Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 13663 of 2014 – DB

(Arising out of OIA-SUR-EXCUS-002-APP-080-14-15 dated 25/08/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Sonic Enterprises ....**Appellant**
Near Masjid, Amod Patia,
Kosambha, Rs,
Surat, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Surat-ii ......**Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

APPEARANCE:
Shri Ankur Upadhyay, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 12729/2024

DATE OF HEARING: 26.09.2024
DATE OF DECISION: 19.11.2024

RAMESH NAIR

The brief facts of the case are that the Appellant is engaged in the business of providing services of Manpower Recruitment or supply Agency Services and fabrication, erection, commissioning and other mechanical services. The Appellant has been issued show cause notice wherein it has been alleged that the Appellant have supplied labour to M/s. Birla Cellulosic, Birla Dham, Kharach, Kosamba, Dist. Surat and the said service is taxable under the category of 'Man Power Recruitment Agency' service. Therefore the Appellant have not deposited the service tax on the amount received from M/s. Birla Celluosic which is liable to be recovered under section 73(1) of the Finance Act, 1994.

1.1 The above show cause notice was adjudicated vide Order-in-Original No. 06/JC-OP/Div-III Ank/OA/SRT-II/2014 dtd. 25.04.2014 wherein demand was confirmed along with penalty. The Appellant being aggrieved with the said Order-in-original dt. 25.04.2014 filed an appeal before Commissioner (Appeals), Surat-ll who vide impugned Order-in-Appeal dt. 25.08.2014 dropped the demand of service partially but confirmed the demand of service tax. Hence, Appellant has filed the present appeal before this Hon'ble Tribunal.

2. Shri Ankur Upadhyay, Learned Counsel appearing on behalf of the appellant submits that the major portion of the service provided by the appellant is fabrication, erection and commissioning service and in small portion of service is man power and supply agency service to M/s. Birla Cellulose during the period 2007-2008 to 2011-2012 (upto December – 2011). He referred to a contract between the appellant and M/s. Birla Cellulose according to which the present demand is on the activity of fabrication, erection and commissioning services provided to M/s. Birla Cellulose. He submits that the appellant have not provided man power to the service recipient whereas they have undertaken the principal job of fabrication, erection and commissioning. Therefore, the demand under manpower supply service is not legal and correct.

2.1 He further submits that as regard the actual manpower supply service provided to M/s. Birla Cellulose the appellant have discharged the service tax correctly and declared in ST-3 return from time to time. He placed reliance on the following judgments :-

- The Hon'ble CESTAT, Mumbai in the case of Satara Sahkari Shetu Audyogik Todani Vahtook Society Vs Kohlapur2014 (36) S.T.R. 123 (Tri. - Mumbai) CCE,

- The Hon'ble CESTAT, Mumbai in the case of Samarth SevaBhavi Trust Vs CCE, Aurangabad 2014 (36) STR 83 (Tri. - Mumbai) which is affirmed by Bombay High Court in 2016 (41) STR 806 (Bom)

2.3 He further submits that the demand was raised under the extended period and the same is the time bar. The appellant have regularly filed the ST- 3 returns and all the information was in the knowledge of the department. Thus, there is no involvement of suppression of fact with intent to evade payment of service tax. However, the issue involved in the present appeal is also related to interpretation of law. Therefore, the demand is time-bar by limitation. He placed reliance on the following judgments :-

- Hon'ble CESTAT, Ahmedabad in case of Saurin Investment Pvt. Ltd. Vs CCE, Ahmedabad Ahmd.) 2009 (16) S.T.R. 446 (Tri.
- Hon'ble Supreme Court in the case Cosmic Dye Chemical Vs CCE, Bombay - 1995 (75) ELT 721 (S.C.)

3. Shri Anand Kumar, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the revenue has demanded the service tax under the head of Man Power Supply Agency Service. On behalf of the appellant it was vehemently argued that the activity of the appellant in the facts of the present case is not of Man Power Supply Agency service. To understand the actual activity, we have gone through the contract between the appellant and M/s. Birla Cellulose. As per the said contract there are two parts one is for supply of manpower, the appellant have submitted that for this service they have discharged the

service tax as appearing in the ST -3 returns. Therefore, the demand in the present case is related to the job of fabrication, erection and commissioning and other miscellaneous jobs. In this regard we referred to the Annexure- B of the contract. The sample copy is scanned below:-

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ANNEXURE – B

Schedule of Rates for fabrication, erection , commissioning, and other mechanical jobs

Sno	Description	Unit	RATES (RS.)	UOM	REMARKS
1	**Fabrication & erection of MS Flange**				
a.	With cutting, drilling and Machining in your scope	Inch-Dia	32	Per No.	
b.	With drilling M/C in our scope	Inch-Dia	24	Per No.	Drilling at our workshop
2	**Fabrication & erection of CS Flange**				
a.	With cutting, drilling and Machining in your scope	Inch-Dia	28	Per No.	
b.	With drilling M/C in our scope	Inch-Dia	16	Per No.	Drilling at our workshop
3	**Fabrication & erection of MS Blank**				
a.	With cutting, drilling and Machining in your scope	Inch-Dia	28	Per No.	
b.	With drilling M/C in our scope	Inch-Dia	17	Per No.	Drilling at our workshop
4	**Fabrication & erection of CS Blank**				
a.	With cutting, drilling and Machining in your scope	Inch-Dia	28	Per No.	
b.	With drilling M/C in our scope	Inch-Dia	20	Per No.	Drilling at our workshop
5	**Fabrication & erection of MS tee**				
a.	With flange (for higher diameter)	Inch-Dia	44	Per No.	
b.	Without flange	Inch-Dia	32	Per No.	
6	**Fabrication & erection of MS Miter bend**				
a.	With flange (for higher diameter)				
(i)	2 - Cut Miter	Inch-Dia	40	Per No.	
(ii)	3 - Cut Mter	Inch-Dia	44	Per No.	
b.	Without flange				
(i)	2 - Cut Miter	Inch-Dia	32	Per No.	
(ii)	3 - Cut Mter	Inch-Dia	36	Per No.	
7	**Fabrication & erection of CS tee**				
a.	With flange (for higher diameter)	Inch-Dia	44	Per No.	
b.	Without flange	Inch-Dia	40	Per No.	
8	**Fabrication & erection of CS Miter bend**				
a.	With flange (for higher diameter)				
(i)	2 Cut Miter	Inch-Dia	42	Per No.	
(ii)	3 Cut Miter	Inch-Dia	48	Per No.	
b.	Without flange				
(i)	2 Cut Miter	Inch-Dia	36	Per No.	
(ii)	3 Cut Miter	Inch-Dia	40	Per No.	

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9	**Fabrication & erection of SS Tee**				
a.	With flange (for higher diameter)	Inch-Dia	60	Per No.	
b.	Without flange	Inch-Dia	44	Per No.	
10	**Fabrication & erection of SS Miter bend**				
a.	With flange (for higher diameter)				
(i)	2 Cut Miter	Inch-Dia	76	Per No.	
(ii)	3 Cut Miter	Inch-Dia	80	Per No.	
b.	Without flange				
(i)	2 Cut Miter	Inch-Dia	60	Per No.	
(ii)	3 Cut Miter	Inch-Dia	64	Per No.	
11	**Fabrication & erection of MS Bend**	**Inch-Dia**	**32**	**Per No.**	
12	**Fabrication & erection of CS Bend**	**Inch-Dia**	**32**	**Per No.**	
13	**Fabrication & erection of SS Bend**	**Inch-Dia**	**40**	**Per No.**	
14	**Fabrication & erection of MS Reducer**	**Inch-Dia**	**40**	**Per No.**	
15	**Fabrication & erection of CS Reducer**	**Inch-Dia**	**44**	**Per No.**	
16	**Fabrication of erection SS Reducer**	**Inch-Dia**	**56**	**Per No.**	
17	**Fabrication & erection of MS Pipe**				
a.	IBR Rate (for HP Steam)	**Inch-Dia**	**48**	**Per meter**	With IBR Welding and Radiography, Certification in our scope
b.	Non - IBR Rate	**Inch-Dia**	**16**	**Per meter**	No extra charge for fittings
18	**Fabrication & erection of CS Pipe**				
a.	IBR Rate (for HP Steam)	**Inch-Dia**	**48**	**Per meter**	With IBR Welding and Radiography, Certification in our scope
b.	Non - IBR Rate	**Inch-Dia**	**16**	**Per meter**	No extra charge for fittings
19	**Fabrication & erection of SS Pipe**				
a.	IBR Rate (for HP Steam)	**Inch-Dia**	**60**	**Per meter**	With IBR Welding and Radiography, Certification in our scope
b.	Non - IBR Rate	**Inch-Dia**	**36**	**Per meter**	No extra charge for fittings
20	**Fabrication & erection of CI Pipe**				
a.	IBR Rate (for HP Steam)	**Inch-Dia**	**44**	**Per meter**	With IBR Welding and Radiography, Certification in our scope
b.	Non - IBR Rate	**Inch-Dia**	**16**	**Per meter**	No extra charge for fittings.
21	**Fabrication of MS Pipe elbow**	**Inch-Dia**	**32**	**Per No.**	
22	**Fabrication of CS Pipe elbow**	**Inch-Dia**	**32**	**Per No.**	
23	**Fabrication of SS Pipe elbow**	**Inch-Dia**	**48**	**Per No.**	
24	**Valve fitting**	**Inch–Dia**	**12**	**Per No.**	Extra will be paid Only for replacement, Will not be paid extra in running meter (piping)

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25	**Readymade bend welding**	**Inch-Dia**	**10**	**Per No.**	Extra will be paid Only for replacement, Will not be paid extra in running meter (Piping)
26	**Grating fixing**				
a.	MS				
(i)	By Cutting/Grinding/Welding		2.8	Per Kg.	
(ii)	By bolting		1.6	Per Kg.	
(iii)	By clamping		2	Per Kg.	
b.	FRP				
(i)	By bolting		2.4	Per Kg.	
(ii)	By clamping		2.4	Per Kg.	
27	**MS Cheqeuerd plate fixing**				
(i)	By Cutting/Grinding/Welding		3	Per Kg.	
(ii)	By bolting		1.6	Per Kg.	
(iii)	By clamping		2	Per Kg.	
28	**MS Cutting**	**Meter**	**8**	**Per meter**	
29	**SS Cutting**	**Meter**	**14**	**Per meter**	
30	**MS Welding**	**Meter**	**12**	**Per meter**	
31	**MS Straight welding**	**Meter**	**8**	**Per meter**	
32	**Welding of MS to SS**	**Meter**	**12**	**Per meter**	
33	**Fixing of Anchor Fastner**		**6**	**Per No.**	
34	**Fabrication of Bracket for Monorail**	**No.**	**80**	**Per No.**	
35	**Fabrication and erection of MSRL Line**	**Inch-Dia**	**10**	**Per meter**	No extra charge for fittings.
36	**Static equipment erection & commisioning - MS/SS/CS/CI**				
a.	At 0 - 9 mtr height		**1**	Per Kg.	
b.	9.1 mtr and above height		**2**	Per Kg.	
37	**Static equipment erection and Commisioning - FRP/PP/HDPE/PVC**				
a.	At 0 - 9 mtr height		**2**	Per Kg.	
b.	9.1 mtr and above height		**2**	Per Kg.	
38	**Rotary equipment erection & commisioning - MS/SS/CS/CI**				
a.	At 0 - 9 mtr height		**1.6**	Per Kg.	
b.	9.1 mtr and above height		**2**	Per Kg.	
39	**Rotary equipment erection & commisioning - FRP/PP/HDPE/PVC**				
a.	At 0 - 9 mtr height		**2**	Per Kg.	
b.	9.1 mtr and above height		**2**	Per Kg.	
40	**Fabrication and erection of tanks, vessels**		**3.2**	**Per Kg.**	
41	**Fabrication and erection of MS Structure**		**2.2**	**Per Kg.**	
42	**Dismantling of all types of equipments (MS/SS/CS/CI)**		**0.6**	**Per Kg.**	Not to be specified as %

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43	Dismantling of all types of pipings (MS/SS/CS/CI)	Inch - Dia	6.4	Per Meter	Not to be specified as %
44	Hydraulic M/c Bend fabrication & fittings	Inch-Dia	8	Per No.	
46	**MS Clamp**				
a.	Fabrication	Inch - Dia	12	Per No.	
b.	Fabrication & Fitting	Inch - Dia	16	Per No.	
c.	Ready made Clamp Fitting	Inch - Dia	6	Per No.	
d.	Shoe clamp fabrication & fitting	Inch - Dia	8	Per No.	
47	**GI Clamp**				
a.	Fabrication	Inch - Dia	6	Per No.	
b.	Fabrication & Fitting	Inch - Dia	10	Per No.	
c.	Ready made clamp Fitting	Inch - Dia	4	Per No.	
d.	Shoe clamp fabrication & fitting	Inch - Dia	6	Per No.	
48	**Hand railing**				
a.	1" x 1"		20	Per Meter	First vertical post + horizontal post + Last vertical post will be considered for calculation of running meter.
b.	1 1/2" x 1 1/2"		28	Per Meter	
c.	1" x 1 1/2"		22	Per Meter	
d.	2" x 2"		32	Per Meter	
e.	2" x 1 1/2"		30	Per Meter	
f.	2" x 1"		24	Per Meter	
49	**Toe plate (Safety guard) fitting on above railing**		8	**Per Meter**	Fix
50	**Lifting and shifting (above 25 kgs.)**				
a.	With Hydra		0.04	Per Kg weight/ Per Meter distance.	1. Weight below 25 Kgs will not be considered for job work. 2. Rates for ground movement only. 3. Jobs other than this to be considered on Man-days basis. 4. These rates are for reference purpose only and to be used only when rates on manpower supply is higher than rates on job basis. In all other situations, lifting and shifting work to be carried out on manpower supply basis and these rates should be avoided.
b.	With trolley		0.20	Per Kg weight/ Per Meter distance.	
c.	Manual / others		0.20	Per Kg weight/ Per Meter distance.	

4.2 From the above rates of the job given in the contract, it is clear that the service charge is on the basis of the quantum of job of fabrication, erection of various type and not on the basis of number of manpower , man hours etc., therefore, as per this particular job contract , the appellant was assigned the particular job of fabrication, erection and commissioning and other jobs which at the most can be classified as business auxiliary service, however, that is not the case of the department in the show cause notice. Accordingly in view of the present fact we are of the view that the services provided by the appellant namely fabrication , erection and commissioning cannot be classified as Man Power Supply Agency Service. Hence, the demand under the said category is not sustainable. This issue has been considered in the following judgments:-

a) In the case of Shivshakti Enterprises Vs. Commissioner of Central Excise, Pune reported at 2016 (41) S.T.R. 648 (Tri. - Mumbai), this Tribunal has given the following findings:-

> ***"5.*** *We find that facts are not much in dispute. Appellant had deployed his employees in the factory premises of Tata Motors for doing specific job work in accordance with the purchase order placed by Tata Motors. We perused the sample/specimen of purchase orders of Tata Motors Ltd. We find that Tata Motors Ltd. had agreed to pay consideration to the appellant based upon the number of pieces that would be manufactured by appellant in the factory premises of Tata Motors. We find that the issue is no more res integra inasmuch as, in case of Divya Enterprises Ltd. - 2010 (19) S.T.R. 370. Tribunal based on laser of contract purchase orders indicated execution of lump sum work as understood by appellant and service recipients. The case is in hand, the appellant as well as the service recipients understood the agreement between them as the lump sum agreement and not for supply of manpower. We find that this Bench in the case of Shriram Sao TVS Ltd. - 2015 (39) S.T.R. 75, in a similar kind of service of lump sum contract for harvesting, loading and unloading of sugarcane held as under :*
>
> *"4. We find that the issue is no more res integra inasmuch as this Bench has held in the case of Bhogavati Janseva Trust v. CCE, Kolhapur - 2014 (34) S.T.R. 410 (Tri.-Mum.) on an identical issue has held in favour of the assessee. The same view was expressed by the Bench in Satara Sahakari Shetu Audyogik Oos Todani Vahtook Society v. CCE, Kolhapur - 2014 (36) S.T.R. 123 (Tri.-Mum.). It was brought to our notice that identical view was expressed by the Bench in the case of Godavari Khore Cane Transport Company Pvt. Ltd. Central Excise Appeal No. 19 of 2014. The judgment of the Godavari Khore Cane Transport Company Pvt. Ltd. was taken in appeal by the Revenue before the Hon'ble High Court of Bombay at Aurangabad. Their Lordships has upheld the order of the Tribunal reported as in Appeal Nos. ST/256/2008, S.T./68, 7/2009-Mum. [2012 (26) S.T.R. 310 (Tri.-Mum.)]. The ratio of the judgment of the Hon'ble High Court at Paras 6 & 7; we with utmost respect reproduce the same.*

> ***6.*** *In view in the facts of circumstances of this case, and various judicial pronouncements, we find that the impugned order challenged by the appellant before us, is liable to be set aside and the appeal needs to be allowed to that extent. The impugned order is set aside, to the extent challenged before us and the appeal is allowed with consequential relief, if any."*

b) In the case of Divya Enterprises Vs. Commissioner Of Central Excise, Mangalore reported at 2010 (19) S.T.R. 370 (Tri. - Bang.), the Hon'ble Tribunal Bangalore has passed the following order:-

> ***"6.*** *We have considered the submission is made at length by both sides and perused the records. The question that arises for consideration is whether the services rendered by the appellant are classifiable under the heading "manpower recruitment & supply agency"?*
>
> ***7.*** *The definition of the manpower recruitment or supply agency under Section 65(105) reads as under :-*
>
> *"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."*
>
> *The taxable service liable for Service tax is also defined under Section 65(105)(k) which is as under :*
>
> *"any service provided to a client, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner."*
>
> *From the plain reading of the above reproduced definitions in the Finance Act, 1994, we find that the activity should be providing of any service directly or indirectly in any manner for recruitment or supply of man-power temporarily or otherwise to a client in order to get covered under the said definition. There should be either a recruitment or supply of manpower temporarily or otherwise. We find from the records that M/s. Aspin Wall & Co. had given the contract as under :*
>
> *"W.O. No . 004/03-04*
>
> *M/s. Divya Enterprises,*
>
> *Bykampady,*
>
> *Mangalore*
>
> *Dear Sirs*
>
> *We refer to the various discussions we had with your partners regarding the godown handling operations at Bykampady location. Accordingly, we are pleased to award you the godown handling work in the following godowns with retrospective effect from the handling of my MARIUPOL that arrived new Mangalore Port on 3-10-2003.*

BALENJA/SOMAYAJI/PORT WORKSHOP godowns

Filling bulk fertilizers into bags, weighing, standardization stacking, and reloading to trucks	*Rs. 47.50 per mt.*
High stacking above 15 height	*Rs. 5.00 per mt.*
Unloading bagged cargo from wagons and reloading (each operation) Truck/godown cleaning casuals, tarex mamool etc., at Actual as certified by our godown supervisor. Socks & gloves for urea at actuals	*Rs. 16.00 mt.*
Bale unloading if full truck load unloaded	*Rs. 5.00 per bale*
Restandardisation of bags	*Rs. 25 00 per mt.*
Service charges	*Rs. 3.00 per mt.*

The rates given above shall be firm without any escalation during the tenure of this work order. However the company reserve its right to extend the same for farther period on mutual agreement."

The company is at liberty to enter into parallel contract with any other party, if required.

The overall interest of the company should be safeguarded by you and loss/damage to the company due to your negligence/fault shall be recovered from you.

Please sign and return duplicate copy of this work order as a token of your acceptance of the rates terms and conditions mentioned hereinabove."

9. *On a careful consideration of the above reproduced letter and facts from the entire case papers, we find that the contract which has been given to the appellants is for the execution of the work of loading, unloading, bagging, stacking destacking etc., In the entire records, we find that there is no whisper of supply manpower to the said M/s. Aspin Wall & Co. or any other recipient of the services in both these appeals. As can be seen from the reproduced contracts and the invoices issued by the appellant that the entire essence of the contract was an execution of work as understood by the appellant and the recipient of services. We find that the Hon'ble Supreme Court in the case of Super Poly Fabriks Ltd. v. CCE, Punjab (supra) in paragraph 8 has laid down the ratio which is as under :*

"There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive. "

An identical view was taken by Hon'ble Supreme Court in the case of State of AP v. Kone Elevators (India) Ltd. (supra) and UOI v. Mahindra and Mahindra (supra) in a similar issue. The ratio of all the three judgments of the Hon'ble Supreme Court, is that the tenor of agreement between the parties has to be understood and interpreted on the basis that the said agreement reflected the role and understanding of the parties. The said ratio applies to the current case in hand. We find that the entire tenor of the agreement and the purchase orders issued by the appellants' service recipient clearly indicates the execution of a lump-sum work. In our opinion *this lump-sum work would not fall under the category of providing of service of supply of manpower temporarily or otherwise either directly or indirectly.*

10. *On perusal of the records and the submissions of learned SDR on the Master Circular dated 23-8-2007, we find that the issue raised at clause 010.02 is as under :*

Business or industrial organizations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. *Whether Service tax is liable on such services under manpower recruitment or supply agency's ser ices*	*In the case of supply of manpower individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use for the services of an individual, employed by him to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.* *Such cases are covered within the scope of the definition of the taxable service (Section 65 (105)(k) since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" (section 65(68) and are liable to Service tax*

11. *It can be seen from the above reproduced portion of the Master Circular that it is in respect of supply of manpower which is engaged for specified period or for completion of particular projects or tasks. The clarification, is in case of supply of man power, it can be seen that the clarification specifically needs that the agency agrees for use of services of an individual to another person for a consideration as supply of manpower. In the cases in hand, there is no agreement for utilization of services of an individual but a job/lump-sum work given to the appellants for execution. The said clarification issued by the Board would be appropriate in the case where services of man power recruitment & supply agency, had been temporarily taken by the Business or the industrial association for supplying of manpower and may not be for execution of a specific work. We are of the considered view that the reliance placed by the learned SDR and the learned Commissioner on the circular will not carry the case of the Revenue any further.*

12. *Accordingly in view of the above findings, we are of the view that the impugned order is liable to be set aside and we do so. The appeal is allowed with consequential relief if any. Since we have disposed of the appeal on merits itself, no findings are recorded on other submissions made by both sides in this appeal."*

c) In the case of Tiwari Services Vs. Commissioner Of Central Excise, Aurangabad reported at 2020 (37) G.S.T.L. 57 (Tri. - Mumbai) Hon'ble Mumbai Tribunal has given the following view:-

> ***"6.*** *We find that M/s. Dhoot Compack Ltd. has entered into agreement with the appellant for manufacture of fabrics on job work basis. The appellant was paid for carrying out such activities on per meter basis. The workmen deployed by the appellant for carrying out such activities were under the supervision and control of the appellant. The ultimate manufacturer, who entrusted the job to the appellant was no way concerned with the workmen deployed by the appellant. It is also noticed that over and above paying the amount for manufacturing activities undertaken by the appellant on job work basis, the said service receiver had not paid any specific price to the workmen deployed by the appellant. Thus, under such circumstances, it cannot be said that the appellant had provided the Manpower Recruitment and Supply Agency Service. Hence, we are of the considered view that the adjudged demands confirmed on the appellant cannot be sustained.*
>
> ***7.*** *Therefore, we do not find any merits in the impugned order. Accordingly after setting aside the same, we allow the appeal in favour of the appellant."*

4.3 In view of the above judgments, it is settled law that even though some man power has been deputed by service provider but the contract is of particular job and the charges is as per the quantum of job and as per the number of samples, the service cannot be categorized under the head of Man Power and Supply Agency Service. Therefore, following the above judgments and considering the facts of the present case, the demand under Man Power and Supply Agency Service will not survive. The appellant have made sufficient submission on limitation. We find that the appellant is registered with the service tax department and they have been filing their ST- 3 returns regularly which is in the knowledge of the department. Therefore, there is no suppression of fact on their part with intent to evade payment of service tax. Thus, the demand is also not sustainable on limitation.

5. As per above discussion and finding, the impugned order stands modified to the above extent. The appeal is allowed with consequential relief.

(Pronounced in the open court on 19.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha