cognizance of payment made by them before issuance of Show Cause Notice while imposing penalty under Section 78.

4. Personal Hearing in the matter was scheduled in virtual mode on 26.8.2020, 11.9.2020, 28.9.2020, 30.12.2020, 12.1.2021, 27.1.2021, 11.2.2021 and 23.2.2021. However, the Appellant did not give consent for hearing on any of the dates but instead sought adjournments on various grounds.

4.1 In reply to letter fixing hearing on 23.2.2021, the Appellant mailed letter dated 22.2.2021, wherein they, inter alia, contended that they are not running merely simple testing service but an engineering diagnostic centre where after diagnosing the defects, if any, they have necessary machines and assets to carry out corrections on the said defects. Thus, they are engaged in job work and hence, entitled to exemption as per Sl. No. 30 of Notification No. 25/2012-ST dated 20.6.2012 read with Notification No. 214/86-CE dated 25.3.1986. The Appellant requested to remand the matter to the adjudicating authority to decide whether activities carried out by them are covered under services or job work activity.

4.2 The Appellant again submitted additional submission vide letters dated 23.2.2021, inter alia, contending that they were under bona fide belief that the services rendered by them were not liable to service tax in terms of Notification No. 25/2012 dated 20.6.2012 and hence, they had not even collected the service tax. The Appellant further pleaded that in the absence of any contemptuous conduct or deliberate evasion of tax, no penalty under section 78 may be imposed. They raised following additional grounds in terms of Section 35A of the Central Excise Act, 1944, as applicable to service tax:

(i) They had not charged and collected service tax during certain period and hence, they were eligible for cum-tax benefit in terms of Section 67(2) of the Act.

(ii) They had submitted details of Cenvat credit available with them during recording of statement, however, the adjudicating authority has not considered while determining service tax liability.



4.3 I find that sufficient hearing opportunities have been granted to the Appellant and no further adjournment can be granted. I, therefore, take up the appeal for decision on the basis of grounds raised in appeal memorandum and submission made vide letters dated 22.2.2021 and 23.2.2021.

5. Before taking up the appeal for decision, I take up the miscellaneous application filed by the Appellant for condonation of delay in filing appeal stating that they received impugned order on 17.12.2019 but filed appeal on 17.3.2020, which is beyond period of 2 months. The Appellant requested to condone delay in filing appeal on the grounds that their consultant was busy with work related to finalization of GST annual return; that the Accountant of the firm who was handling the matters left their firm and new Accountant had to compile required details. I find that the Appellant had filed appeal beyond 2 months from receipt of impugned order but within further period of one month. Considering the reasons put forth by the Appellant, I, under proviso to Section 85(3A) of the Act, condone delay in filing appeal and take up the appeal for decision on merit.

6. I have carefully gone through the facts of the case, the impugned order and grounds raised in Appeal Memorandum. The issue to be decided in the present appeal is whether the impugned order confirming service tax demand of Rs. 89,40,454/- and imposing penalty under Sections 70, 77 and 78 of the Act, is correct, legal and proper or not.

7. On going through the records, I find that an offence case was booked against the Appellant for evasion of service tax. Investigation carried out against the Appellant revealed that they had carried out radiographic testing process on various metallic components, which was covered within definition of 'service' in terms of Section 65B(44) of the Act. The investigation further revealed that they had charged and collected service tax from their clients but had short paid / not paid service tax in Government Account during certain period from January, 2013 to June, 2017 and failed to file ST-3 Returns for the said period.

8. It is pertinent to examine the findings recorded at Para 14.3 and Para 14.4 of the impugned order, which are reproduced as under:

"14.3 I find that during investigations, statement of Shri Chintal Gajera, Partner of the Noticee firm, who was looking after entire day to day work of their firm, was recorded on 23.11.2016 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, wherein he has categorically admitted that ".....  
*M/s. I Tech Advance Inspection Services, Rajkot carry out radiographic testing*



*dy*

*processes on various metallic components viz. castings received from various service recipients/manufacturers of castings. Radiography is a kind of Non Destructive Testing Process (NDT) which is performed in semi-finished or finished stage of manufacturing or before final fettling process as per Final Purchaser's requirements. Such requirement, covers particular defect type and its level or to meet dimension tolerances. .... For providing services, we use machineries viz. Radiography Camera, Welding Machine, Compressor etc. and raw materials Radiographic Film."*

14.4 I further find that when specifically asked about charging of Service Tax from their clients, he admitted that "Yes, our firm has charged and collected Service Tax in invoices raised to our Service Recipients for the period from January 2013 to 30.09.2014 and further for period from 01.10.2015 till date. We have not charged or collected service tax in respect of services provided to various service recipients for the period 01.10.2014 to 31.09.2015 and availed exemption benefit of Notification No. 25/2012-ST dated 20.06.2012 read with Notification No. 214/86-CE."

8.1 As per findings recorded above, it is observed that the Appellant carried out radiographic testing processes on various metallic components viz. castings received from their clients. Such test was carried out using Radiography camera, Radiographic Film etc. to find out any defect in casting and its level or to meet dimension tolerances. The Appellant had issued invoices with description 'service charges for testing of castings' as recorded in para 14.7 of the impugned order. The Appellant had obtained service tax registration under the category of 'Technical Inspection and Certification Agency Services' and had also charged and collected service tax from their clients during certain period as per findings in the impugned order. From the nature of activities undertaken by the Appellant, I am of the considered view that the same is covered as service within the meaning of Section 65B(44) of the Act and the Appellant is liable to pay service tax on consideration received by them. I rely on the Order passed by the Hon'ble CESTAT, Chennai in the case of Super Quality Services reported as 2016 (42) S.T.R. 538 (Tri. - Chennai) passed on similar issue. In the said case, the party was carrying out radiographic testing on industrial castings so as to identify any defects on the castings by using x-ray film through Radiography testing. The Tribunal held that such activity was covered under 'Technical Inspection and Certification Agency Services' in terms of Section 65(105)(zzi) of the Finance Act, 1994. I find that with effect from 1.7.2012, there is no requirement to classify service under specific taxable category, however, there is no denying the fact that the activities carried out by the Appellant was covered within the term 'service' defined under Section 65B(44) of the Act and



it is liable to service tax as the said service was not covered under negative list under Section 66D of the Act.

9. The Appellant has contended that the adjudicating authority had erred in denying them the benefit of Notification No. 25/2012-ST dated 20.6.2012 and Notification No. 214/86-CE dated 25.3.1986. On going through the impugned order, I find that the Appellant was given several opportunities of personal hearings but the Appellant did not appear before the adjudicating authority nor filed any reply to Show Cause Notice. However, I find that the adjudicating authority has dealt with the issue as per findings recorded at para 14.7 of the impugned order reproduced as under:

“14.7 On the basis of data collected from the Noticee during investigation, I find that the Noticee had provided services of “Technical Inspection and Testing Certification” in respect of Castings received from their clients. They issued certificates to their clients after testing about fitness of the products forwarded by their clients. According to the Noticee, they were doing jobwork as a manufacturer and hence the services provided by them were exempted under Notification No. 25/2012-ST dated 30.6.2012 read with Notification No. 214/86-CE. However, I find that the Noticee were only doing testing of products with the instruments viz. Radiography Camera, Welding Machine, Compressor etc. and Radiographic film. The testing of castings to find out any defect with the help of above instruments cannot be considered as a manufacturing process on job work. The Noticee used to issue invoices for service charges for testing of castings only. They also raised invoices containing Service Tax and in some cases they have collected service tax from their clients. Thus, the above contentions made by the Partner of the Noticee in his statement is not tenable and therefore, I reject the same.”

9.1 It is further observed that Notification No. 214/86-CE dated 25.3.1986 granted exemption to the job worker from payment of Central Excise duty when goods were sent by the Principal manufacturer on following the procedure prescribed in the said notification. I reproduce relevant portion of the said notification as under:

“The exemption contained in this notification shall be applicable only to the said goods in respect of which,-

(i) the supplier of the raw materials or semi-finished goods gives an undertaking to the Assistant Collector of Central Excise having jurisdiction over the factory of the job worker that the said goods shall be -

(a) used in or in relation to the manufacture of the final products in his factory; or

(b) ...



*[Handwritten signature]*

(c) ...

(d) ...

(ii) the said supplier produces evidence that the said goods have been used or removed in the manner prescribed above; and

(iii) the said supplier undertakes the responsibilities of discharging the liabilities in respect of Central Excise duty leviable on the final products."

Explanation 1 –

For the purpose of this notification, the expression 'job work' means processing or working upon of raw materials or semi finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process."

Since, the activities carried out by the Appellant was 'service' as held by me in para supra, the said activities does not get covered under the expression 'job work' given in Explanation 1 supra and consequently, Notification No. 214/86-CE dated 25.3.1986 has no applicability in the present case. I, therefore, discard the contention raised by the Appellant being devoid of merit.

10. It is pertinent to mention here that the Appellant had opted for 'Voluntary Compliance Encouragement Scheme, 2013' (VCES-2013) and had discharged their service tax liability in respect of services in question for the period up to December, 2012 as recorded in impugned order. The Appellant continued to provide said Technical Inspection and Certification Agency Service thereafter and also collected service tax from their clients but did not deposit the same in Government account during certain period from January, 2013 to June, 2017, as revealed during investigation and has been admitted by the partner of the Appellant. If the said service provided by them was not taxable as claimed by the Appellant, then there was no justifiable reason for them to charge and collect service tax from their clients. When any amount is collected as Service tax, it is required to be deposited to the Government account as stipulated in Section 73A of the Act but the Appellant failed on this count. Further, the Appellant did not file prescribed ST-3 Returns for the period from January, 2013 to June, 2017, ostensibly to hide their liability from the Department. All these evidences point to the fact that the Appellant was involved in deliberate evasion of service tax during all these years.

11. Further, I examine two additional grounds raised by the Appellant vide



*[Handwritten signature]*



letters dated 23.2.2021 by resorting to Section 35A of the Central Excise Act, 1944. The Appellant has contended that they were having Cenvat credit available in their Cenvat credit account but the adjudicating authority had not considered the same while determining service tax liability. The second ground raised by the Appellant is that they were eligible for cum-tax benefit since they had not charged service tax during certain period. Admittedly, the Appellant had not raised these two issues before the adjudicating authority during adjudication proceedings. The Appellant has also not raised these issues in appeal memorandum filed before this appellate authority but only cursorily raised these issues in their letter dated 23.2.2021. I find that Section 35A of the Central Excise Act, 1944 has not been made applicable to service tax by Section 83 of the Finance Act, 1944 and there is no provision in Section 85 of the Finance Act, 1994 to raise at appeal stage any new plea, which has not been raised earlier before the adjudicating authority. I, therefore, hold that the Appellant cannot raise any new ground which has not been agitated before the adjudicating authority. I discard both these new grounds for the above reasons.

12. In view of discussion and findings above, I hold that the Appellant was rightly held liable to pay service tax by the adjudicating authority. I, therefore, uphold the confirmation of service tax demand of Rs. 89,40,454/-. Since demand is upheld, it is natural that confirmed demand is required to be discharged along with interest. I, therefore, uphold recovery of interest under Section 75 *ibid*.

13. As regards penalty imposed under Section 78 of the Act, the Appellant has pleaded that they were under *bona fide* belief that the services rendered by them were not liable to service tax in terms of Notification No. 25/2012 dated 20.6.2012 and hence, they had not even collected the service tax. The Appellant further pleaded that in the absence of any contemptuous conduct or deliberate evasion of tax, no penalty under section 78 may be imposed. I find that one can have *bona fide* belief due to decisions of the Hon'ble High Court/CESTAT holding that service tax was not payable or any instructions / Circular issued by CBIC on the subject matter. However, the appellant has not brought on records any case law / Board's Instructions or given any reason / justification as to why they were holding such belief. On the contrary, it is on record that the Appellant had registered themselves under the category of Technical Inspection and Certification Agency Services'. The partner of the Appellant firm had admitted during investigation that they had charged and collected service tax from their clients but did not deposit in Government account. The non-payment of service



tax by the Appellant was unearthed only during investigation carried out by the Department. They had also not filed any ST-3 Returns during the entire period and hence they had not declared their liability to the Department. Had there been no investigation by the Department, the non-payment of service tax by the Appellant would have gone unnoticed. So, there was suppression of facts involved in the present case with intent to evade service tax.

13.1. I also find from the impugned order that the Appellant had opted for Voluntary Compliance Encouragement Scheme (VCES) 2013 and had discharged their service tax liability in respect of the services in question for the period up to December, 2012. Hence, it is apparent from the facts emerging from records that the Appellant had knowledge about their tax liability. Subsequently, they had charged service tax and collected it from their clients for certain period as recorded in the impugned order but failed to deposit the same in government account as mandated by law. Hence, the appellant is a habitual offender involved in evasion of service tax. Since the Appellant suppressed the facts of non-payment of Service Tax with intent to evade payment of tax, penalty under Section 78 of the Act is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 89,40,454/- imposed under Section 78 of the Act.

14. I find that the adjudicating authority has imposed penalty of Rs. 10,000/- each under Section 77(1)(b), Section 77(1)(c), Section 77(1)(e) and Section 77(2) of the Act for failing to keep, maintain books of accounts and other documents as required under the act, failing to produce documents called upon during the investigation, failure to issue invoices to their clients showing all the details, failure to assess correct service tax liability respectively. I concur with the findings of the adjudicating authority and uphold imposition of penalty Section 77(1)(b), Section 77(1)(c), Section 77(1)(e) and Section 77(2) of the Act.

15. As regards the late fees imposed under Section 70 of the Act, I find that the Appellant was registered with service tax but they failed to file ST-3 returns for the period from January, 2013 to June, 2017. Hence, the Appellant has been rightly held liable for late fees under Section 70 of the Act. I, therefore, uphold

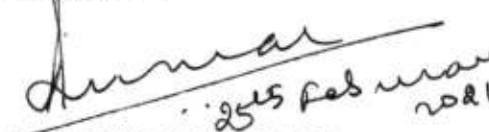


late fees amount of Rs. 2,00,000/- under Section 70 of the Act.

16. In view of the above, I uphold the impugned order and reject the appeal.

17. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

17. The appeal filed by the Appellant is disposed off as above.

  
25 Feb 2021  
(AKHILESH KUMAR)  
Commissioner (Appeals)

Attested



(V.T.SHAH)  
Superintendent (Appeals)



By Regd Post A.D.

<p>To, M/s I Tech Advance Inspection Services, Survey No. 245, Plot No. N, Near Pragati Steel Scrap, Opp Gram Swaraj Manadal, Shapar (Veraval), Rajkot.</p>	<p>सेवा में, मे. आई टेक एडवांस इन्सपैक्शन सर्विसेस सर्वे न° 245, प्लॉट न° एन, प्रगति स्टील स्क्रेप के पास, ग्राम स्वराज मण्डल के सामने, शापर (वेरावल), राजकोट।</p>
---	--

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-2 मण्डल, राजकोट को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

