# CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
## WEST ZONAL BENCH : AHMEDABAD

**REGIONAL BENCH : COURT NO - 3**

**Service Tax Appeal No. 417 of 2010-DB**
(Arising out of OIA No. 46-49/2010/BVR/KCG/COMMR-A-/AHD dated 12/05/2010 passed by Commissioner of Central Excise-BHAVNAGAR)

**Santosh Pradhan** ...Appellant
C/O, Vaman Prestressing Co Pvt Ltd,
Survey No. 266, Paiky, Village : Godaveri, Taluka : Muli,
Surendranagar
Gujarat

*-Versus-*

**C.C.E. & S.T.- Bhavnagar** ...Respondent
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar,
Gujarat
364001

**WITH**

1. **Service Tax Appeal No. 418 of 2010(Sibaram Pradhan)**
2. **Service Tax Appeal No. 419 of 2010 (Rajesh D Swain)**
3. **Service Tax Appeal No. 420 of 2010 (Prakashchandra Anadi Chandra Pillai**

(Arising out of OIA No. 46-49/2010/BVR/KCG/COMMR-A-/AHD dated 12/05/2010 passed by Commissioner of Central Excise-BHAVNAGAR)

Present For the Appellant : None

Present For the Respondent : Shri T.K. Sikdar, Asst. Commr. (AR)

**CORAM:**
**HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
**HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**FINAL ORDER NO. A/11908-11911/2019**

Date Of Hearing: 17/09/2019
Date of Decision: 15/10/2019

**RAMESH NAIR**

The issue involved in the present case is taxability of Manpower Recruitment or Supplies Agency Services.

2. None appeared on behalf of the appellant.

3. Shri T.K. Sikdar, Ld. Counsel appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by the Ld. AR and perusal of records, we find that all the appellants are individuals. They have made a

defense right from the Adjudicating Authority that with effect from 16.06.2005, Manpower Recruitments and Supply Agency Services means any "Commercial concern engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower, temporarily or otherwise to a client". It has been the submission by the appellants, that they are the individual person and not commercial concern. Therefore, as per the definition prevailing at the relevant time, they are not covered under the 'Manpower recruitment or Supply Agency Services'. The appellants also raised defense of claim of SSI exemption, the same was denied on the ground that no evidence of aggregate value of turnover of first 4,00,000/- from the levy of Service Tax was submitted. We find that the Adjudicating Authority as well as the Commissioner (Appeals) held that since the appellant were operating as a proprietorship concern, it will fall under the term 'Commercial Concern'. Hence, they were liable to pay the Service tax. We find that merely because the appellant's concern is a proprietorship concern, it cannot be said that they are not individual person. For all the legal purposes, a proprietorship concern is considered as individual persons, be it an Income Tax law or any other law. Therefore, this aspect needs to be reconsidered and also the claim of SSI exemption made by the appellants. We, therefore, set aside the impugned order and remand the matter to the Adjudicating Authority to decide the matter afresh after affording an opportunity of personal hearing to the appellants. Since the matter is of very old period of year 2005-2008, the Adjudicating Authority shall pass an order within a period of three months from the date of this order. All the issues are kept open. Appeals are allowed by way of remand to the Adjudicating Authority

(pronounced in the open court on 15/10/2019)

**(Ramesh Nair)**
**Member (Judicial)**

**(Raju)**
**Member (Technical)**

Diksha