

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 01

Service Tax Appeal No. 11589 of 2018

[Arising out of OIA-AHM-EXCUS-003-APP-0225-17-18 dated 20.03.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III]

M/s Asanand And Sons

R.S. No 189 Nr. Ganeshpura, Overbridge
Mehsana Ahmedabad State,
Highway Ganeshpura, Kadi, Mehasana (Gujarat)

.....Appellant

VERSUS

C.C.E. & S.T.- Ahmedabad-iii

Custom House, Ashram Road-Ahmedabad

.....Respondent

APPEARANCE:

Shri. V. Khandhar (Advocate) for Appellant

Shri. T.K. Sikdar, Authorized Representative for Respondent

CORAM: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/ 12214 /2019

DATE OF HEARING/DATE OF DECISION: 04.04.2019

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 20.03.2018 passed by the Commissioner (Appeals), Central Excise, Ahmedabad.

2. Brief facts of the case are that the appellant is a partnership firm, engaged *inter alia*, in the business of manufacture of Potato Chips, French Fries and other related frozen products. The activity undertaken by the appellant is considered as manufacture under the Central Excise statute and for such purpose, the appellant got itself registered with the Central Excise Department. The appellant discharges its duty liability on manufacture of the said products. For carrying out the above activity during the disputed period, the appellant had availed the services of M/s S.S. Enterprise for deployment of manpower within the factory premises and also paid the service tax to such contractor on the basis of invoices raised by it on the appellant. Subsequently, the appellant came to know

that the activity undertaken by such contractor is to be considered as deemed manufacture and thus, the service tax exemption should be available for such service in terms of Clause (f) of Negative List, as specified under Section 66D of the Finance Act, 1994. Accordingly, the appellant had filed the refund application before the Jurisdictional Service Tax authorities, claiming refund of service tax paid by such contractor. The matter was adjudicated by the original authority vide order dated 25.05.2017, wherein refund claim filed by the appellant was sanctioned. Against such adjudication order, the department had filed appeal before Ld. Commissioner (Appeals), which was allowed vide the impugned order dated 27.02.2019 in favour of Revenue, by setting aside the original order. Hence, the appellant has filed the present appeal before the Tribunal.

3. Heard both the sides and perused the records.

4. For addressing the issue arising out of the present dispute, I have perused the contents of agreement dated 15.02.2017 entered into between the appellant and M/s S.S. Enterprise. The salient features of the contract were that the payment was required to be made by the appellant to the contractor depending on achievement of the production target i.e. on per kg basis; that the contractor was liable for payment of the statutory taxes in respect of the employees, and that the contractor's responsibility was for obtaining the licence required under Contract Labour Act, 1970 and adherence of the conditions of said license. On close reading of the contractual norms, I find that the job of the contractor M/s S.S. Enterprise was not only confined to deployment of workmen/manpower, but also for carrying out the manufacturing activity, for which payment of charges was dependent on the basis of achievement of the production target. It is an admitted fact on record that the appellant was no way concerned with the workmen deployed by such contractor and did not supervise or monitor the activities undertaken by the deployed manpower/work force. Thus, under the circumstances of the case, the contractor M/s S.S. Enterprise should not be considered as manpower recruitment agent, for the purpose of payment of service tax. Since it had erroneously paid service tax amount received from the appellant, the benefit of refund, in my considered opinion, should be available to the appellant. I find that upon proper analysis of the factual matrix of the case, the original authority

had allowed the refund claim filed by the appellant. The views expressed by the original authority was in consonance with the statutory provisions and I fully endorse such views expressed by him in support of grant of the refund benefit in favour of the appellant.

5. Therefore, I do not find any merits in the impugned order passed by the Commissioner (Appeals) in rejecting the refund application filed by the appellant. Accordingly, by setting aside the impugned order, the appeal is allowed in favour of appellant, with consequential benefit of refund.

(Dictated and Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

Seema