IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.41943 of 2013

(Arising out of Order in Original No. LTUC/160/2013-(C) dated 17.5.2013 passed by the Commissioner, LTU, Chennai)

Commissioner of GST & Central Excise **Appellant**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Vs.

M/s. Chemplast Sanmar Ltd. **Respondent**
9, Cathedral Road
Chennai – 600 086.

APPEARANCE:

Smt. Anandalakshmi Ganeshram, Supdt. (AR)
Smt. Radhika Chandrasekar, Advocate for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40542/2023

Date of Hearing : 04.07.2023
Date of Decision: 11.07.2023

Per M. Ajit Kumar,

This is an appeal filed by Revenue against Order in Original No. LTUC/160/2013 (C) dated 17.5.2013 passed by the Commissioner, LTU, Chennai.

2. Brief facts of the case are that the Internal Audit Group of LTU, Chennai conducted an audit of records of M/s Chemplast Sanmar Ltd (hereafter also referred to as 'respondent'), for the period April 2008 to January 2011. On verification of the records of the taxpayer, it was noticed that the services of corporate staff at the top-level

management viz. legal, finance, taxation etc. in the respondents company was shared by the entire Sanmar group of companies and who at the end of each year, calculated the proportional cost of salaries of these staff borne by the respective companies based on their turnover and paid it to Chemplast. This system of supply of skilled manpower appeared to fall within the purview of taxable services under 'Manpower Recruitment and Supply Services' as defined in section 65(105)(k) of the Finance Act, 1994 (FA 1994), read with section 65(68) ibid and hence chargeable to service tax. From the records, it was seen that the taxpayer had received Rs.4,98,11,000/-, Rs.1,91,73,000/- and Rs.1,49,41,000/- from their group companies on account of corporate salary expenses for the years 2008 – 09, 2009 – 10 and 2010 – 11 respectively. By providing the services of their employees to the group companies, Chemplast appeared to have rendered 'manpower supply service' and appeared to be liable to pay service tax on the same. Therefore, a Show Cause Notice was issued to M/s. Chemplast Ltd. seeking to demand Service Tax of Rs.96,70,383/-. After due process of law, the matter was adjudicated. The original authority dropped all proceedings. Aggrieved by the said order, Revenue is before us in appeal.

3. No cross-objection has been filed by the respondent-assessee.

4. The learned Superintendent (AR) Smt. Anandalakshmi Ganeshram appeared for the appellant and Smt. Radhika Chandrasekar, learned counsel appeared for the respondent.

4.1 The learned AR Smt. Anandalakshmi Ganeshram has stated that this is a case where the respondents have admitted that they have

shared the cost of services of their top-level corporate staff with their group companies who are legal entities having separate PAN for income tax purpose. Hence it is not a case of self-service and would tantamount to a person rendering service to another and will be liable for Service Tax as determined by the nature of transaction. She further stated that what is received by Chemplast from their group companies cannot be held as reimbursement but it was a consideration for the service rendered. She referred to the decision of the Larger Bench of the Tribunal in the case of Sri Bhagavathy Traders Vs. CCE, Cochin – 2011 (24) STR 290 (Tri. LB). She also added that since the respondent had suppressed this activity from the department; not filed ST-3 returns clearly showing this activity nor have paid duty or sought a clarification after amendment to the statute, which was clear and did not have any ambiguity, they had suppressed the matter and were liable to pay Service Tax on a demand under the extended period. She has further referred to Board Circular No. 148/17/2011-ST dated 13.12.2011, Boards Circular in F. No. 137/35/2011-ST dated 13.7.2011 and 'Education Guide to Service Tax' brought out by the Tax Research Unit (TRU) of CBEC on 20/06/2012, in support of the merits of the case. She prayed that the impugned order may be set aside and pass such other orders as this Tribunal may deem fit.

4.2 The learned counsel Smt. Radhika Chandrasekar appeared on behalf of the respondent. She stated that the respondent viz., Chemplast Samar Ltd., along with Cabot Sanmar Ltd, Sanmar Foundries Ltd. all belong to one group i.e. Samar Group. The Group companies availed the services of employees of Chemplast and the

proportional cost of salaries is borne by the respective companies based on their turnover by way of 'reimbursement' to the respondent. She stated that the entire transaction is only a cost sharing arrangement between the Group Companies and there is no mark up or element of profit or consideration out of the said arrangement. Only service charges received for the taxable services rendered is subject to Service tax. The Hon'ble High Court of Delhi in the case of ***Intercontinental Consultant and Technocrats Pt Ltd Vs. Union of India (2012-TIOL-966-HC-DEL-ST)*** has held Section 67 is supreme and refers to only the consideration for the services provided and anything other than consideration cannot be taxed. Revenue's appeal against the said judgment was dismissed by the Hon'ble Supreme Court in ***Union of India vs Intercontinental Consultant and Technocrats Pt Ltd (2018-TIOL-76-SC-ST).*** As regards limitation she said that the Show Cause Notice is time barred, as none of the ingredients that are required for invoking the extended period of 5 years are present. She relied on the following judgments in this regard:

a) Commissioner of Central Excise, Nagpur Vs Ballarpur Industries Ltd. [(2007) 8 SCC 89]

b) Continental Foundation Joint Venture Holdings Vs Commissioner of Central Excise [(2007) 10 SCC 337]

She hence prayed that the impugned order be upheld.

5. Having heard the learned AR and Counsel for the contesting parties and having perused the Appeal Papers, we find that the following issue have been raised in the appeal;

i) whether the respondents sharing of services of their corporate staff with the Sanmar group of companies can be treated as a service of "manpower recruitment or supply agent" as defined in section 65(105)(k) of the Finance Act, 1994 (FA 1994), read with section 65(68) ibid.

ii) whether the payment of proportional cost of salaries of these staff borne by the respective companies to the respondent can be stated to be a 'consideration' as per Explanation (a) to Section 67 of the FA 1994 or has to be treated as 'reimbursement' and found not taxable in the light of the Hon'ble High Court of Delhi's judgment in the case of 'Interccontinental Consultant' (supra).

iii) whether the show cause notice is hit by the limitation of time.

6. We find that the first challenge made by the respondent is to the exigiblity of the activity of sharing services of their corporate staff with group companies under the definition of "manpower recruitment or supply agent". Since classification and valuation are two different matters, the nature of the service is not to be confused with the measure by which the consideration is paid, it would hence be useful to examine the definition of the service independently. Relevant portions of section's 65(105)(k) and section 65(68) of FA, 1994 and extracted below for a better understanding of the issue;

> *Section 65(68) - "Manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person.*

Hence the definition requires that to fall within its description, a service activity has to satisfy the following conditions;

(a) a person
(b) provides service

(c) directly or indirectly,
(d) in any manner for recruitment or supply of manpower,
(e) temporarily or otherwise
(f) to any other person.

It is seen that the definition is very broad and takes within its ambit the activities performed by the Respondent. There is no definition of the word "person" in FA 1994 however the impugned order at para 10 refers to the definition of 'person' as found in the 'The General Clauses Act, 1897'. The Hon'ble Apex Court in its judgment in **Dulichand Lakshminarayan Vs The Commissioner of Income Tax, Nagpur** [1956 AIR 354] faced with a similar situation, held that;

> *"There is no definition of the word "person" in the Partnership Act. The General Clauses Act, 1897, however, by section 3 (42) provides that "person shall include any company or association or body of individuals whether incorporated or not".*

The impugned order also records that the respondent have in their additional submissions dated 16/05/2013, admitted that they and their group companies are distinct legal entities. This being so the respondent being a company, is covered by the term 'any person' and since they render service directly or indirectly, for supply of manpower, temporarily or otherwise to any other person, who happens to be a distinct company of their group, they are covered by the definition of "manpower recruitment agency". There is no confusion on this score.

6.1 A look at the section as it stood prior to the impugned period and after would be informative. The comparative table is shown below;

Section 65(68) of FA 1994

Earlier section before changes	As on 16/05/2008
"Manpower recruitment or supply agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of	"Manpower recruitment or supply agency" means any ~~commercial concern~~ person (1) engaged in providing any service, directly or indirectly, in any manner for

manpower, temporarily or otherwise, to a client;	recruitment or supply of manpower, temporarily or otherwise, ~~to a client~~ to any other person (2);
	(1) Substituted (w.e.f. 01.05.2006) by s. 68 of the Finance Act , 2006 (21 of 2006). (2) Substituted (w.e.f. 16.05.2008) by s. 90 of the Finance Act , 2008 (18 of 2008)

It is seen from the statute as it stood during the major part of the impugned period, which was from, April 2008 to January 2011, that there were two important changes made to the definition of "Manpower recruitment or supply agency", altering its earlier scope. These changes signify the legislative intent to broaden the scope of the definition and to bring in an inclusive definition which is very broad from that of a narrower and more specific one. After these changes in the section, there can be no further ambiguity that the respondent action in deploying staff to its group companies was covered by it. It is hence concluded that the respondent sharing services of their corporate staff with the Sanmar group of companies is covered by the definition of 'manpower recruitment or supply agency' as defined in Section 65(105)(k) of FA, 1994 read with section 65(68) ibid.

7. The second issue relates to whether the payment of proportional cost of salaries of the staff borne by the respective companies to the respondent can be stated to be a 'consideration'. A plain reading of Section 67 indicates that service tax is leviable only on the amount received as a 'consideration' for the services provided or to be provided which would form part of taxable value for the purpose of service tax during the relevant time. Hence the challenge the respondent poses to

Revenue's appeal is related to Section 67(1) of FA 1994. The relevant portion is as under;

> Section 67(1) subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall, -
>
> (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
> .....
>
> Explanation – For the purposes of this Section, -
>
> (a) 'consideration' includes any amount that is payable for the taxable services provided or to be provided.
>
> (emphasis added)

7.1 The difference between the contesting parties appears to be in the field of semantics as much as from the provisions of law. Revenue refers to the payments made by the group companies to the respondent as 'consideration', while the respondent labels the same payment as a 'reimbursement'. Since the term 'consideration' has been defined in section 67, the discussion will have to be confined to understanding the term from the said description. No import of definition from any other statute or legal reference is possible. The factual position can be ascertained only by examining the nature of payment. The fact is that the group company's pay the respondent for the use of staff provided by them. This payment is for the benefit of using the expertise of the respondents staff for fixed periods. The term 'consideration' as defined in the section includes 'any amount' that is payable for the taxable services provided or to be provided which is broad enough to include payments labelled as 'reimbursement' under its fold. Once a nexus between the provision of service and payment is evident and it is determined that service has been provided in terms of the definition of the impugned service and payments made toward

it are received from time to time, then the payments labelled as 'reimbursement' come under the definition of 'consideration'. The respondent does not deny this nexus but states that they have produced a Chartered Accountant's certificate before the adjudicating authority wherein it has been certified that what is received from the group company during the relevant period is only towards the reimbursement of actual expenses and there was no mark-up. Hence there is no consideration received so as to attract service tax.

7.2 They have drawn attention to the Hon'ble High Court of Delhi's judgment in the case of ***Intercontinental Consultant and Technocrats Pt Ltd*** (supra) which struck down Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 that attempted to tax reimbursement, on the ground that it is in conflict with Section 67 provides for inclusion of expenses reimbursed. Revenues appeal was dismissed by the Hon'ble Supreme Court in Union of India vs Intercontinental Consultant and Technocrats Pt Ltd (supra).

> Section 67 of FA 1994 which came into effect from 01.05.2006 is as follows: -
>
> "67. Valuation of taxable services for charging service tax (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,
> . . . .
> Explanation: For the purpose of this section, -
>
> (a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;
>
> (b) . . . .
>
> (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of accounts of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise." (emphasis added)

The predicament with labels is that they tend to discourage the examination of facts at the very threshold. However, just because the respondent labels the payment as reimbursement it will not become representative of its true character even if the term is used in the impugned order. A principle of interpretation of an activity, is that the nomenclature assigned to it is not decisive of its nature. It has been discussed earlier that the expression 'any amount' of wide import and takes in all payments made towards the receipt of taxable service. It hence does not brook the question whether there is any markup or profit etc. or not. It has been discussed above that the services rendered by the respondent fits in to the definition of 'Manpower Recruitment and Supply Services'. Now it is found that the money received by the respondent is also covered by the term 'consideration' as per the explanation to section Section 67(1) of FA 1994. In ***Intercontinental Consultant and Technocrats Pt Ltd,*** referred to by the respondent, the petitioner received payments from their clients not only for their service as a consulting engineer, but were also reimbursed expenses incurred by them such as air travel, hotel stay, etc. It was paying service tax in respect of amounts received by it for services rendered to its clients. This is not the case here. Reimbursed expenses such as air travel, hotel stay, etc are only incidental to the main service for which Service Tax was being discharged and were beyond the value of the service rendered. It was in that context that the Hon'ble Court held, it is only the value of such service that is to say, the value of the service rendered by the petitioner to NHAI, of a consulting engineer, that can be brought to charge and nothing more.

The Hon'ble Court held that the quantification of the value of the service can therefore never exceed the gross amount charged by the service provider for the service provided by him. That is not the situation here, the real nature of the payment made by the group companies to the respondent are towards the use of their staff. The value sought to be taxed does not exceed the gross amount paid by the group companies. Hence what is sought to be taxed under Service Tax law, is the amount which is attributable to the taxable service alone. The fact that this payment is worked out or calculated in a particular manner for the convenience of the parties involved or that the final payment by all Group Companies is equal to the wages paid and there is no mark up or that the payment is labelled as a 'reimbursement' etc does not change its essential character as being a consideration for service rendered by the respondents staff. The method of collection of consideration does not affect the essence of the service so long as a service is actually rendered. So also, the converse, as to how the service recipient pays the service provider must not be confused with the nature of the service rendered. The Hon'ble Supreme Court in **Senairam Doongarmall Vs Commissioner of Income Tax, Assam [1961 AIR 1579]** held;

> "8. The compensation which was paid in the two years was no doubt paid as an equivalent of the likely profits in those years; but, as pointed out by Lord Buckmaster in The Glenboig Union Fireclay Co. Ltd. v. The Commissioners of Inland Revenue ((1922) 12 T.C 427/ (1922) 12 Tax Cases 427) and affirmed by Lord Macmillan in Van Den Berghs Ltd. v. Clark ([1935] A.C. 431/ (1935) 3 ITR (Eng. Cases) 17(HL)), "there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test". This proposition is as sound as it is well-expressed, and has been followed in numerous cases under the Indian Income Tax Act and also by this Court. It is the quality of the payment that is decisive of

> the character of the payment and not the method of the payment or its measure, and makes it fall within capital or revenue."
>
> (emphasis added)

7.3 Revenue has referred to Board's Circular in F. No. 137/35/2011-ST dated 13.7.2011 to submit that the volume of activity undertaken or the presence or absence of the profit motive is irrelevant:-

> "2. ……. activity of ONGC of providing its staff on deputation to DGHC for a remuneration in the form of reimbursement from DGHC, is chargeable to service tax under 'Manpower Recruitment or Supply Agency's Service' in terms of Section 65(105)(k) of the Finance Act. As …… to any other person.
>
> ……..
>
> 4. In the said definition the key words are, any person; directly or indirectly; in any manner; and temporarily or otherwise. It thus appears that organisations that make available their staff to other entities would be covered under the said definition. The motive for providing such manpower is of no consequence. The requirement for taxability is that the person should be engaged in an activity that is covered under Section 65(105)(k) ibid. The volume of activity undertaken or the presence or absence of the profit motive is irrelevant. (emphasis added)

Boards circulars are not binding on the Tribunal however the doctrine of contemporanea *expositio* is from time to time being evoked by courts to cull out the intendment of the legislature by removing ambiguity in its understanding of the statute by the executive. It means to read the statute by reference to the exposition it has received from the authority who created the statute, where the language given by the authority is plain and unambiguous. In **Desh Bandhu Gupta and Ors v. Delhi Stock Exchange [1979] 3 SCR 373** the Apex Court held that this principle can be invoked, though the same will not always be decisive on the question of construction. But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling, is nevertheless

entitled to considerable weight as highly persuasive. To this effect the circular makes it clear that the motive for providing such manpower is of no consequence. The requirement for taxability is that the person should be engaged in an activity that is covered under Section 65(105)(k) ibid. The volume of activity undertaken or the presence or absence of the profit motive is irrelevant. Though we do not take the circular as binding we find that it is line with the views expressed by us.

7.4 A point touched upon in para 11.2.2 of the impugned order is that the employees are neither contractually employed nor do they come under the direction and control of the group companies. Throughout the entire process they continue to be employed only by the respondent and are fully under their direction/ control and remain only in their payroll. The assertion was not followed up with an examination of the 'terms and condition' of the 'sharing' process, between the respondent and the group companies. We find that the respondent too has not found it necessary to bring out the nature of the 'sharing' process by producing a copy of the contract/ agreement, in their submissions before the lower authority. Hence the staff 'sharing' has to be understood in general terms. It is not a dispute that the 'shared' employees while being on the pay rolls of the respondent were performing the tasks relating to the group companies activities under its (group companies) day to day direction/ control and were not under the direction/ control of the respondent in this regard. The fact that the group companies had employed the staff to benefit from the skills / expertise of the staff in the use of the group companies for

limited periods, is implicit in the staff 'sharing model' adopted by the group. Had the staff been remote controlled by the respondent during day-to-day operations they would be of no use to the group companies. The direction/ control of the respondent is hence of a general nature as they are the respondent's employees and are on their pay rolls, while the effective control of the staff during the course of their deployment is that of the group companies only. Our interpretation stands supported by para 2.9.1 of the 'Education Guide to Service Tax' brought out by the Tax Research Unit (TRU) of CBEC on 20/06/2012 which has also clarified the issue on similar lines, as under;

> 2.9.1 All are services provided by an employer to the employee outside the ambit of services?
>
> No. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside the ambit of employment for a consideration would be a service. For example, if any employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service.
>
> (emphasis added)

We hence do not find merits in treating 'consideration' as a 'reimbursement' which is not exigible to tax as stated in the impugned order.

8. After examining the relevant sections covering classification and valuation of services, we find that the impugned order has erred in its conclusion and the respondent does not have a case on merits.

9. We now examine the third question of whether the show cause notice is hit by the limitation of time. The stand taken by Revenue is that the respondent has not disclosed the activities of sharing of staff with the department in any manner, including in statutory document like ST3 returns nor have they sought any clarification from the

department if there was any aspect of confusion in their mind. This goes to show the deliberate suppression on their part which permits the issue of Show Cause Notice during the extended period and also warrants imposition of penalty. Had the audit of the unit not been done the evasion would not have come to light and is a clear case of suppression of facts. The respondent on the other hand is of the view that in terms of Section 73(1) of the Finance Act, 1994 as amended the period within which a Show Cause Notice can be issued is within a period of one year from the relevant date. The extended period in terms of proviso to Section 73 (1) can be invoked only when there is fraud, collusion, wilful misstatement, suppression of facts, contravention of any of the provisions of this Chapter or of the Rules made there under with intent to evade payment of service tax. The Show Cause Notice is time barred, as none of the ingredients that are required for invoking the extended period of 5 years are present. The Respondent had filed ST-3 returns regularly and the Department has also issued the Show Cause Notice No. 261/2010 dated 31.08.2010 and Show Cause Notice No. 253/2011 dated 08.08.2011 for the period 01.08.2009 to 30.06.2010 and July 2010 to March 2011 respectively, questioning the distribution of cenvat credit. The department had conducted audit and queries were raised. The Respondent has replied vide letter dated 05.04.2011 (i.e. after the audit of the unit) intimating that there is no manpower supply nor any charging of any fee so as to attract service tax and that the total actual salary paid to the corporate staff is being shared within the group companies and that there is no mark-up. They have relied upon the following judgments to state that

where various circulars / instructions are issued and where there was no clarity in the views expressed by the authorities, extended period cannot be invoked. [**Commissioner of Central Excise, Nagpur Vs Ballarpur Industries Ltd. [(2007) 8 SCC 89**] and that mere omission to give correct facts is not suppression. Suppression means failure to disclose full information with the intent to evade payment of duty. [**Continental Foundation Joint Venture Holdings Vs Commissioner of Central Excise [(2007) 10 SCC 337**].

9.1 It is seen that this is an issue where the respondent has paid no tax at all. This is not a case where there was complication in understanding the scope of taxable services under 'Manpower Recruitment and Supply Services' as defined of section's 65(105)(k) and section 65(68) of FA, 1994, as has been discussed at para 6 above. Board does bring out Circulars and clarifications on various aspects of the law from time to time. But that does not mean that every issue is complicated and requires clarification. It puts forward its views so as to have uniformity in procedures between the department and the tax payer. Hence the present case cannot be said to involve an interpretation of statutory provisions especially for a company, as they have specialised staff to look after legal and tax matters. In fact, top level management officials dealing with legal matters and taxations among other areas of specific rates were those whose expertise was shared with the group companies. The Service Tax (Determination of Value) Rules, 2006, was brought into effect from 01.06.2007. Rule 5 provided for "inclusion in or exclusion from value of certain expenditure

or costs", whereas the demand is only for the period from April 2008 to January 2011. Rule 5(1) stated as under;

> Rule 5 - Inclusion in or exclusion from value of certain expenditure or costs
>
> (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

Hence the Rule had clearly required that if any expenditure or costs was incurred by the service provider in the course of providing taxable service, all such expenditure or costs should be treated as consideration for the taxable service. Although this Rule was later struck down by the Hon'ble High Court in Intercontinental Consultant and Technocrats Pt Ltd Vs. Union of India (2012) 12 TMI 150 judgment of the Hon'ble High Court, New Delhi, it was rendered only on 30/11/2012. It is not their case that they have challenged the scope of the definition of 'manpower supply service' or non-exigility of 'reimbursement. in a court of law or even sought a clarification from the department which went unanswered. Hence the respondent cannot claim confusion before the judgment came to be passed or to be ignorant of law. Audit inspections by the department do not absolve the respondent unless it can be shown that the impugned data was presented to audit during their visit. Audit teams are known to audit specific aspects of a tax payers' activities. It may not be possible for them to make a discovery of every hidden issue within the knowledge of the tax payer, during their visit. We have earlier noted that the respondent too has not found it necessary even to bring out the nature of the 'sharing' process by producing a copy of the contract/

agreement, in their submissions before the lower authority. While ignorance of law cannot be pleaded as a defence, the respondent is a part of a group of companies and has specialised officers dealing with taxation and legal matters. The words 'any person' 'to any person' and 'any amount' are clear and without ambiguities and should not have caused misunderstanding to them, when they can be clearly understood by laymen. Company officials are expected to exercise reasonable care in the affairs of their company. Such a glaring omission on their part can happen by design and not by accident. Whether there was an intention to evade duty can only be known by the circumstances surrounding the act. An act of evasion is always hatched in secrecy and it is difficult at all times to adduce direct evidence of the same. The intention to evade can only be gathered from the inferences drawn from acts or illegal omission committed by a person's blameworthy act. Hence for the reasons discussed the inference of the department that the respondent M/s Chemplast had by their blameworthy conduct deliberately supressed facts with intention to evade payment of duty cannot be faulted. It has been held by courts that appellate bodies should be mindful of the first-hand knowledge of the original authority and the position that he holds to assess the facts and the credibility of circumstances from his own observations. Even if a superior appellate body feels that another view is possible, that is no ground for substitution of the original authorities view with one's own by exercising its appellate jurisdiction. The exception would be if the impugned order is demonstrably found as not being rational or reasonable or is suffering from procedural impropriety which is not the

case here. The two judgments cited by the respondent hence do not come to their rescue. Hence we find that the SCN has been issued correctly under the extended period of time.

10. Having regard to the discussions above the appeal succeeds both on merits and on the show cause notice not being hit by the limitation of time. We find that a small amount of the demand pertains to the period prior to a change in the definition of 'manpower supply service' took place on 16.5.2008 and will not be liable to tax. We hence set aside the impugned order and remand the matter to the lower authority for issue of orders afresh regarding the quantification of tax payable from 16.5.2008 along with interest and for the imposition of penalty as proposed in the Show Cause Notice. The appeal succeeds on these terms and is disposed off accordingly.

(Pronounced in open court on 11.7.2023)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex