

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

Service Tax Appeal No. 41233 of 2015

(Arising out of Order in Original No. 02/2015 (ST) dated 30.1.2015 passed by the Commissioner of Central Excise, Chennai – III)

With

Service Tax Appeal No. 40660 of 2017

(Arising out of Order in Appeal No. 240/2016 (CXA-I) dated 31.10.2016 passed by the Commissioner of Central Excise (Appeals – I), Chennai)

Service Tax Appeal No. 41395 of 2018

(Arising out of Order in Appeal No. 31/2017-18 (Audit – I) dated 22.2.2018 passed by the Commissioner of Central Tax (Appeals – II), Chennai)

And

Service Tax Appeal No. 41823 of 2018

(Arising out of Order in Appeal No. 152/2018 (CTA – II) dated 31.3.2018 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

**M/s. Larsen & Toubro Ltd.
(ECC Workshop & TLTRS)**

NH-4, Bangalore Highway
Nirvalloor Village
Kancheepuram – 631 561.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

Respondent

APPEARANCE:

Shri Raghavan Ramabhadran, Advocate for the Appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40335-40338/2026

Date of Hearing: 27.10.2025
Date of Decision: 09.03.2026

Per M. Ajit Kumar,

All these appeals involve a common issue, hence they are taken up together for disposal and are disposed by this common order.

2. Brief facts are that the appellant is a manufacturer of steel structures and is registered with the respondent-department for the provision of taxable services, namely Erection, Commissioning and Installation Service, Maintenance or Repair Service, and for discharge of service tax under the reverse charge mechanism in respect of Manpower Recruitment Services and Rent-a-Cab Service. During audit of the appellant's ECC Workshop accounts for the periods July 2012 to March 2014 and April 2014 to March 2015, it was observed that the appellant had engaged various contractors to carry out operations within its factory premises pursuant to work orders under which all materials, power, and machinery were supplied by the appellant, and the work was executed under its supervision and control, with consideration paid on a per-piece or per-MT basis. The department classified these activities as Manpower Recruitment and Supply Service, attracting liability to pay 75% of the service tax under the partial reverse charge mechanism (**RCM**), in terms of notification 30/2012 ST, dated: 20.06.2012. For the period July 2012 to March 2014, the service tax payable on labour charges was computed and it was found that tax was only partly paid in respect of certain work orders issued to M/s. C. Mani Construction and M/s. J. Manickam, resulting in a short-payment. A further demand was raised for the period April 2014 to March 2015. In respect of L&T (TLTRS Division), a Show Cause Notice dated 08.08.2014 demanded duty for the period

July 2012 to March 2014, followed by a Statement of Demand dated 05.01.2016 for the period April 2014 to March 2015. Upon adjudication, the Ld. Commissioner confirmed the demands along with interest and imposed penalties under Sections 76 and 78 of the Finance Act, 1994. Aggrieved thereby, the appellant has preferred the present four appeals before the Tribunal.

3. The learned Advocate Shri Raghavan Ramabhadran appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 Shri Raghavan Ramabhadran the Ld. Counsel for the appellant in his written synopsis provided the following table, giving a snap shot of the Appeals.

TABLE -I

Appeal No.	ST/41233/2015	ST/41823/2018	ST/40660/2017	ST/41395/2018
Appellant	L&T (ECC Workshop)		L&T (TLTRS)	
Impugned Order	OIO No. 02/2015 (ST) dated 30.01.2015	OIA No. 152/2018(CTA-II) dated 31.03.2018	OIA No. 240/2016(CXA-I) dated -	OIA No. 31/2017-18 (Audit-I) dated 22.02.2018
Order-in-Original	Same as above	OIO No. 10/2017(ST) dated 11.05.2017	OIO No. 16/2015 dated 30.11.2015	OIO No. 12/2016 dated 30.11.2016
SCN/ SOD	SCN No. 31/2014 dated 15.10.2014	SOD no. 09/2016 dated 15.03.2016	SCN No. 25/2014 dated 08.08.2014	SOD No. 36/2015(ST) dated 05.01.2016
Period involved	July 2012 to March 2014	April 2014 to March 2015	July 2012 to March 2014	April 2014 to March 2015
Amount of tax	Rs.1,84,23,778/- under Proviso to Section 73(1).	Rs.91,03,587/- under Section 73(1).	Rs.43,25,115/- under Proviso to Section	Rs.27,06,417/- under Section 73(1).
Amount of interest	Not quantified – under Section 75.	Not quantified – under Section 75.	Not quantified – under Section	Not quantified – under Section 75.
Amount of penalty	Rs.1,84,23,778/- (Section 78)	Rs.9,10,358 (Section 76)	Rs.43,25,115/- (Section 78) Rs.10,000/- (Section 77)	Rs.2,70,642/- (Section 76) Rs.10,000/- (Section 77)
Issue	Demand of Service tax on alleged receipt of Manpower Supply Services in respect of work orders issued for undertaking specific works under partial reverse charge (75%) mechanism.			

The Ld. Counsel submitted that the appellants engaged independent job workers for specific intermediate production processes, paid on item-rate/tonnage basis, who remained under the contractors' control and not that of the appellant. Mere execution of work at the appellants' premises using their raw materials and tools does not constitute manpower supply, as clarified by Board Circular No. 190/9/2015-ST. For identical contracts, the service tax demand on one contractor was set aside by Order-in-Appeal No. 64/2018 dated 08.03.2018, which has attained finality. Once the activity is held non-taxable in the hands of the service provider, the corresponding RCM demand on the recipient is unsustainable. The Ld. Counsel stated that the issue stands conclusively settled by a catena of decisions holding that contracts for execution of specific jobs with payment on piece-rate/output basis do not constitute manpower supply services, including:

- i. *Suresh Contracts & Ors.* – 2023 (5) TMI 393 (CESTAT Chennai), following *Adiraj Manpower Services* (SC);
- ii. *Donypolo Udyog Ltd.* – 2023 (3) TMI 539 (CESTAT New Delhi);
- iii. *Nishkarsh Industrial Services* – CESTAT Ahmedabad;
- iv. *Rajhans Metals Pvt. Ltd.* – 2024 (9) TMI 929 (CESTAT Ahmedabad);
- v. *Abbas Mussa Hasam & Ors.* – 2024 (5) TMI 135 (CESTAT Ahmedabad);
- vi. *Fire Controls* – 2019 (8) TMI 1028 (CESTAT Bangalore).

He submitted that although the Show Cause Notices invoke Rule 2(g) of the Service Tax Rules, 1994, the Orders-in-Original rely on Sections 65(68) and 65(105)(k) of the Finance Act, 1994, provisions applicable only prior to 01.07.2012 and therefore irrelevant to the period in

dispute. Without prejudice, even if tax liability is assumed, the Appellants are entitled to full CENVAT credit, rendering the demand revenue-neutral. The issue involves interpretation of law, supported by divergent judicial views, and the Appellants acted under a bona fide belief that RCM was inapplicable. Consequently, there was no suppression, the extended limitation could not be invoked, and the appeal deserves to be allowed.

3.2 Per Contra Smt. O.M. Reena the Ld. A.R. has taken us through the impugned orders and reiterated the findings given therein. She stated that the contractors brought only workmen into the factory. The materials, power and machinery were provided by the assessee and the various jobs undertaken by the contractors were within the factory premises under the superintendence or control of the appellant. Hence the service merited to be classified as Manpower Recruitment & Supply Services and the appeal merits to be rejected.

4. We have heard the parties and examined the appeals. The principal issue is whether the contracts entered into by the appellants, under which specific works are executed on an output or piece-rate basis, with raw materials and equipment supplied by the appellants and work carried out under their supervision, constitute "manpower supply services" liable to service tax under the partial reverse charge mechanism, or whether the contractors are independent job workers rather than mere suppliers of contract labour.

5. Rule 2(g) of the Service Tax Rules, 1994 defines “supply of manpower” as the supply of manpower, temporarily or otherwise, to another person to work under that person’s superintendence and control. The issue of manpower supply therefore turns on the existence of an employer–employee relationship of the appellant with the workmen, which is characterised by the employer’s right to supervise and control the work performed. Such a relationship is contractual in nature and must be ascertained from the relevant agreement. However, Constitutional Courts have cautioned that **no single determinative test can conclusively distinguish a contract of service from a contract for service.** [**Sushilaben Indravadan Gandhi Vs New India Assurance Co. Ltd.**, (2021) 7 SCC 151]

6. Recently the Hon’ble Supreme Court in **GENERAL MANAGER, U.P. COOPERATIVE BANK LTD. Vs ACHHEY LAL & ANR.** [2025 INSC 1175 / Civil Appeal No.2974/2016, Dated: 11.09.2025], examined a catena of judgments so as to consolidate and lay down the relevant **tests to determine the employer-employee relationship.** It held:

“FEW TESTS TO DETERMINE EMPLOYER EMPLOYEE RELATIONSHIP TO BE KEPT IN MIND WHILE DECIDING MATTERS ARISING FROM LEGISLATIONS LIKE INDUSTRIAL DISPUTES ACT, 1947, THE FACTORIES ACT, 1948 ETC:

1. Control Test

(i) **The control test postulates that when the hirer has control over the work assigned and the manner in which it is to be done, an employer-employee relationship is established.** The control test is derived from common law application in vicarious liability claims.

(ii) The earliest instance of applying the control test in India is in **Shivanandan Sharma Vs Punjab National Bank Ltd.** reported in AIR 1955 SC 404. Here, a claim under the Industrial Disputes Act arose as to whether a head cashier was the bank's employee. The bank had an agreement with a contracted treasurer who nominated people to work for discharging function of the bank under the agreement, including the cashier in question. The court held that although the treasurer chose the nominees who discharged the functions, yet the bank had complete control over the nominee's disciplinary matters, leave of absence, how the nominees discharged their functions, and, importantly, their salaries were paid by the treasurer from the funds provided by the bank. It was held that the bank manager had the same degree of control over the nominees as he did over numerous other employees, and thus an employer-employee relationship existed. The bank also had the right to select bank personnel who would have the authority to supervise how the cash department conducted its work. The court concluded that the cashier was an employee of the bank. The scope of indirect employment was expounded as under:

"If a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master." (emphasis supplied)

(iii) While **Shivanandan Sharma** (supra) was the first instance of the control test being applied, an important step in the test's evolution was in **Dharangadhara Chemical Works Ltd. Vs State of Saurashtra** reported in (1957) 1 LLJ 477. The dispute was whether agarias (salt workers) were employees and whether the claim under the Industrial Disputes Act 1947 was maintainable. To establish that the hirer had control over the hired person, it was ruled that control must exist in two aspects. First, control over the nature of the work performed and, secondly, the manner in which the work is conducted. It was argued that since agarias assisted several persons in performing work, they were independent contractors.

(iv) For the court, the true difference between the workers and independent contractors was whether the work was being committed for oneself or a third party. The existence of external help would not rule out an employer-employee relationship. The court opined that the greater the degree of control, the more likely the hired person would be an employee. Accordingly, the agarias were held as employees

and eligible for benefits under the Industrial Disputes Act 1947.

(v) The court enunciates the manner to make this distinction as under:

"The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer" (emphasis added)

(vi) Thus, the control test was expanded to mean due control and supervision. In numerous cases, the control test adopted in Dharangadhara (supra) remained the sole factor determining employer-employee relationship. The degree and level of control required would depend on the facts and circumstances of each case.

2. Organisation/Integration Test

(i) The first instance of the shift from the control test as a sole determinative factor was in **Silver Jubilee Tailoring House Vs Chief Inspector of Shops and Establishments** reported in (1974) 3 SCC 498. This Court observed that the earlier reliance on the control test was attributed to the agrarian economy, where masters often exercised control over workers. This occurred due to masters having more knowledge, skill and experience. The shift to a multifactor test is due to modern work being conducted by professionals where masters lack the technical expertise to direct the manner in which the work is undertaken. The court arrived at these conclusions relying on judgements in the **Market Investigations Ltd. Vs Minister of Social Security** reported in (1969) 2 WLR 1, Cassidy v Ministry of Health reported in (1951) 2KB 343, Montreal v Montreal Locomotive Works Ltd reported in 1947 1 DLR 161 (Privy council). In Silver Jubilee (supra) reliance was placed on a combination of the organisation test (also known as the integration test) as interpreted in the Market Investigations Ltd. (supra), Cassidy. (supra), Montreal Locomotive Works (supra) and the control test used in India.

(ii) **The organisation test looks at the degree of integration in the work committed in the hirer's primary business with the understanding that the higher the level of integration, the more likely the worker is to be an employee.** A combination of control and integration tests allows the professional workers to be classified as employees, notwithstanding a lack of control over the manner of work. Furthermore, the existence and potential use of factors beyond the control and integration in future cases was also recognised. This opened the path for the multifactor test.

3. Multiple Factor test

(i) The multifactor test includes:

- a) Control
- b) Ownership of the tools
- c) Integration/Organisation
- d) Chance of profit
- e) Risk of loss
- f) the master's power of selecting his servant
- g) The payment of wages or other remuneration
- h) The master's right to control the method of doing the work, and
- i) The master's right of suspension or dismissal.

(ii) In **Steel Authority of India Limited Vs National Union Waterfront Workers**, reported in 2017 NLS Bus L. Rev. 20, it was opined that where sham arrangements exist, the Contract Labour (Regulation and Abolition) Act, 1970 would not apply, and workers would be deemed employees and have the right to raise an industrial dispute in the same manner as an employee.

(iii) To identify whether sham arrangements exist, this Court in **Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N.** reported in (2004) 5 SCC 514 ruled that piercing the veil was necessary. **Whether the arrangement was a sham was not considered as a question of law.** Such a determination must be adjudicated based on the evidence adduced in the court by either party and not merely by referring to the provisions. The relevance of factors other than the control and integration to determine whether the workers are employees or independent contractors was brought out. The court examined the following factors:

- a) who is the appointing authority?
- b) who is the paymaster?
- c) who can dismiss?
- d) the duration of an "alternative service";
- e) the extent of control and supervision;
- f) the nature of the job, e.g. whether it is professional or skilled work;
- g) nature of establishment;
- h) the right to reject.

(iv) This Court in **Bengal Nagpur Cotton Mills v. Bharat Lal** reported in (2011) 1 SCC 635 laid down two factors to be considered to determine the true nature of the hiring entity, i.e., whether it is the principal employer or contractor:

- (i) Whether the principal employer pays the salary instead of the contractor; and
- (ii) Whether the principal employer controls and supervises the work of the employee?

4. Refinement of the multifactor test

(i) The courts, over the years, have refined the scope of the multifactor test by adding various factors based on the facts and circumstances. This Court, in many cases, has applied the refinement of the multifactor test.

(ii) In **Sushilaben Indravadan Gandhi v The New India Assurance Company** Limited, reported in (2021) 7 SCC 151, this Court revisited the distinction between a contract of service and a contract for service. After analysing *Market Investigations Ltd.* (supra), *Cassidy* (supra) and *Montreal Locomotive Works* (supra), the multifactor test was reiterated, consisting of the following factors:

- a) Control over the work and manner in which it is conducted
- b) Level of integration into employers' business
- c) Manner in which remuneration is disbursed to workers
- d) Economic control over workers
- e) Whether work being conducted is for oneself or a third party

(iii) In **Sushilaben** (supra) priority was given to factors of control and mode of remuneration, noting these would ordinarily suffice to identify the true nature of the relationship unless other contractual terms indicated otherwise.

(iv) In **Sushilaben** (supra) the articulation of the control test has been given importance as it varies from that in **Balwant Rai Saluja Vs Air India Ltd.** reported in 2014 9 SCC 407. This was elucidated as under:

"The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases." (emphasis added)

(v) The use of the term "sufficient degree of control" is in stark contrast to the "effective and absolute control" ruling in **Balwant Rai Saluja** (supra). However, no reference to Balwant Rai Saluja (supra) was made while discussing the evolution of the various tests. (Referral: IIMA, Working Paper by M.P. Ram Mohan and Sai. Muralidhar K.)
(emphasis added)

The Court held that everything would depend upon the facts that are involved in the particular case.

7. We find that the CBIC has taken a similar view in its Circular No. 190/9/2015-ST dated 15.12.2015, relevant portion of which is extracted below;

"2. **The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service** are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service providers accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

2.1 On the other hand, the **essential characteristics of job work service** are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

3. **Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case.** The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided. . ."
(emphasis added)

8. Although the burden of proof lies on the Revenue, the SCN dated 15.10.2014 neither contains extracts of the contract or work order nor treats them as relied-upon documents, despite these being the best evidence of the nature of work performed. The SODs are similarly deficient. The appellant has however submitted a few copies of the workorder along with their appeals. The terms of service as per the contract has however been examined by the Commissioner in an earlier contract between one contractor (G. Velmurugan) and the Appellant (L&T - TLTRs). In that case, it was alleged by revenue that services rendered during April 2014 to March 2015 fell under "manpower supply services." The appellant contends that the contracts in the present cases are identical and has submitted a comparative chart in the 'Synopsis' filed during the public hearing and is reproduced below:

S. No.	Clauses of work order as per OIA No. 64/2018/Audit II Dated 08.03.2018	Clauses as per L&T (ECC Workshop) work orders. [Work Order for C. Mani Construction – Page No. 62 of Appeal No. ST/41823/2018]
1	Work order is issued for undertaking a specific work.	Yes, [Page No. 62, 23 description of work in work order]
2	There is no restriction on number of workers	Yes, there is no restriction on number of workers and the contractor is at liberty to complete the work with any number of workers.
3	Consideration is based on quantum of work	Yes [Page No. 64, clause 2]
4	Workforce employed is on the roll and supervision of the contractor as responsibility is on the contractor to	Yes, [Page No. 65 - clause 24]

The comparison above has not been refuted by revenue nor are there any allegations that the work orders are a sham. The OIO passed in the case of G. Velmurugan, was set aside by the Ld. Commissioner

(Appeals) vide Order-in-Appeal No. 64/2018/Audit II dated 08.03.2018. for the following reasons:

- A. The consideration is based on quantum of work completed in the factory of L&T.
- B. There is no restriction on the number of workers to be employed by the contractor for carrying out the work.
- C. The work force employed is on the roll of the contractor and under the supervision of the contractor as the contractor has to ensure that the workmen strictly follow the safety procedure.

9. As evident from the First Appellate Authority's order, no master-servant relationship exists between the appellant and the workers. The work is executed entirely by the contractor, who is paid based on the work completed. This arrangement satisfies the essential characteristics of job work service under **Board's Circular No. 190/9/2015-ST**, which is binding on the department. Further, in light of the Hon'ble Supreme Court's judgment in **Achhey Lal** (supra), the relationship fails the 'control test', as the workmen are on the contractor's rolls and under his supervision. The degree of control rests predominantly with the contractor, and the workmen are neither integrated into nor directly remunerated by the appellant's organization. Given the straightforward nature of the arrangement, the 'multiple factor test' is not applicable. Accordingly, applying the tests laid down in **Achhey Lal** (supra), the workmen are job workers, and the allegation of manpower supply by the contractor is unsustainable.

10. The appellant submits that, to their knowledge, the Department has not filed an appeal against the order dated 08.03.2018. This submission has not been disputed by the Revenue. Accordingly, the order has attained finality, and its ratio is binding on the Department. The impugned order is hence liable to be set aside.

11. We find that the appellant has relied upon a large number of judicial precedents. It is true that the decisions rendered in such matters are largely fact-specific and turn upon the nature of the contracts examined therein. However, we note that the consistent ratio emerging from these decisions, including the decision of the Coordinate Bench of this Tribunal in **Suresh Contracts & Ors. Vs CCE** – 2023 (5) TMI 393 (CESTAT Chennai), is that contracts entered into for execution of specified jobs, where consideration is linked to output or piece-rate basis and the workmen are not integrated into the hiring organisation, cannot be classified as manpower supply services. In the absence of any distinguishing facts or contrary material placed before us, we find no justification to take a view different from that already taken by the Coordinate Bench.

12. For the reasons stated we set aside the impugned orders. The appellant is eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 09.03.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Rex