



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



द्वितीय तल, जी एस टी भवन / 2nd 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

DIN20221164SX00005025EC

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अपील / फाइल संख्या/
Appeal / File No.
V2/51/BVR/2022

मूल आदेश सं / O.I.O. No.

BHV-EXCUS-000-JC-LD-027-2021-
22

दिनांक/Date

22-03-2022

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

BHV-EXCUS-000-APP-080-2022

आदेश का दिनांक /

Date of Order:

11.11.2022

जारी करने की तारीख /

Date of issue: 14.11.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

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अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम।
द्वारा उपरलिखित जारी मूल आदेश से सूचित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

M/s. Techsara Private Limited, 401, Nr. Anand Vihar Akhada, Prabhudas Talav, Bhavnagar-364001

इस आदेश (अपील) से व्यवित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 मुद्दाओं से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, की 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 वे सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिचय क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 की जानी चाहिए /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 मांग, ब्याज की मांग और नगाना या जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय 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 रजिस्टार 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 आदेश-पत्र के साथ 500/- रुपय 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 सकती 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 मांग, ब्याज की मांग और नगाना या जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय 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 रजिस्टार 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 आदेश-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा /

An 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 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 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 नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्याय आवृत्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त अथवा उपआवृत्त, 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की गयी मूलत राशि
- (iii) सेनवेट जमा निवामावली के नियम 8 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान विधेय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थीन स्वयंज 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणवाहिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अथवा सर्विद, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौबी मंजिन, 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 मान के किसी नुकसान के मामले में, जहां नुकसान किसी मान को किसी कारखाने से अंदर गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंदर गृह से दूसरे अंदर गृह पारगमन के दौरान, या किसी अंदर गृह में या अंदरगमन में मान के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंदर गृह में मान 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 मान के विनिर्माण में प्रयुक्त कच्चे मान पर भरी गई केन्द्रीय उत्पाद शुल्क के कूट (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 मान 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 इव्टी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आवृत्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समावाहिकि 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)नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघेषण 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 अदावगी के साथच 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 O.I.O 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 अदावगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये वा 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 निम्न पट्टी कार्य से बचने के लिए ब्यवस्थिति अपीलीय न्यायाधिकरण को एक अपील वा केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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) ब्याससंघोधित 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-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान अकर्मित 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, अपीलाधी विभागीय वेबसाइट 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Techseria Pvt. Ltd. (Earlier known as M/s. Open Source Squad Consultancy Private Limited), Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-LD-027-2021-22 dated 22.03.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that on the basis of data/ details provided by the Income Tax Department containing various persons i.e. Income Tax Assessee, who declared in their Income Tax Returns for financial year 2014-15, 2015-16 & 2016-17 to have earned income by providing services classified under various service sectors, it was found that the Appellant has not obtained Service Tax registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The Income Tax Department had also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, 1961 in respect of various persons which depicted that such persons had earned income from providing services. The Jurisdictional Range Superintendent issued letters to the Appellant calling for information/ documents for the financial year 2014-15, 2015-16, 2016-17 & 2017-18 (upto June-2017). Appellant vide their letter dated 21.08.2020 submitted that they are engaged in providing Information Technology software Service having 100% revenue from export business and not liable to pay Service Tax and they also submitted Balance Sheet, Form 26AS, Bank Account Statement etc. for the period from 2014-15 to 2017-18. The Appellant also submitted that e-brc were not available due to non applicability of port code and FIRC are being sought from the bank.

3. The investigation culminated into Show Cause Notice dated 10.09.2020 proposing to demand Service Tax of Rs. 51,56,346/- including all cesses under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act'), interest under Section 75 and penalty under Section 77(1)(a), 77(2), and Section 78 of the Act by invoking extended period. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 51,56,346/- under Section 73(1) with interest under Section 75 and imposed penalties of Rs. 10,000/- each under Section 77(1)(a) and 77(2) of the Act. The penalty of Rs. 51,56,346/- was also imposed upon the Appellant under Section 78 of the Act.

4. Being aggrieved, the Appellant has preferred the present appeal on ground that the adjudicating authority erred in law and by not appreciating facts that the Show Cause Notice was issued after due time which is not valid in eyes



Handwritten signature and date: 11-11-2022

5. Personal hearing in the matter was held on 03.11.2022. Shri Ankit Bhatt, Advocate appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the Appellant is exporting their entire services and they are not liable to pay any Service Tax. However, they were under the impression that they are not liable to take registration or file return ST-3. While admitting this bonafide failure on their part, they are contesting the tax liability. They could not submit copies of FIRC to the lower authority as the same are received from the authorized bank after certain time. He submitted a set of copies of these FIRC with additional arguments and requested to consider the same. Therefore, he requested to set aside the demand for Service Tax and the penalty under Section 78 of the Finance Act, 1994 imposed on them.

6. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on activity carried out by them or not. The Adjudicating Authority has held that the Appellant had received income from Information Technology Software Service/ IT enabled services (software development) during the Financial Year 2014-15 to 2017-18 and the services provided by the Appellant are also not covered under the Negative List under Section 66D of the Act. He further observed that these services are not exempted under mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012 and hence are subject to levy of Service Tax under Section 66B of the Act. The appellant failed to submit the copies of FIRC during the course of adjudication to establish that the payment for such service has been received by them in convertible foreign exchange under Rule 6A(1)(e) of the Service Tax Rules, 1994. Therefore, the Adjudicating Authority held that the services provided by the Appellant cannot be treated as export of services and they are liable to pay the Service Tax.

7. The Appellant during the course of personal hearing submitted written submission wherein they stated that they are engaged in providing services related to Information Technology - such as Software Design, Software maintenance, Software Functions repair, Website Development, Website maintenance and other related services for outside India. On verification of Form 26AS submitted by the Appellant for the year 2014-15 to 2017-18, it is clear that they have not received any income except bank interest. Thus, they have not received any income from indigenous customers. They have also submitted copies of IT Service Income ledger from 2014-15 to 2014-18 wherein they have received income from various customers viz. OPGSP Set, Savel LLC-LA-USA, MRP Vision-LA-USA, Transferwise Ltd, Premier Technology, Blur Limited, Research Analytic, Mule Data, Development Ltd., Nikosh ltd., Swipe Task Pte, Chi



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k Bang, Ansera D.O.O., Ross Hunter, Josh Green, Wilco Van, Seasonal, Liam Patton, Blue Grass Digital Ltd., Entropy etc. The Appellant have submitted the certificate of inward remittance issued by City Bank, Bank of America, Yes Bank and Standard Chartered bank, wherein remittance amount has been mentioned in US Dollar as well as Indian Rupees during the period 2014-15 to 2017-15 and the name of remitter has also been mentioned which tallies with the name of the customers as mentioned above. They have also submitted the copies of account statement issued by Standard Chartered Bank and State Bank of India.

8. It is clear from the records submitted that the services provided by the Appellant is classifiable under the category of "Export Services". The Appellant is located in India and the service recipients are outside of India. Further, the services provided by the Appellant are not specified in the negative list as per Section 66D of the Act. The services have also been provided outside India and the payment received by the Appellant is in convertible foreign exchange. Therefore, I find that the activity of the Appellant falls within the four corners of the Rule 6A of the Service Tax Rules, 1994 (hereinafter referred to as 'the Rules'). On going through the case records and submissions made by the Appellant, I have no doubt that the Appellant is providing export services satisfying the provisions of the Place of Provision of Services Rules, 2012 notified vide Notification No. 28/2012-Service Tax dated 20.06.2012, as amended.

9. The place of provision of service has been defined under Place of Provision of Services Rules, 2012 (Notification No. 28/2012-Service Tax dated 20.06.2012) which reads as under:

"3. Place of provision generally. - The place of provision of a service shall be the location of the recipient of service:"

The provisions of Rule 6A of the Rules are re-produced below for reference:

"6A. Export of services.-

(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the provider of service is located in the taxable territory,

(b) the recipient of service is located outside India,

(c) the service is not a service specified in the section 66D of the Act,

(d) the place of provision of the service is outside India,

(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act

(2)"

On the basis of documents submitted by the Appellant, it is clear that the provider of service i.e. the Appellant is located in the taxable territory and the recipients of service are located outside India. Further, the service is not



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specified in the Section 66D of the Act. The place of provision of the service is outside India in terms of Rule 3 of the Place of Provision of Services Rules, 2012. The payment has been received in convertible foreign exchange as the Bank of America has received the payment in US dollar or pound and the same was remitted to Appellant's bank account in equivalent convertible Indian Rupees. On verification of sample copies of invoices submitted by the Appellant, it is clear that they had issued the invoices having amount either in US Dollar or GB Pound. As all these ingredients are satisfied, the service provided by the Appellant is nothing but export of service. Therefore, the services provided by the Appellant are not liable to Service Tax.

10. However, I am of the considered view that the Appellant was liable to obtain Service Tax registration and to file statutory returns, which they failed to do. Therefore, I find that they are liable for penalty under Section 77(1)(a) and Section 77(2) of the Act. Since the service tax is not leviable on the activities carried out by the Appellant, the question of levy of interest and penalty under Section 78 of the Act is not warranted.

11. In view of discussions and finding, I set aside the impugned order, except for the penalty under Section 77(1)(a) and 77(2) as mentioned at para 10 supra, and allow the appeal filed by the Appellant.

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

12. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested



Superintendent

Central GST (Appeals) आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

Rajkot

(शिव प्रताप सिंह)/(Shiv Pratap Singh),

To, M/s. Techseria Pvt. Ltd. (Earlier known as M/s. Open Source Squad Consultancy Private Limited), Plot No. 401, Near: Anand Vihar Akhada, Prabhudas Talav, Bhavnagar.	सेवा में, मेसर्स टेकसेरिया प्राइवेट लिमिटेड (पहले ओपन सोर्स स्कवाड कंसल्टंटी प्राइवेट लिमिटेड) प्लॉट संख्या: 401, आनंद विहार अखाड़ा के पास. प्रभुदास तलाव, भावनगर
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प्रतिनिधि :-

- 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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

