

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

Service Tax Appeal No. 41753 & 41754/2016

(Arising out of Order in Appeal No. 209 & 210/2016 (CXA – II) both dated 31.05.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

B.S. Biswal & Company

No. 44/18, First Floor
Dr. Varadharajan Street
Vedachalam Nagar
Chengalpet – 603 001.

Appellant

Vs.

Commissioner of GST & Central Excise

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

Respondent

With

Service Tax Appeal No. 40559/2017

(Arising out of Order in Appeal No. 456/2016 (CXA – II) dated 16.12.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

Beekay Steel Industries Ltd.

No. 10, Kumaravadi Village
Madhuranthagam Taluk
Kancheepuram District – 603 107.

Appellant

Vs.

Commissioner of GST & Central Excise

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

Respondent

Service Tax Appeal No. 40860/2017

(Arising out of Order in Appeal No.49/2017 (CXA – II) dated 31.01.2017 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

B.S. Biswal & Company

No. 44/18, First Floor
Dr. Varadharajan Street
Vedachalam Nagar
Chengalpet – 603 001.

Appellant

Vs.

Commissioner of GST & Central Excise

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

Respondent

And

Service Tax Appeal No. 40819/2018

(Arising out of Order in Appeal No. 11/2017-2018 (Audit – I) dated 29.01.2018 passed by the Commissioner (Audit – I), Chennai)

Beekay Steel Industries Ltd.

No. 10, Kumaravadi Village
Madhuranthagam Taluk
Kancheepuram District – 603 107.

Appellant

Vs.

Commissioner of GST & Central Excise

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

Respondent**APPEARANCE:**

Shri S. Venkatachalam, Advocate for the Appellants
Smt. G. Kripa, 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. 40491 – 40495/2026

Date of Hearing: 09.01.2026

Date of Decision: 17.04.2026

Per M. Ajit Kumar,

All these appeals arise out of a common issue, hence they are taken up together and are disposed by this common order.

2. The **first appellant** M/s. B.S. Biswal and Company (**Biswal**) who is registered with the Service Tax Department is providing taxable service under the category of 'Manpower Recruitment and Supply Agency Service' to the **second appellant**, M/s. Beekay Steel Industries Ltd. (**Beekay**). It was noticed that Biswal stopped filing ST-3 returns from 01.04.2008. Department sought production of

copies of agreements and the payments received from Beekay during the period 2008 – 09. However, Biswal stated that the activity carried out by them was only manufacture and does not fall under the category of 'Manpower Recruitment and Supply Agency Service' and furnished copies of ledgers and balance sheets for the period 2008 – 09 to 2012 – 13. Since Biswal did not produce copies of agreements, the same were obtained from Beekay. On perusal of the agreements, it appeared that on the basis of work order by Beekay to Biswal, it was on principal to principal basis and that Biswal had to supply manpower for the production activities and housekeeping activities and Biswal was vested with the rights to control the manpower supplied for production activities and that they were to charge Beekay towards supply of such labour on per MT basis. It also appeared that the activity fell under the category of 'Manpower Recruitment and Supply Agency Service'. Hence Show Cause Notices dated 23.10.2013 for the period from 01.04.2008 to 30.06.2012 and 23.4.2014 for the period July 2012 to September 2013 were issued for demanding Service Tax amount of Rs.17,65,051/- and Rs.2,04,326/- respectively along with interest and for imposing penalties under section 76, 77 and 78 of the Finance Act, 1994 (**FA 1994**). After due process of law, the Ld. Adjudicating Authority confirmed the proposals in the Show Cause Notices. For the period from 01.10.2013 to 31.03.2015, on the same set of facts and allegations, Show Cause Notice dated 14.10.2015 was issued to Biswal for demanding service tax of Rs.2,58,911/-. After due process of law, the Ld. Adjudicating Authority confirmed the demands along

with interest and imposed penalties under sections 76 and 77 of the Act. Biswal preferred appeals before the Ld. Commissioner (Appeals) and they were rejected. Hence Appeal No. ST/41753 and 41754/2016 and ST/40860/2017 before this Tribunal.

2.2 In Appeal No. ST/40559/2017, brief facts are that the appellant Beekay is a manufacturer of non-alloy steel, alloy steel, bright bars etc. falling under Chapter 72 of CETA, 1985. On verification of records of Beekay, it was found that they had made periodical payment to Biswal, a labour contractor for undertaking the conversion work in relation to manufacture of hot rolled products and steel products and it was seen that they had paid an amount of Rs.92,89,050/- for the period from 01.07.2012 to 31.03.2014. On perusal of the agreement between Beekay and Biswal, it appeared that the service provider Biswal had provided manpower service on principal to principal basis for the production activities and housekeeping activities of Beekay. The said activity amounted to supply of 'Manpower Recruitment and Supply Agency Service'. From 01.07.2012, Notification No. 30/2012-ST dated 20.6.2012 provides that the person receiving the manpower service was liable to pay 75% of the service tax liability. Hence for the period from 01.07.2012 to 31.03.2014, it appeared that Beekay was liable to pay service tax to the tune of Rs.8,61,095/- in their capacity as a service recipient of 'Manpower Recruitment and Supply Agency Service'. Hence Show Cause Notice dated 19.08.2014 was issued proposing to recover the said amount. After due process of law, the Ld. Adjudicating Authority confirmed the entire service tax of Rs.8,61,095/- along with interest

and imposed penalties under sections 76 and 77 of the FA. The appeal preferred by Beekay before the Ld. Commissioner (Appeals) was rejected. Hence the present appeal.

2.3 In Appeal No. ST/40819/2018, for the same activity, Show Cause Notice dated 28.11.2016 has been issued to Beekay recover service tax of Rs.8,70,366/- along with interest and penalties for the period from April 2015 to March 2016. The Ld. Adjudicating Authority confirmed the demand and the Ld. Commissioner (Audit) upheld the same. Hence the appellant is in appeal.

3. The learned Advocate Shri S. Venkatachalam appeared for the appellant and Ld. Authorized Representative Smt. G. Kripa appeared for the respondent.

3.1 Shri S. Venkatachalam, the Ld. Counsel for the appellants (Biswal and Beekay) submitted as follows:

A. Beekay manufactures Bright Bars under Chapter 72 of the Central Excise Tariff Act and engaged Biswal as a job worker, paying charges based on quantity of finished goods.

B. Initially, M/s. B.S. Biswal & Company supplied labour and paid service tax up to March 2008. Thereafter, the contract was changed to a job-work arrangement for manufacture of goods, and service tax was neither paid nor collected, as the activity did not constitute manpower supply.

C. Based on audit objections, show cause notices were issued, and impugned orders were passed without properly considering the Agreement and appellants' submissions, violating principles of natural justice.

D. The agreement clearly shows that workers remained under the control of the job worker, not the appellants, and payments were linked to output, not manpower. This is also admitted in the show cause notices. Hence, the activity does not fall under "Manpower Recruitment or Supply Agency" as defined under Rule 2(g) of the Service Tax Rules, 1994, but is a job-work activity covered under the negative list for the relevant period. The contrary findings in the impugned orders are factually and legally unsustainable.

E. The appellants' service provider's activity is covered under Section 66D(f) of the Finance Act, 1994, being a process amounting to manufacture/production of goods. Since it results in manufacture of excisable goods, it falls in the negative list and is not liable to service tax. Further, the consideration was linked to the quantity of finished goods produced and not to the number of persons employed.

F. It is undisputed that the appellants paid duty on the goods manufactured on job-work basis by M/s. B.S. Biswal & Company; therefore, no service tax is payable. The appellants rely on the decisions cited in the grounds of appeal and, in particular, on the following decisions (including recent ones).

3.2 Smt. G. Krupa Ld. Authorized Representative submitted on behalf of revenue that:

A. The definition of 'Manpower Recruitment or Supply Agency' under Section 65(68) of the Finance Act, 1994, applicable during February 2012–March 2013, covers direct or indirect supply of manpower.

B. The Appellant was engaged by M/s Beekay Steel Industries Ltd. (BSIL) to produce Hot Rolled Products on a tonnage basis using its own labour. Prior to 01.04.2008, the Appellant paid service tax as a manpower supply agency but later claimed the activity was job work to avoid tax.

C. This claim is untenable as the Appellant failed to prove absence of Beekay's supervision and control. The work order lacked essential manufacturing specifications and instead required maintenance of Beekay's machinery, indicating labour supply rather than genuine job work. Supplying labour for production does not convert the activity into job work. The arrangement clearly reflects supply of manpower, which falls squarely within the statutory definition.

D. The payment structure, absence of independent tools or materials, and maintenance obligations confirm labour hire. The job work order was merely a device to evade service tax. Accordingly, the Appellant is liable under *Manpower Recruitment or Supply Agency* service.

E. CBIC Circular No. 96/7/2007-ST clarifies that where workers are employed by an agency and supplied for specific tasks, the agency is liable to service tax. This squarely applies to the present case.

F. The plea against extended limitation fails as the Appellant stopped filing statutory returns post 01.04.2008. Penalties under Sections 76, 77, and 78 are rightly imposed and upheld.

G. The agreement with BSIL further confirms daily production obligations, fixed job charges per MT inclusive of levies, statutory

compliance by the Appellant, fixed working hours, responsibility for labour, and machinery maintenance—reinforcing the finding of manpower supply.

The Ld. A.R. prayed that the appeals filed by Beekay and Biswal may be rejected.

4. We have heard the parties and have carefully considered their oral and written submissions. The issue pertains to the classification of service rendered by Biswal to Beekay as 'Manpower Recruitment and Supply Agency Service' (Revenue) or as 'Job Workers' used for manufacturing Bright Bars and not falling under the Service Tax net.

5. The issue before us, as articulated by the Hon'ble Supreme Court in **Sushilaben Indravadan Gandhi Vs New India Assurance Co. Ltd.** [(2021) 7 SCC 151], is **whether the facts of the present case disclose a contract of service or a contract for service**. The question whether the relation between the parties was one as between an employer and employee or was of job work in nature is a pure question of fact. The principles according to which the factual relationship between employer and employee or master and servant is to be determined is laid out in a series of tests as laid out in various judgments of the Supreme Court.

6. The Supreme Court in its recent judgment 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 several judgments of Constitutional Courts and held, as under:

"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 Vs 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.)."

In **Sushilaben** (supra), the Apex Court stated the issue succinctly when it said:

"28. It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded, which factors should in any case be treated as determining ones. **The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the**

factors which point in one direction and balancing them against those pointing in the opposite direction [See Atiyah, PS. "Vicarious Liability in the Law of Torts", pp. 37-38] .

(emphasis added)

7. For a better understanding the relevant definition of 'Manpower Recruitment or Supply Agency' as stated under Section 65(68) of the Finance Act, 1994 during the period of dispute i.e. from February 2012 to March 2013, is reproduced below:

"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 try other person."

8. It would at this stage be appropriate to examine the terms of the contract between the parties. The salient features are set out in Letter No. BSIL/F/VS/002A/08-09 dated 01.04.2008.

- a. that the assesseees are required to produce Hot Rolled Products the quantity as assigned to them on daily basis;
- b. that the assesseees are entitled to charge for Job which will be mutually discussed and settled at frequent intervals and that presently the Job charges are to be billed at the rate of Rs. 160/- per MT for the quantity produced/manufactured:
- c. that the above rate will be inclusive of statutory levies and their margin etc.
- d. that the assesseees have to submit the Job bill once in every month and the payment will be made within 10 days of receipt of the bill;
- e. that they are required to abide by all Statutory obligations as per the legislations of the Central and State Acts enforced time to time in carrying out the job work for manufacturing activity and also keep the management free from any Acts of commission or omissions arising from this;
- f. that they have to carry out the manufacturing activity during the general shift for 12 hours starting from 06.00 to 18.00 hrs on working days;

g. **that the labour engaged to produce given result will be under your control and that M/s BSIL do not undertake any control over the labour;**

h. that the assesseees have to help the management in keeping the production machineries in neat, clean and in working condition always;

i. that the job work order for manufacturing dutiable goods will be valid from 01.04.2008 onwards and that either party can terminate the same agreement by giving notice of one month in writing and mutual consent;

(emphasis added)

9. An agreement that is enforceable in a court of law is a contract.

A contract falls within the domain of private law and is a critical document for understanding the nature of the service provided. It is a settled principle of law that a contract must be interpreted in accordance with the **common intention of the parties**, which is to be ascertained from the contract as a whole and the circumstances surrounding its formation. The maxim "*pacta dant legem contractui*" signifies that the stipulations agreed upon by the parties constitute the law governing the contract. In **DLF Universal Ltd. & Anr. v. Director, Town and Country Planning Department, Haryana & Ors.**, [(2010) 14 SCC 1] the Hon'ble Supreme set out the interpretation of contract as follows:

"Interpretation of contract

13. **It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises the joint intent of the parties.** Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the

ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. **It is not the intent of a single party; it is the joint intent of both the parties** and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

14. As is stated in **Anson's Law of Contract** :

"a basic principle of the common law of contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed, and no injury is done to the interests of the community at large."

There is no dispute with the proposition that the terms and conditions have to be seen as intended by parties, and it has to be based on the objectives, values, and policies that contract is designed to actualize.

(emphasis added)

10. A cumulative reading of the contractual terms as set out above, in contextual reference to the 'tests' mentioned in the Supreme Court judgment in *ACHCHEY LAL* (supra), establishes that the relationship between the parties is one of job work / contract for service, and not a master-servant or contract of service arrangement, as held by the Revenue. The obligation is output-oriented, requiring production of a specified quantity of Hot Rolled Products on a daily basis, with consideration fixed as job charges per metric tonne. Payment is thus linked to results, not manpower, time, or wages, which is determinative under the **mode of remuneration test** and the **economic control limb of the multifactor test**.

11.1 The contractor bears economic risk and reward, with job charges inclusive of statutory levies and margin, evidencing a

real chance of profit and risk of loss, which is wholly incompatible with employment under the **multifactor test**. The raising of monthly job bills and settlement thereof further reflects a **principal-to-principal commercial arrangement**, inconsistent with wage payment under a contract of service.

11.2 Statutory compliance and indemnification obligations vest entirely with the contractor, reinforcing the absence of employment under the **control and economic responsibility test**. Aligning job timings with factory shift hours serves only operational coordination and does not amount to control over the manner of work, which alone is material under the **control test**.

11.3 Most decisively, the contract expressly stipulates that labour remains under the exclusive control of the contractor, with the principal exercising no control whatsoever. The absence of any right to direct how the work is performed conclusively negatives a master-servant relationship under the **control test**. Ancillary obligations relating to machinery upkeep and mutual termination with notice are merely facilitative and reflect commercial parity, not service control. Hence applying the control test, mode of remuneration, integration test, and the multifactor economic test, the contractual arrangement unequivocally qualifies as job work (contract for service) and not a contract of service. The impugned order hence merits to be set aside and as a corollary all consequential adjudication dues are also liable to be set aside.

12. The Revenue has stated that the Appellant initially paid service tax as a manpower supply agency but later claimed the activity was

job work to avoid tax. The job work order was merely a device to evade service tax. Accordingly, the Appellant is liable under Manpower Recruitment or Supply Agency service. We have examined the contractual agreement between the parties and found it to be a contract of service, during the disputed period. Even if we accept the Revenue's contention that the change in pattern was deliberate, we must hold that a change in business model for reduction of tax liability need not be viewed with suspicion. It is a matter of common knowledge that every businessman will arrange his affairs in his best interest so long as it is a legitimate or genuine act. That is the presumption in law. Tax mitigation done by an assessee in which he arranges his affairs so that the tax attracted under the taxing statute is less, is legitimate. Provided it is within the framework of law and has no elements of fraud, which typically involves, but is not restricted to, creation of complex artificial business structures. The burden would rest on the Revenue to prove that the real intent of the transaction which the parties intended and the documents/ transactions, are at variance with the actual intent.

12.1 The Hon'ble Delhi High Court in **The Commissioner Of Income Tax, Delhi VI Vs Shiv Raj Gupta** [372 ITR 337 (Del.) / ITA No. 41/2002, Dated: 22/12/2014], after discussing three important judgments of the Hon'ble Supreme Court in the cases of **McDowell and Co. Ltd. Vs CTO** [(1985) 3 SCC 230]; **Union of India Vs Azadi Bachao Andolan** [(2004) 10 SCC 1] and **Vodafone International Holdings B.V Vs Union Of India & Anr** [(2012) 6 SCC 613 / CIVIL APPEAL NO.733 OF 2012, dated: 20/01/2012], held;

"38. **Thus, in Vodafone's case (supra) earlier decisions in McDowell (supra) and Azadi Bachao Andolan (supra) stand explained and elucidated.** Demanding and complicated question of tax avoidance and tax evasion, form over substance and what are the powers of the Revenue/income tax authorities stand explicated and unravelled. The issue is vexed but to our benefit examined and answered in Vodafone's case (supra) and we have applied the said tests.

Vodafone tests

39. **Expressions "tax avoidance, tax evasion and tax mitigation" are often spoken about, but differently understood.** Rule of law mandates and requires a measure of certainty in understanding the said terms. Juristic explications on the subject are indicative of equivocating and divergent stand points. The distinction between the expressions; tax avoidance, tax evasion and tax mitigation has been a subject matter of several erudite articles with different perspectives like Morality on Tax Avoidance by Zoë Prebble and John Prebble; Interpretation of Tax Statutes: tax avoidance and the intention of the Parliament by Judith Freedman; Tax Avoidance, Tax Evasion and Tax Mitigation by Philip Baker; and, Corporate Social Responsibility and Tax Avoidance: A comment and reflection by John Hasseldine and Gregory Morris. We acknowledge benefit of exposition and analysis in these articles as we elaborate on the said distinction. Discussion even after Vodafone's case (supra) is reflective that penetrating and perfect clarity of the said terms is not easy to discern and determine. To us the determination and ratio in Vodafone's case is clear.

****. ****. ****

41. The precise test enunciated and prescribed as a tenet, negates and disqualifies colourable device, deceit and sham as a legitimate and acceptable tax event. These terms have some-what ethical and casuistical connotations and are the elective test for differentiating tax planning from abusive tax avoidance.

42. To appreciate the concept of abusive tax avoidance, it would be appropriate to first delineate with precision the expressions 'tax mitigation' and 'tax evasion' as their boundaries and confines would enable us to draw lines amongst the four concepts; **tax mitigation, tax evasion, acceptable tax avoidance and abusive tax avoidance. Each of the said expressions involves an element of tax planning.** It would be hard to conceive of a situation where the assessed does not indulge to some sort of tax

planning, be it tax mitigation, acceptable tax avoidance, abusive tax avoidance or tax evasion. "Tax planning", being common to all situations, cannot be the distinguishing feature, but nature and character of the planning and its nexus with the transaction is decisive.

43. **Tax mitigation** in simple words would refer to a taxpayer taking advantage or benefit of a beneficial provision under the tax code and complying with the requisites to his lower the tax liability. In the words of Lord Nolan in CIR versus Willoughby [1997] 4 All ER 65, it is:-

"The hallmark of tax mitigation, on the other hand, is that the taxpayer takes advantage of a fiscally attractive option afforded to him by the tax legislation and genuinely suffers the economic consequences that Parliament intended to be suffered by those taking advantage of the option."

The aforesaid quote uses the expression 'economic consequences that Parliament intended' which as per some, causes confusion and is self contradictory. However, the said criticism overlooks that if the intention of the Parliament is clear and unambiguous; taking advantage or benefit as envisaged by the provision is a case of tax mitigation. Even in case of debate, when the intention of the Parliament is favourable and adjudication decides the question in favour of the assessee, it would be a case of tax mitigation. Courts are trusted and given the power to determine as to what was the intent of the Parliament while enacting a particular provision. When the court decision interpreting the legislative intent is in favour of the assessee, there is no avoidance of tax because the conduct is consistent with the taxing provision. If there is no tax avoidance, the question of abusive tax avoidance does not arise, for the latter refers to a particular category of transactions that are unacceptable being pejorative, i.e. **sham, colourable device or deceitful and is distinct from tax mitigation.** Albeit, where the Parliament's intention is to the contrary and the finding negates the assessed's submission, it would be a case of tax avoidance, whether acceptable or abusive is a different and another matter. Thus, the term '**tax mitigation**' is simple, intelligible and unequivocal. It is a positive term and refers to the assessed taking benefit or advantage of a provision which the tax code intends and wants to confer. Deductions under Chapter VIA, exemptions under Sections 10A, 10AA, 10B etc. of the Act are all provisions relating to tax mitigation. If an assessee takes benefit or advantage by complying with the stipulated conditions therein to reduce his tax liability, it would be a case of tax mitigation.

44. **Tax evasion** is illegal and consists of wilful violation or circumvention of applicable tax laws to minimise tax liability. **The assessed breaches the relevant law and it involves contumacious behaviour or actual knowledge of wrong doing.** This can happen when an assessee deliberately fails to report an item in the income tax return, or knowingly claims a deduction which he is aware he is not entitled to, or consciously omits to supply information even when there is duty to furnish the said details. It can also apply to situations when the assessee fails to clarify a matter, which has been misunderstood by the income tax authorities, and keeps quiet. **In these cases, there is element of wilfulness, dishonesty or contemptuous conduct or even absence of honest belief.** If the taxpayer cannot show that he had an honest belief that he was not liable to tax or liable to a lower tax, then prima facie such conduct would fall within the ambit/scope of tax evasion.

45. **Tax avoidance** by elimination would mean the residual and surplus, after we exclude cases of tax mitigation and tax evasion. Tax mitigation and tax evasion are two end points. It is easier and more beneficial to follow this discernment to define tax avoidance, for the confines and bounds of tax mitigation and tax evasion are easier to decipher and define legally and also identify with some exactness in practice. (Refer Tax Avoidance, Tax Evasion & Tax Mitigation by Philip Baker.)

46. It is equally important to distinguish and differentiate **acceptable tax avoidance and abusive tax avoidance.** The Supreme Court in **CIT versus Raman (A.) & Co.** [1968] 67 ITR 11, at p.17 had observed:-

"Avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. A taxpayer may resort to a device to divert the income before it accrues or arises to him. Effectiveness of the device depends not upon considerations of morality, but on the operation of the Income-tax Act. Legislative injunction in taxing statutes may not, except on peril of penalty, be violated, but it may lawfully be circumvented."

47. In clear and categorical terms the aforesaid ratio was resonated and approved by the Supreme Court in the **Vodafone's case** (supra). Thus, the test of 'devoid of business purpose' or 'lack of economic substance' is not accepted and applied in India as it is too broad and unsatisfactory. The said test, if ardently applied, **would contradict and would be irreconcilable with**

taxpayers' right to arrange once affairs within the confines of law, which is not prohibited or barred.

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50. The assessed is well within his right to choose any one event between two or more events and select an event to minimize or reduce his tax liability. The Act, i.e. the Income Tax Act, 1961, imposes and saddles tax liability on the chosen tax event. The Act per se, unless a provision so stipulates, does not restrict or curtail the right of choice. Tax is determined and gets crystallized on the tax event adopted by the assessee. For example, in Vodafone's case (supra), the assessed had several options and therefore, right to choose a particular tax event. **As long as the choice is within the framework of law, the Assessing Officer cannot disturb the tax effect or liability, which is the consequence of the event.** The choice of the assessee is not abrogated or invalidated. For example, a company has several legal options, and therefore, right to choose how to dispose of a capital asset, as in Vodafone's case (supra). Similarly, an assessee can opt for and has multiple options for raising debt to finance business expansion plans. The assessed may have several legally permissible alternatives to effect and divide the assets on partition. Such examples are numerous. The choice might result in mitigation of tax liability, but the tax effect would not classify or help us differentiate between tax avoidance and abusive tax avoidance. **Any attempt to minimize or eliminate tax liability would not make the choice of the tax payer abusive tax avoidance.** The foundation of the said principle is that the tax code by its nature differentiates between different types of actions, transactions, arrangements and activities and then identifies and stipulates the consequences. The tax code, i.e. the Income Tax Act, 1961 is rule based and complex. The Act is not entirely principle based. The provisions are read and applied. Principle of purposive interpretation both in favour of Revenue or assessed can be applied but within four corners of law. In fact, in some cases, the assessed may find themselves taxed at a higher liability for failure to choose a more tax friendly event. But the right of choice is hedged with one significant condition. The event selected, as noticed above and subsequently, should be real and not a colourable device, sham and deceit.

51. Tax reduction is not an evil if you do not do it evilly [Murphy Logging Co. vs. US, 378 F.2d 222 (1967)]. **The assessee acts evilly when there is camouflage or dubiousity to mask and masquerade the real intent of the transaction which the parties intended and the**

document(s)/transaction(s), is at variance with the actual intent. The assessed in such cases does not choose the real event as one from the multiple choices, but adopts a sham or colourable event. The assessed then acts fraudulently, deceitfully or in a corrupt manner. He does not choose an event which is useful, viable and tenable, but employs deception and visors to pretense a state of affair which is different from the actual or real state of affairs. The event propounded is contrary to his intention. When the event selected is artificial it can be treated as colourable, deceitful or sham. The artificial event is one which purports to be one thing but in fact is another. Thus, abusive tax avoidance is a matter of evil intention and a result of dishonest behaviour of the assessed.

52. In such cases, question of ignorance as to tax or administrative incompetence would arise for consideration, for abusive tax avoidance scheme requires a mind set and propensity to act evilly. It requires a degree of knowledge and absence of honest belief.

53. The aforesaid doctrine of abusive tax avoidance is a Judge made law or a judicial doctrine. The Parliament can legislate and has enacted provisions to negate and nullify specific anti-tax avoidance rules/provisions. . .”

(emphasis added)

13. In the light of the above judgment, the tax planning done by an assessee that results in the mitigation of tax is not a blameworthy conduct inviting penal consequences, unless it be shown by Revenue to be triggered by a fraudulent intention. No such evidence has been shown in this case.

14. We accordingly set aside the impugned orders and allow the appeals. The appellant is eligible for consequential relief, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 17.04.2026)

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

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