**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 76629 of 2024**

(Arising out of Order-in-Original No. 43-44/ST/COMM./2024 dated 12.09.2024 passed by the Principal Commissioner, C.G.S.T. and Central Excise, Patna-I Commissionerate, 1st Floor, Central Revenue Building (Annexe), Birchand Patel Path, Patna – 800 001)

**M/s. Mars Mountain Security Services Pvt. Ltd.** **: Appellant**
203, Hem Plaza, Frazer Road,
Patna – 800 001 (Bihar)

**VERSUS**

**Principal Commissioner of C.G.S.T. and C.Ex.** **: Respondent**
Patna-I Commissionerate,
1st Floor, C.R. Building (Annexe), Birchand Patel Path,
Patna – 800 001 (Bihar)

**APPEARANCE:**

Shri Ankit Kanodia, Advocate,
Shri Deo Prakash Singh, Advocate
Smt. Megha Agarwal, Advocate
For the Appellant

Shri S.K. Dikshit, Authorized Representative,
For the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 75451 / 2026**

DATE OF HEARING: 12.03.2026

DATE OF DECISION: 30.03.2026

**ORDER: [PER SHRI K. ANPAZHAKAN]**

The present appeal has been filed against the Order-in-Original No. 43-44/ST/COMM./2024 dated 12.09.2024 passed by the Ld. Principal Commissioner, C.G.S.T. and Central Excise, Patna-I Commissionerate, 1st Floor, Central Revenue Building (Annexe), Birchand Patel Path, Patna – 800 001, wherein the Ld. Principal Commissioner has confirmed the demand of Service Tax of Rs. 1,27,22,387/- for the period 2005-06 to 2009-10, along with interest and penalties u/s 76, 77 & 78 of Finance Act, 1994.

2. The facts of the case are that M/s Mars Mountain Security Services Pvt. Ltd., 203, Hem Plaza, Frazer Road, Patna – 800 001 (hereinafter referred to as the "appellant") is engaged in providing Manpower Recruitment, Security and allied services. The appellant is registered under Service Tax.

2.1. Two Show Cause Notices were issued to the appellant by invoking extended period of limitation. One Show Cause Notice dated 07.10.2010 was issued covering the period from 2005-06 to 2008-09 and another Show Cause Notice dated 11.07.2011 was issued covering the period from 2008-09 to 2009-10.

2.2. Thereafter, the Order-in-Original No. 18-19/ST/Aayukt/2100 dated 09.12.2011 (the first adjudication order) confirmed the demand(s) raised in the Notices. On the appellant's earlier appeal, CESTAT, Kolkata vide Order dated 02.05.2024 set aside the said order and remanded the matter for a decision. Accordingly, personal hearing was held on 14.08.2024.

2.3. On *de novo* adjudication, the ld. adjudicating authority again confirmed the entire demand vide the impugned Order-in-Original dated 12.09.2024. The appellant has filed the appeal before this Tribunal challenging the said Order-in-Original.

3. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant submitted that the demand has been raised on the allegation that the appellant has suppressed the taxable value by showing a lower figure in ST-3 Returns compared to the gross income as per Audited Balance Sheet, resulting in short payment of Service Tax. In this regard, the appellant has made the following submissions:

- Service Tax is payable on cash basis (i.e., on actual receipt of consideration), whereas books of accounts and Balance Sheet are maintained on accrual basis. The two figures therefore cannot match by their very nature and any comparison is inherently flawed.

- The gross amount in the Balance Sheet also includes 'reimbursable expenses' such as the cost of diesel supplied to clients. Such reimbursements do not form part of taxable value.

- It is a settled principle of law that Service Tax can be levied only upon clear identification of service provider, service recipient and consideration paid. Demand cannot be raised merely on the basis of a difference in two sets of documents without establishing that such difference represents taxable services rendered and consideration received therefor.

- Reliance is placed on CESTAT Delhi in *South Eastern Coalfields Ltd. vs. CCE & ST (2024) 17 Centax 245 (Tri.-Del.)* and CESTAT Mumbai in *Principal Commissioner, CGST vs. SBI Life Insurance Company Ltd. (2024 TIOL 202),* wherein it has been consistently held that demands cannot be sustained solely on the basis of mismatch between ST-3 Returns and Balance Sheet / Income Tax returns without further proof.

- The Department has incorrectly rejected the decisions cited by the Appellant on the ground of non-applicability without assigning cogent reasons.

3.1. In view of the above, the appellant submits that the demand based purely on differential figures between Balance Sheet and ST-3 is legally unsustainable and liable to be set aside.

4. The appellant has further submitted that they have received payments for supplying Field Consultants to the Directorate of Horticulture, Patna for the FY 2008-09 & 2009-10 and the entire amount received is not includable in the assessable value for the purpose of computation of Service Tax liability under manpower supply service charges. In this regard, the appellant made the following submissions:

- As per the work order with Directorate of Horticulture, the Appellant was paid a fixed service charge (on which Service Tax was duly paid) and a separate, identifiable amount representing wages of field consultants as fixed by the service recipient. The wage component was a reimbursable expenditure and not service charge.

- The Directorate of Horticulture, Patna itself confirmed vide letter dated 23.12.2009 that out of total payment of Rs. 75,22,482/-, Rs. 72,34,361/- was earmarked toward wages of field consultants and only Rs. 2,88,121/- was the service charge to the Appellant. The Adjudicating Authority ignored this contemporaneous government document entirely.

- The Hon'ble Supreme Court in *Union of India vs. Intercontinental Consultants & Technocrats Pvt. Ltd. 2018 (10) G.S.T.L. 401 (S.C.)* has categorically held that valuation of taxable service under Section 67 of Finance

Act, 1994 can only include the gross amount charged for 'such taxable service' and nothing more. Reimbursements cannot be included.

- The Ld. adjudicating authority's finding that wages cannot be reimbursement because an employer-employee relationship exists between service provider and manpower is erroneous. The appellant's obligation was merely to facilitate supply; wages were fixed and actually paid by the service recipient as per contract, making it a clear case of pass-through/reimbursement.

- No Service Tax was demanded on the service charge component as it was already duly paid. The demand survives only on the wage amount, which has been confirmed to be reimbursable by the service recipient itself.

4.1. Accordingly, the appellant submits that the demand of Service Tax confirmed in the impugned order on the reimbursable wage component for the said period is contrary to the Hon'ble Supreme Court's ruling (supra) and liable to be set aside.

5. It has also been submitted by the appellant that the amounts received by them from M/s. Reliance Infocomm Engineering Pvt. Ltd. for supply of diesel for BTS sites are not includable in the gross taxable value of security services for the purpose of computation of Service Tax liability. In this regard, the appellant made the following submissions:

- The appellant was awarded separate and distinct work orders by M/s. Reliance Infocomm — one for security services and another independently for supply of diesel at specified rates. These were entirely separate contracts and must be treated independently.

- Supply of diesel is supply of goods and cannot be clubbed with the provision of security services. The two transactions operated under distinct work orders with separately identified rates and quantities (diesel measured in specified units).

- Notification No. 12/2003-ST dated 20.06.2003 specifically exempts from Service Tax so much of the value of taxable services as is equal to the value of goods and materials sold by the service provider to the recipient, subject to documentary proof. The appellant has maintained and produced invoices and work orders clearly demarcating the diesel supply component.

- The Hon'ble Allahabad High Court in *Commissioner of Central Excise, Agra vs. Goverdhan Transformer Udyog Pvt. Ltd. 2015 (37) S.T.R. 161 (All.)* has held that where the value of goods and services are separately disclosed in the contract/invoices, Service Tax cannot be levied on the goods component.

- The Ld. adjudicating authority's finding is based on surmise and misreading of the work orders. The impugned order itself does not dispute that diesel was actually supplied under a separate contract.

5.1**.** Thus, the appellant submits that the alue of diesel supplied under independent work orders is exempt from Service Tax and the demand on this count for 2005-06 to 2007-08 is liable to be quashed.

6. The appellant also submits that they have provided earth-filling/soil supply services to M/s Reliance Infocomm Engineering Pvt. Ltd. for preparation of BTS tower sites, which does not fall within the taxable category of 'Site Formation and Clearance, Excavation and Earthmoving and Demolition Services' as defined under Section 65(97a) of the Finance Act, 1994; that thus, the Service Tax demand for Financial Year 2008-09 on this count is not sustainable. In this regard, the appellant made the following submissions:

- The task of the appellant was strictly and solely to procure and unload specified quantities of soil (measured in cubic feet) at designated sites as per the work order. The appellant had no role in levelling, stabilisation, or any further activity. The remaining work was performed by other agencies appointed by the service recipient.

- Section 65(97a) of the Finance Act, 1994 defines Site Formation Services to include drilling, boring, soil stabilisation, horizontal drilling, land reclamation, contaminated top soil stripping, demolition, etc. — all of which are pre-construction site preparation activities. Mere supply of soil as a commodity does not fall within any of these categories.

- Section 65(105)(zzza) provides that the taxable service is one provided 'in relation to site formation and clearance.' Simply supplying soil as a material — without performing any site formation activity — cannot constitute a taxable service under this head.

- CBIC Circular No. B1/6/2005-TRU dated 27.07.2005 clarifies that Site Formation Services covers preparatory activities like blasting, drilling, overburden removal, and earthmoving for making land suitable for construction. The appellant's activity of delivering and unloading soil does not involve any such site preparation work.

- The adjudicating authority has itself not disputed that the appellant's work was to supply soil, yet classified the same as Site Formation Service relying on internet sources and non-binding reference materials. This approach is legally impermissible — the classification must be based on the statutory definition, which clearly excludes simple supply of soil.

- The work orders and invoices clearly establish the unit-based (cubic feet) supply nature of the contract, leaving no scope for treating it as a service contract for site preparation.

6.1**.** Thus, the appellant submits that the activity of supplying and unloading soil does not satisfy the statutory definition of Site Formation Service under Section 65(97a). Accordingly, the appellant has argued that the demand confirmed in the impugned order for FY 2008-09 under this head is wholly unsustainable and liable to be set aside.

7. Without prejudice to the above, the Ld. Counsel or the appellant has also made various submissions on the ground of limitation. He submits that they have not suppressed any information from the Department; in the ST-3 returns filed by them, the appellant have declared the correct taxable value and correctly

determined the Service Tax liability. Thus, the appellant submits that invocation of extended period of limitation is not sustainable.

8. In view of the above submissions, the appellant prays for setting aside the impugned order and allowing the present appeal.

9. On the other hand, the Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order.

10. Heard both sides and perused the records of the case.

**Service Tax on Manpower Supply to Directorate of Horticulture (Reimbursable Wages)**

11. In respect of the demand raised and confirmed on the reimbursement of wages received by the appellant for supplying Field Consultants to the Directorate of Horticulture, Patna for the FY 2008-09 & 2009-10, it is observed from the records that as per the Work Order with Directorate of Horticulture, the appellant was paid a fixed service charge on which Service Tax was duly paid by the appellant. We find that the Work Order indicates a separate identifiable amount representing wages of field consultants as fixed by the service recipient. It is pertinent to note that wage component is a reimbursable expenditure and not a service charge. We find that the Directorate of Horticulture, Patna itself confirmed vide letter dated 23.12.2009 that out of total payment of Rs. 75,22,482/-, Rs. 72,34,361/- was earmarked toward wages of field consultants. Thus, it is evident that only Rs.2,88,121/- was the service charge to the appellant. For ready reference, the said letter is extracted below:

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# उद्यान निदेशालय, बिहार

(राज्य बागवानी मिशन)

Market No.-13, Main Secretariat, Patna-800015, Phone+Fax 0612-2215215, e-mail: dir-bhds-bih@nic.in, website www.horticulture.bih.nic.in

पत्र संख्या – NHM/BHDS/132/2008 754 /NHM, पटना, दिनांक:– 23 दिसम्बर, 2009

प्रेषक,

अरविन्दर सिंह, भा.व.से.
मिशन निदेशक,
राज्य बागवानी मिशन, बिहार, पटना।

सेवा मे

मेसर्स मार्स माउण्टेन सिक्युरिटी सर्विसेज प्रा० लि०,
203, 207 हेम प्लाजा, फ्रेजर रोड, पटना।

विषय: – क्षेत्र सलाहकारों को माह सितम्बर–अक्टूबर 2009 एवं माह अक्टूबर से दिसम्बर 08 तथा जनवरी 09 से अगस्त 09 की बकाया मानदेय राशि का चेक संबंधित को भुगतान हेतु प्रेषण।

महाशय,

उपर्युक्त विषयक सूचित करना है कि राष्ट्रीय बागवानी मिशन अन्तर्गत कृषि स्नातक क्षेत्र सलाहकारो की सेवाएं अनुबंध के आधार पर आपके प्लेसमेंट एजेंसी के माध्यम से प्राप्त की गई है। इस हेतु माह सितम्बर–अक्टूबर 2009 एवं माह अक्टूबर से दिसम्बर 08 तथा जनवरी 09 से अगस्त 09 का मानदेय राशि मो0 [illegible]/– (पच्हत्तर लाख बाईस हजार चार सौ बेरासी) रूपये मात्र का चेक संख्या 603724, दिनांक 23.12.2009 इस पत्र के साथ संलग्न कर भेजा जा रहा है (विवरणी संलग्न)। इस 75,22,482/– (पच्हत्तर लाख बाईस हजार चार सौ बेरासी) रूपये में से मो0 72,34,361/– (बहत्तर लाख चौतीस हजार तीन सौ ईकसठ) रूपये मात्र क्षेत्र सलाहकारो को मानदेय के लिए तथा [illegible]/– [illegible]

तदनुसार क्षेत्र सलाहकारों को मानदेय भुगतान प्रासंगिक पत्र के आलोक में सुनिश्चित करें एवं उपयोगिता प्रमाण–पत्र, भुगतान की विवरणी सहित अधोहस्ताक्षरी को 15 दिनों के अन्दर उपलब्ध करायी जाए।

अनुलग्नक :– यथोक्त।

विश्वासभाजन

(अरविन्दर सिंह)
मिशन निदेशक
राज्य बागवानी मिशन, बिहार, पटना।

11.1. A perusal of the said letter clearly indicates that the wages reimbursed by the service receiver is in the nature of 'reimbursements' only. However, we find that the ld. adjudicating authority ignored this contemporaneous government document entirely.

11.2. In this regard, we also note that 'reimbursements received were not includable in the assessable value during the period under dispute. The Hon'ble Supreme Court in the case of *Union of India vs. Intercontinental Consultants & Technocrats Pvt. Ltd. 2018 (10) G.S.T.L. 401 (S.C.)* has categorically held that valuation of taxable service under Section 67 of Finance Act, 1994 can only include the gross amount charged for 'such taxable service' and nothing more. Accordingly, the Hon'ble Apex Court has held that reimbursements are not includable in the assessable value prior to 2015. In this connection, we find the ld. adjudicating authority's finding, that wages cannot be reimbursement because an employer-employee relationship exists between service provider and manpower, to be erroneous. From the facts and evidence available before us, it is clear that the appellant's obligation was merely to facilitate supply of labour and the wages were fixed and actually paid by the service recipient as the per contract, making it a clear case of pass-through/reimbursement. Thus, we hold that no Service Tax can be demanded on the amount of 'wages reimbursed' in this case, in terms of the decision of the Hon'ble Apex Court cited supra. Accordingly, we hold that the demand of Service Tax confirmed in the impugned order on the reimbursable wage component for the periods 2008-09 and 2009-10 is not sustainable and accordingly, we set aside the same.

**Service Tax on Supply of Diesel Under Security Services (Reimbursable Goods)**

12. Regarding the demand of Service Tax confirmed on the amounts received by the appellant from M/s Reliance Infocomm Engineering Pvt. Ltd., we find that the demand has been confirmed by including the cost of diesel supplied by the appellant for the BTS sites. In this regard, we find from the records that the appellant was awarded separate and distinct work orders by M/s Reliance Infocomm — one for security services and another independently for supply of diesel at specified rates. We find that these were entirely separate contracts and hence the same must be treated independently. Supply of diesel is supply of goods and cannot be clubbed with the provision of security services. The two transactions operated under distinct work orders with separately identified rates and quantities (diesel measured in specified units). In support of this, we refer Notification No. 12/2003-ST dated 20.06.2003 which specifically exempts from Service Tax so much of the value of taxable services as is equal to the value of goods and materials sold by the service provider to the recipient, subject to documentary proof. We find that the Appellant has maintained and produced invoices and work orders clearly demarcating the diesel supply component. The Hon'ble Allahabad High Court in the case of Commissioner of *Central Excise, Agra vs. Goverdhan Transformer Udyog Pvt. Ltd. [2015 (37) S.T.R. 161 (All.)]* has held that where the value of goods and services are separately disclosed in the contract/invoices, Service Tax cannot be levied on the goods component. Thus, by relying on the ratio of the decision cited supra, we hold that the value of diesel supplied under independent work orders is exempt

from Service Tax and the demand confirmed in the impugned order on this count pertaining to the period from 2005-06 to 2007-08 is not sustainable and accordingly, we set aside the same.

**Classification of Soil Supply as 'Site Formation Service' u/s 65(97a)**

13. Regarding the demand of Service Tax under the category of Site Formation Services for the Financial Year 2008-09, we observe that the appellant have provided earth-filling/soil supply services to M/s Reliance Infocomm Engineering Pvt. Ltd. for preparation of BTS tower sites. In this regard, we take note of the fact that the task of the appellant was strictly restricted to procurement and unloading of specified quantities of soil (measured in cubic feet) at designated sites as per the work order. We find that the appellant had no role in levelling, stabilisation, or any further activity. The remaining work was performed by other agencies appointed by the service recipient. Section 65(97a) of the Finance Act, 1994 defines Site Formation Services to include drilling, boring, soil stabilisation, horizontal drilling, land reclamation, contaminated top soil stripping, demolition, etc. — all of which are pre-construction site preparation activities. We observe that mere supply of soil as a commodity does not fall within any of these categories. Section 65(105)(zzza) provides that the taxable service is one provided 'in relation to site formation and clearance.' Simply supplying soil as a material — without performing any site formation activity — cannot constitute a taxable service under this head. In support of this view, we refer the CBIC Circular No. B1/6/2005-TRU dated 27.07.2005, which

clarifies that Site Formation Services covers preparatory activities like blasting, drilling, overburden removal, and earthmoving for making land suitable for construction. We find that the appellant's activity of delivering and unloading soil does not involve any such site preparation work. The work orders and invoices submitted by the appellant clearly establish the unit-based (cubic feet) supply nature of the contract, leaving no scope for treating it as a service contract for site preparation. Accordingly, we hold that the said services rendered by the appellant do not fall within the taxable category of 'Site Formation and Clearance, Excavation and Earthmoving and Demolition Services' as defined under Section 65(97a) of the Finance Act, 1994 and hence we set aside the demand confirmed in the impugned order on this count.

14. We also observe that the demand in the present case has been raised on the allegation that the appellant has suppressed the taxable value by showing a lower figure in ST-3 Returns compared to the gross income as per Audited Balance Sheet, resulting in short payment of Service Tax. In this regard, we observe that during the period under dispute, Service Tax was payable on actual receipt of consideration, whereas books of accounts and Balance Sheet are maintained on accrual basis. Thus, it follows therefrom that the two figures cannot match by their very nature and any comparison is inherently flawed. We find that the gross amount in the Balance Sheet also includes 'reimbursable expenses' such as the cost of diesel supplied to clients. Such reimbursements do not form part of taxable value. It is a settled principle of law that Service Tax can be levied only upon clear identification of service provider, service recipient and

consideration paid. Demand cannot be raised merely on the basis of a difference in two sets of documents without establishing that such difference represents taxable services rendered and consideration received therefor. In support of this view, we place our reliance on the decisions of the CESTAT, Delhi in *South Eastern Coalfields Ltd. vs. CCE & ST [(2024) 17 Centax 245 (Tri.-Del.)]* and the CESTAT, Mumbai in *Principal Commissioner, CGST vs. SBI Life Insurance Company Ltd. [(2024-TIOL-202-CESTAT-MUM)],* wherein it has been consistently held that demands cannot be sustained solely on the basis of mismatch between ST-3 Returns and Balance Sheet / Income Tax returns without further proof. Thus, we agree with the submission of the appellant that the demand based purely on differential figures between Balance Sheet and ST-3 is legally unsustainable and liable to be set aside.

15. We also find force in the appellant's contentions on the ground of limitation, considering the fact that the appellant have not suppressed any information from the Department. In the ST-3 returns filed by them, the appellant have declared the correct taxable value and correctly determined the service tax liability. We also do not find that any corroborative evidence has been brought on record by the Revenue to show that the appellant has indulged in any activity amounting to suppression or wilful mis-statement. Thus, we hold that invocation of extended period of limitation is not warranted in the facts and circumstances of the case.

16. In view of the above findings, we hold that the demand of Service Tax confirmed in the impugned order is not sustainable and hence, we set aside the same. As the demand of Service Tax itself itself does not sustain, the question of demanding interest or imposing penalties does not arise and accordingly, the same are also set aside.

17. In the result, we set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

(Order pronounced in the open court on **30.03.2026**)

Sd/-
**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

Sd/-
**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

Sdd