CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 701 of 2010

(Arising out of Order-in-Original No. 2/2010 dated 08.02.2010 passed by the Commissioner of Central Excise, Bangalore II Commissionerate, Bangalore.)

M/s. Integra Micro Systems Pvt. Ltd.
No.4, 12th KM,
Bellary Road,
Jakkur,
Bangalore. **........Appellant(s)**

VERSUS

Commissioner of Central Excise
And Service Tax,
1st to 5th Floor,
TTMC Building, Above BMTC Bus Stand,
Domlur,
Bangalore – 560 071. **......Respondent(s)**

WITH

Service Tax Appeal No. 2291 of 2010

(Arising out of Order-in-Original No. 37/2010 dated 28.07.2010 passed by the Commissioner of Service Tax, Bangalore.)

M/s. Integra Micro Systems Pvt. Ltd.
No.4, 12th KM,
Bellary Road,
Jakkur,
Bangalore. **........Appellant(s)**

VERSUS

Commissioner of Central Excise
And Service Tax,
1st to 5th Floor,
TTMC Building, Above BMTC Bus Stand,
Domlur,
Bangalore – 560 071. **......Respondent(s)**

APPEARANCE:

Mr. N. Anand, Advocate for the Appellant

Mr. M. A. Jithendra, Asst. Commissioner (AR) for the Respondent

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE SMT.R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order Nos. 21557 -21558 /2025

Date of Hearing: 26.05.2025
Date of Decision: 26.09.2025

Per: P.A. Augustian

The issue in the present appeal is whether the activities carried out by the Appellant amounts to manpower recruitment or supply agencies services as per impugned order or falling under the category of Information Technology Software services as claimed by the Appellant.

2. The Appellant is 100% EOU providing software and information technology services of various nature including software testing in software development document services...etc. Alleging that the activity carried out by the Appellant is classifiable under the category of manpower supply services, proceedings were initiated and show cause notice was issued for the period from June 2005 to April 2008 on 26.10.2009 covered by Appeal No. ST/2291/2010 and show cause notice dated 15.04.2009 is issued for the period from June, 2005 to December, 2006 covered by Appeal No.ST/701/2010. The Adjudication authority as per the impugned order held that the activities carried out by the Appellant is falling under the category of manpower recruitment or supply agency services and confirmed the demand of duty

and also imposed penalty under various provisions of law. Aggrieved by said orders, present appeals are filed.

3. When the appeals came up for hearing, the Learned Counsel for the Appellant draw our attention to the details of business activities carried out by the Appellant which varies from software development services to information development and submits that Appellant had obtained registration under Maintenance and repair service under service tax and later under Information Technology services after the service tax was introduced from 16.05.2008. The Learned Counsel also draws our attention to the intellectual property, certificate No. 787161 dated 10.01.2005 issued under Trade Marks Act, 1999 confirming the trade mark of the Appellant under computer programming. The Learned Counsel also draw our attention to the master business agreement entered by the Appellant on 08.04.2004 where it is specifically stated that the services to be provided by the associate ABB under this agreement in connection with the projects including without limitation, development, coding, testing, supply enhancement and maintenance of data and final production of hardware application and other deliverable as specified in the individual statement of works and ABB will specified the projects that are required to be executed by the associates through SOS. The Learned Counsel further submits that as per the terms and conditions of the agreement, the activities carried out by the Appellant are falling under the category of ITS services.

4. The Learned Counsel further submits that against the very same agreement, on introduction of service tax on ITS services after 2008, Appellant had registered themselves and paying service tax. The Department has not made any objection regarding classification of the services as declared by the Appellant. The Learned Counsel also drew our attention to the

Order-in-Appeal No. 565/2024-25 dated 27.03.2025 where first Appellate Authority had considered the demand confirmed by the Adjudication Authority for the subsequent period. Though the Appellant had requested to keep the matter in abeyance since present appeals are pending for the previous period before this Tribunal, Learned Commissioner (Appeals) proceeded with the appeal and categorically held that Appellant is not involved in manpower supply and held that the activity is falling under the category of development of software and most of the software services is designing, developing and coding. Accordingly, the demand under the category of manpower supply was dropped. The Learned Counsel submits that since the Department had accepted the said finding for subsequent period, the demand under the manpower supply for the previous period is unsustainable.

5. The Learned Counsel also draws our attention to the indemnity clause in the agreement that the integra shall be responsible for the performance of each Project in accordance with the SOW. Integra agrees that all payments to be made to Integra by Philips under the SOWs for Fixed Price Projects are subject to the achievement of Milestones and under SOWs for Time and Materials Projects are subject to the actual services provided on a monthly basis by Integra to Philips as per the rates and currency specified in the specific SOW under reference, or in Annexure B of the Agreement in case no rates have been set forth in the specific SOW under reference. In the event Integra fails to achieve the Milestones as specified in the SOWs and/or in any amendments thereof for Fixed Price Projects or fails to perform its obligations of Time and Materials Projects, and also in the event Integra fails to perform its obligations under this Agreement or the SOW as the case may be, Philips will suffer loss, harm and damage. Accordingly, Integra agrees to keep Philips, subject to Clause 28, indemnified against any

and all direct liabilities, costs, damages, claims, penalties, interest, expenses, etc., that may arise on Philips in this regard. The Learned Counsel also drew our attention to the show cause notice dated 26.10.2009 and the invoices issued by M/s Philips, M/s ABB...etc. where for some activities, they have issued the invoices which clearly mention the description of the activity as testing charges, software services...etc. and there is no mention regarding supply of manpower as alleged in the show cause notice. The Learned Counsel also draw our attention to the statement given by the Engineering Manager of Motorola India Pvt Ltd on 16.05.2008 under Section 14 of the Central Excise Act where it is specifically stated that the services availed by Motorola from M/s Integra Micro software Services Pvt. Ltd, Bangalore - I are:-

i) Software Designs and Coding Services

ii) Software Testing Services

iii) Product Technical Documentation Services

6. The Learned Counsel also drew our attention to the various other master service agreement entered by the Appellant with different clients and as per said agreement, the activity carried out by the Appellant is for development of software and not for supply of manpower as alleged. The Learned Counsel also draw our attention to the definition of ITS services which is reproduced below:-

> "*(zzzze) to any person, by any other person in relation to information technology software including.-*
>
> *(i) development of information technology software,*
>
> *(ii) study, analysis, design and programming of information technology software,*
>
> *(iii) Adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,*
>
> *(iv) providing advice, consultancy and assistance on matters related to in-formation technology software, including conducting feasibility studies on*

implementation of a system, specifications for a database de-sign, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software,
(v) [providing] the right to use information technology software for com mercial exploitation including right to reproduce, distribute and sell information technology software and right to use software compo-nents for the creation of and inclusion in other information technol ogy software products,
(vi) (providing) the right to use information technology software supplied electronically;"

7. The Learned Counsel also drew our attention to the Notification F.No. 334/1/2008-TRU dated 29.02.2008 where it is clarified that Information Technology Software Services (ITSS) includes:-

- Development (study, analysis, design and programming) of software.
- Adaptation, up-gradation, enhancement, implementation and other similar services in relation to IT software.
- Provision of advice and assistance on matters related to IT software, including:
    - Conducting feasibility studies on the implementation of a system,
    - Providing specifications for a database design,
    - Providing guidance and assistance during the start-up phase of a new system,
    - Providing specifications to secure a database,
    - Providing advice on proprietary IT software.
- Acquiring the right to use,-
    - IT software for commercial exploitation including right to reproduce, distribute and sell,

  - software components for the creation of and inclusion in other IT software products,
  - IT software supplied electronically.

8. The Learned Counsel drew our attention to consequential amendments in other taxable services are also being made:-

- At present, 'Information technology service' is specifically excluded from the scope of Business auxiliary service [section 65(105)(zzb)]. Consequent on the proposed IT software service, information technology services get covered comprehensively for the purpose of levy of service tax and, therefore, specific exclusion of 'Information technology service' under Business auxiliary service is being deleted.
- To include 'testing and analysis of IT software' services under Technical testing and analysis service [section 65(105)(zzh)].
- To include 'Certification of IT software' services under Technical inspection and certification service [section 65(105)(zzi)].

9. The Learned Counsel further submits that the issue was considered by this Tribunal in the matter of **M/s Stag Software Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore (2008 (10) STR 329 (Tri. – Bang.)** where it is held that:-

> *"7. On a very careful consideration of the entire issue, we find that software engineering itself is completely exempt from Service tax at all times even at present. When software engineering itself is not liable to tax, software testing, which is an integral part for such development, cannot be brought under tax net in the guise of Technical Inspection and Certification service. Moreover, the learned Advocate has clearly distinguished the facts in the case of Tata Consultancy Services (supra), wherein the Hon'ble Apex Court was dealing with 'canned' software, which was*

ready for sale off the shelf. However, in the present case, the testing goes hand in hand with the development and this is not a case of 'canned' software, which can be treated as 'goods'. Therefore, in view of the above, we hold that the demand of Service tax on software testing in the category of 'Technical Inspection and Certification Service' is not correct. The same is liable to be set aside".

9.1. Said decision was upheld by Hon'ble High Court **(2009 (16) STR 144(Kar.)** and when respondent filed appeal before the Hon'ble Supreme Court, it was dismissed **(2009 (16) STR J 78 (SC)** upheld by the Hon'ble Supreme Court. The Learned Counsel also relied by the decision of this Tribunal in the matter of **M/s RELQ Software Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore (2009 (14) STR 799 (Tri. - Bang.).**

10. The Learned Counsel further submits that as per the decision of the Tribunal in the matter of **M/s DR Lal Path Lab Pvt Ltd Vs. Commissioner of C. Ex., Ludhiana (2006 (4) STR 527 (Tri. – Del.),** it is well settled that once there is a specific entry for an item in the tax code, the same cannot be taken out of that specific entry and taxed under any other entry. In the present case, Revenue is seeking to discard the specific entry and to bring the Appellant's services under very general entry only because under the specific entry, no tax is payable at the relevant period. This approach is contrary to the scheme of litigation. What is specifically kept out by the legislator cannot subject to tax by the Revenue administration as another entry. Said decision was upheld by Hon'ble **Punjab and Haryana High Court (2007 (8) STR 337 (P & H)**. As regarding confirming the demand by invoking the extended period of limitation, Learned Counsel draw our attention to the decision of this Tribunal in the matter of **M/s Sasken Communication Technologies Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore - 2024 (22) CENTAX 264 (Tri. – Bang.).**

11. The Learned Authorized Representative (AR) for the Revenue drew our attention to the definition of Manpower Recruitment Agency or Supply Agency under Section 65(105) reads as:-

> "any commercial concern engaged in providing any service directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client".

12. And also the decision in the matter of **M/s Talking Technology Pvt. Ltd. Vs. The Commissioner of Service Tax, Chennai – 2020 (3) TMI 315 – CESTAT Chennai.** The Learned Authorized Representative (AR) also relied on the decision of the Tribunal in the in the matter of **M/s Aztecsoft Limited Vs. The Commissioner of Central Excise, Bangalore** vide Final Order No. 20528/2024 dated 03.07.2024.

13. Heard both sides. As regarding the decisions relied by the Learned Authorized Representative (AR) in the matter of M/s **Aztecsoft Limited** (supra), the impugned order clearly held that the Appellant had supplied manpower to the clients who are required to function under the control of the said clients. The manpower supplied by the Appellant was used for software consultancy or software development, but the role of the Appellant is limited to supply of skilled manpower. The Clients were reimbursing Appellant for the supply of manpower, the amount reimbursed is for the personnel supplied and not for the software and hence, the service involved is manpower supply, which is the predominant or essential character of the service involved, in terms of Section 65A of Finance Act, 1994. However in the present case, on perusal of the contract entered by the Appellant with their clients, it is an admitted fact that services provided by the Appellant as software development, design, testing of software and allied programming task...etc. Even as per the invoices issued by the client, said submission is

supported. Further it is evident that on the very same agreement against the Appellant for the subsequent period from 01.04.2008 to 15.05.2008, show cause notice issued and Appellate Authority (Order-in-Appeal No. 565/2024-25 CT dated 09.04.2025) has categorically held that the activities is not falling under the category of manpower recruitment. Facts being so, for the previous period, cannot be held that it is falling under the category of manpower recruitment. Moreover, on introduction of the service tax on ITS services after 16.05.2008, Appellant had obtained the registration and was paying service tax and there is no objection from the Department regarding the classification adopted by the Appellant. Facts' being so, impugned order confirming the demand under the category of manpower recruitment is unsustainable. Accordingly appeals are allowed with consequential relief if any in accordance with law.

(Order was pronounced in Open Court on 26.09.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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