

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70807 of 2018

(Arising out of Order-In-Appeal No.140-ST-APPL-AUDIT-LKO-2018, dated - 22/03/2018 passed by Commissioner (Audit), CGST & Central Excise, Lucknow)

M/s U P Electronics Corporation Ltd,Appellant
(10, Ashok Marg, Lucknow, Uttar Pradesh 226001)

VERSUS

Commissioner, CGST & Central Excise, Lucknow
....Respondent

(7 Havelock Road, Lucknow Uttar Pradesh-226001)

APPEARANCE:

Shri Shiv Kumar Yadav, Advocate for the Appellant
Ms. Chitra Srivastava, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER NO.70795/2025

DATE OF HEARING : 15.07.2025
DATE OF DECISION : 13.11.2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Appeal No.140-ST-APPL-AUDIT-LKO-2018, dated -22/03/2018 passed by Commissioner (Audit), CGST & Central Excise, Lucknow. By the impugned order Commissioner (Appeals) has held as follows:-

"In the foregoing paras I have confirmed the demand of Service Tax amounting to Rs.3,09,387/- (Rs.2,33,851

+ Rs.75,536) and dropped the demand of Rs.48,283/-.

Accordingly I also reduce the penalty to Rs.30,939/-.

In view of aforesaid, I pass the following order -

ORDER

I, partially allowed the Appeal No. 92/ST/2017 dated 23.05.2017 filed by M/s. U. P. Electronics Corporation Ltd., 10, Ashok Marg, Lucknow in the above manner.

2.1 The Appellant is engaged in providing taxable services under the category of 'Commercial Training or Coaching Centre, Information Technology Software Services and Business Auxiliary Service'.

2.2 Demand Cum Show Cause Notice No.3/JC/ADJ/Lko/ 2015-16 dt.15.04.2015 for the Financial Year 2013-14 issued demanding Service Tax in respect of these activities. In furtherance of the said Show Cause Notice Appellant vide Letter dated 30.10.2015, 20.11.2015 and 18.12.2015 asked to provide information in respect of the above services for the period 2014-15 & 2015-16 (upto Sept. 2015). The Appellant vide letter dated 07.01.2016 provided head-wise information alongwith the supporting documents, copy of annual accounts for the Financial Year 2014-15.

2.3 On the basis of the information provided, the short payment of Service Tax has been computed as in table below:-

Period (Financial Year)	Amount received as per profit & loss account		Total Amount received (sum of column no.2 &3)	Corporate Computer Training Fee account credited by the transfer from advance account	Difference between (column no.4 & 5)	amount shown in the ST-3 return (out of the figure shown in col.6)	amount on which serviceta x has not been paid (Col.6 & Col.7)	the Service tax	Service Tax short paid (Col.8* Col.9)
	Corporate Computer Training Fee	Computer education fee							
1	2	3	4	5	6	7	8	9	10
2014-15	23013520	3683621	26697141	13705375	12991766	10744384	2247382	12.36 %	277776

Year	Rate of Service Tax	Total value of service on which S. Tax is payable (as	Taxable value on which service tax has	Differential value on which service tax not paid (Col.4-3)	(Amt. in Rs.) Service Tax short paid
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		shown in RUD 4)	been paid (as per ST-3 returns		
1	2	3	4	5	6
2013-14	12.36%	15,86,73,730	15,87,49,851	76121	
	Total	15,86,73,730	15,87,49,851	76121	nil
					nil

Year	Rate of Service Tax	Total amount received against which no Service Tax has been paid	Service Tax not paid
1	2	3.	4
2014-15	12.36%	18,92,000/-	2,33,851/-
	Total	18,92,000/-	2,33,851/-

2.4 Thus the Appellant has short paid Service Tax amounting to Rs.5,11,627/- during the Financial Year 2014-15 under the provision of Section 66B, 67 & 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. The said amount alongwith the interest payable under Section 75 of the Act was recoverable from the client.

2.5 A statement of demand dated 17.03.2016 was issued to the Appellant asking them to show cause as to why:-

- (i) Service Tax amounting to Rs.5,11,627/-/(Rupees Five lacs eleven thousand six hundred and twenty seven only) not paid by them, should not be demanded and recovered from them under the provision of Section 73 (1) of the Finance Act, 1994.
- (ii) Interest should not be charged on the aforesaid amount and recovered from them at the appropriate rate till the date of actual payment under Section 75 of the Finance Act, 1994.
- (iii) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994.

2.6 The statement of demand has been adjudicated as per the Order-In-Original No. 187/DC/ U.P. Electronics Corporation /LKO-I/2016 dated 22.03.2017 holding as follows:-

ORDER

1. I hereby confirm the demand of Service Tax amounting to Rs.3,57,670.00 under Section 73 (1) of the Act alongwith interest at appropriate rate under Section 75 of the Finance

Act, 1994. I drop the demand of Rs.1,53,957.00 [(Rs.5,11,627.00 (-) Rs.3,57,670.00)].

2. I impose penalty of Rs.35,767.00 under Section 76(1) of Finance Act, 1994 for short payment of Service Tax.

2.7 Aggrieved Appellant filed appeal before the Commissioner (Appeals) which has been disposed of as per the impugned order. Aggrieved Appellant has filed this appeal.

3.1 This matter has been listed for hearing on number of times i.e. 18.03.2024, 24.06.2024, 29.07.2024, 18.09.2024, 13.11.2024, 09.12.2024, 05.03.2025 & 15.07.2025. When the matter was listed on 15.07.2025, none appeared for the Appellant. Shri Shiv Kumar Yadav, Clerk for the Counsel appeared and requested for an adjournment. Since the matter has been adjourned for more than the maximum prescribed number of times as per proviso to Section 35C (1A) of the Central Excise Act, 1944 matter has been taken up for consideration after hearing the Revenue. On 15.07.2025 following order was passed:-

ORDER SHEET

"When the matter was called, Shri Shiv Kumar Yadav, Clerk of the counsel for the Respondent appeared on behalf the counsel and requested for an adjournment.

2. Since the issue is in very narrow compass and matter has been adjourned more than 3 times and on the last occasion matter was adjourned by way of last chance, we are deciding the issue on merits.

3. Heard learned Authorized Representative for the Revenue and perused the appeal records.

4. **Order Reserved.** Both sides are at liberty to file written submission."

3.2 We have not received any written submission from the Appellant.

3.3 Heard learned Authorized Representative for the Revenue who reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 The impugned order records as follows:-

"I find that demand of Rs.48,283/- has been proposed against value related to Computer Education Fee. This fee was received by the institute in Agra accredited by NIELIT. This institute provided computer training to the students which enabled them to appear in 'O' level certificate examination conducted by NIELIT. The demand was confirmed by the adjudicating authority for non-submission of certificate authorizing the appellant to give such training, Since the appellant has provided such certificate therefore, as per exemption provided under Notification No. 25/2012-ST dated 20.06.2012 such fee is not liable to be taxed.

In the instant case Appellant have themselves submitted that being a nodal agency of government, they receive various enquiries from the concerned government departments for development of software etc. to make presentation before the concerned department as per their requirement. For accomplishing the said requirements, appellant empanel various vendors, who may visit and chalked the plan for software development. From the above description of their work it is apparent that the appellants are engaged in the service of promoting business of the said vendors by way of finding/evaluating their prospective customers and also helping them in planning software development accordingly, I find that non-refundable amount collected as processing fees (tender cost) or whatsoever name it is called is liable to be taxed. Therefore I find that the amount of Rs.18,92,000/-involving Service Tax amounting to Rs.2,33,851/-, received by the appellant as

non-refundable processing fees (tender cost) is liable to be taxed. Original Adjudicating authority has rightly confirmed the demand and termed this service as Business Support Service

I also find that the Adjudicating authority has already reduced the demand by considering the plea of the Appellants regarding computation error, I find that he has rightly confirmed the amount of Service Tax of Rs.75,536/- and therefore I uphold the of demand of Rs.75,536/-."

4.3 We find that the demand have been confirmed in respect of the business support services as made in the statement of demand and in respect of the commercial training and coaching services. The demand has been reduced from Rs.2,77,776/- to Rs.75536/-. All other demand raised in the statement of demand have been dropped.

4.4 The Order-In-Original records as follows:-

The demand under discussion was raised mainly on the basis of taxable amount reflected in ST-returns for the financial year 2014-15 vis-à-vis P & L account for the period. The party submitted revised ST-3 return physically for the period with the plea that the ACES system had not accepted it, as revision of a ST-3 return in ACES system is not allowed after 90 days of filing of original return. The option to revise the ST-3 return was only prorogated in the minds of the party when department enquired into the matter.

The figures to calculate the Service Tax liability have been taken from the Annual Account for the Financial Year 2014-15 and the party has categorized the services as under-

Taxable Value	Service Tax	Remark
18,56,748.00	2,29,493.00	Differential value between P&L account and ST-3 returns for Commercial Training or Coaching Services.
3,90,634.00	48,283.00	Differential value of Computer Education Fee for Commercial Training or Coaching Services.
Sub-total-	2,77,776.00	Refer -Column '8' & '10' of table 'A' of SCN.

22,47,382.00		
18,92,000.00	2,33,851.00	Demand proposed under 'Business Support Services' on tender processing charges alleging that these charges received for providing evaluation of prospective customers and processing of purchase orders
Total- 41,39,382.00	5,11,627.00	

These figures have been submitted by the party vide their letter C.No.Ref:UPLC: Accts: Service Tax (2014-15) dt.07.01.2016 in reference to this office letter C.No. 16-ST/AGUP/UPECL/Gr8/11/258 dr. 17.12.2015.

During the course of Personal Hearing, Shri Praveen Kumar, Dy. General Manager, UPECL, Lucknow, authorized signatory of the party, submitted a synopsis of the reply and requested to pass favorable order accordingly.

In respect of Commercial Training party arbitrarily deducted an amount of Rs.1,28,125/- on account of 'advances not liable to Service Tax' and an amount Rs.3,90,634/- on account of Computer Education Fee from the taxable receipts attracting Service Tax amounting to Rs. 64,119/- [@12.36% of Rs.5,18,759/- (Rs.1,28,125/- Rs.3,90,634/-)]. Further, the admitted short payment of Service Tax amounting to Rs. 11,417/- is said to be paid by adjustment, this is not acceptable as such demandable as they never reported any type of excess payment and adjustment thereof, to their Range Officer. Thus, the demand of Rs.75,536/- (64,119/- +11,417/-) is liable to be confirmed out of the demand of Rs.2,29,493/-related to differential value between P & L account and ST-3 returns for Commercial Training or Coaching Services, and, the rest demand of Rs.1,53,957/- (2,29,493-75,536) is proposed to be dropped.

In respect of differential value of computer education fee for "Commercial Training or Coaching Services" the party submitted that 'A' level and 'O' level training certificate issued by them are recognized by "All India Counsel for

Technical Education" as such Service Tax as not applicable on this service, but they failed to submit the authority by virtue of which they could enjoy the status of "recognized" during the period 2014-15. Hence, the Service Tax demanded on this count amounting to Rs.48,283/- is liable to be confirmed.

In respect of amount received on account of "Businesses Support Service", they have accepted that no bill/invoice had been issued to the empanelled vendors from whom this amount was realized, and this amount was directly credited in their Profit & Loss Account. They have contended that they had not provided any service to the prospective empanelled vendors as such they are out of the purview of any tax. The plea of the party is baseless as they received the remuneration on account of tender processing charges alleging that the charges received for providing evaluation of prospective customers and processing of purchase order. The Service Tax demanded on this count amounting to Rs.2,33,851/- is liable to be confirmed.

During the course of personal hearing the submission of reply to the SCN by the party was considered and on the basis of plea submitted by the party, the demand of Rs.1,53,957/- on account of differential value between P & L account and ST-3 returns for Commercial Training is considered to be dropped. The rest amount of demand amounting to Rs. 75,536/-, Rs.48,283/-, and Rs.2,33,851/- totaling to Rs.3,57,670/- is liable to be confirmed as the plea submitted by them were not supported by any cogent fact. The party have not done self assessment of the Service Tax liability correctly and have shown incorrect value of taxable services in their ST-3 returns. Party failed to deposit the short paid Service Tax of Rs.3,57,670/- (Rupees three lakh fifty seven thousand six hundred and seventy only) inclusive of Education Cess & Secondary Higher Edu. Cess which is demandable and recoverable from them under

Section 73(1) ibid alongwith appropriate rate of interest under Section 75 ibid.

4.5 Undisputedly the Appellant has been in respect of the demand made under the category of Business Support Services have themselves submitted and as recorded in the impugned order that they were providing services for which they collected non-refundable amount collected as processing fees or tender cost. The entire argument made in the impugned order is without taking into consideration the fact that the amount collected was towards tender processing fees levied in respect the tenders floated by the Government. The Appellant as such was not providing any support to the business of the vendors. It may be that in respect of some tenders more than one vendor would be making a bid and each one was charged the same processing fees. It is not understood as to how charging of this processing fees can be termed as considerable for any service being provided. We do not find any merits in this demand.

4.6 We also note that the Commissioner (Appeals) has vide Order-In-Appeal No.05-ST/APPL/LKO/2020 dated 16.01.2020 in the case of the Appellant held as follows:-

"3. Aggrieved with the order, the appellant preferred this appeal on the following grounds:

- The appellant had received a non-refundable token amount from its vendors who have applied for empanelment so that only serious vender may apply and also to bear the cost of e-bid conducted by the appellant.*
- The appellant did not provide any service to the vendors.*

4. Personal hearing in the case was held on 28.11.2019. Shri Pradeep Kumar, Authorized representative, appeared on behalf of the appellant and re-iterated the grounds of appeal.

5. I have gone through the case record. It is apparent from the record that the appellant is a nodal agency of

Government of U.P. for empanelment of the vendors for development of various software. As a part of e-bidding process, non-refundable e-Bid processing fee amounting to thirty thousand rupees was collected from each bidder(vendor) interested in the empanelment. After screening of the bids, successful bidders were empanelled. It is alleged that the said amount of thirty thousand rupees was received by the appellant on account of service of promotion o business of the vendors. Whereas the appellant contend that the said amount was processing fee and no service was provided to the vendors.

6. The argument of the Appellant has merit. The fact that the said amount was collected from successful vendors who got empanelment as well as failed vendor who did not succeed in getting empanelled, shows that the said amount was not in consideration for any service. In view of the above, there is no ground to levy service tax on the impugned amount received from the bidders. The impugned order is therefore, not sustainable and the same is set aside. The appeal is allowed.”

4.7 In view of the above, we do not find any merits in the demand of Rs.2,33,851/-.

4.8 In respect of the Commercial Training and Coaching Services, we find that demand has been made on the basis of the figures reported in ST-3 return and the Financial Records of the appellant. Undisputedly appellant was paying service tax in respect of the Commercial Training and Coaching services. However on comparison of the figures in the financial records and ST-3 certain differences were noticed. Following was observed:

Receipts as per Financial records	a	12991768
Gross Receipts as Per ST-3 return for Apr-Sept	b	4943624
Gross Receipts as Per ST-3 return for Oct-Mar	c	5800760

Gross Receipts as Per ST-3 return (b+c)	d	100744384
Difference (a-d)	e	2247384
Service Tax demanded @ 12.36% (0.1236*e)	f	277776

After taking note of the submissions made by the appellant in respect of differences observed original authority dropped the demand of Rs 1,53,957/- and confirmed the demand of Rs 75,536/-+48,283/- (Demand in respect of receipts for training programs leading to 'A' level and 'O' level Certificates recognized by "All India Council for Technical Education". Impugned order drops the demand of Rs 48,283/-. So the remaining amount of Rs 75,536/- is now in dispute. Appellant had before the original authority claimed that they have paid the service tax sought to be demanded and have filed physically revised service tax return for the period October 14 to March 15 on 04.08.2015. However the copy of the revised return filed has not been produced before the either of the lower authorities or before us. Hence we are not in position to accept the claim put forward by the appellant. Appellant do not dispute the receipts as per the Financial Records. Appellant had claimed deductions on following account, which has not been found to be admissible:

- | | |
|--|--------------|
| a. Advances not liable to service tax | :Rs 128125/- |
| b. Computer Education fees | :Rs 390534/- |
| c. Total | :Rs 518659/- |
| d. Service Tax @12.36% | : Rs 64170/- |
| e. Service tax admitted to be short paid | : Rs 11417/- |
| f. Total Service Tax demanded | : Rs 75587/- |

We are in agreement with the observation made in the adjudication order to the effect that in view of any satisfactory explanation in respect of deductions claimed these deductions cannot be allowed. Thus we hold the demand of Rs. 75,587/- computed as above.

4.9 As we have upheld the demand to the extent of Rs 75,587/- the penalty imposed upon the appellant under Section 76 (1) is reduced to Rs 7559/-

4.10 Summarizing our findings:

- Demand of Rs 2,33,851/- in respect of tender processing fees is set aside;
- Demand of Rs 75,587/- on account of difference in figures of Financial Records of the appellant and their ST-3 return is upheld.
- Penalty under Section 76 (1) is reduced to Rs 7,559/-

5.1 Appeal is partly allowed as indicated in Para 4.10 above.

(Pronounced in open court on 13.11.2025)

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

**Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)**

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