

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

REGIONAL BENCH – COURT NO.1

1. Service Tax Appeal No.75477 of 2022

(Arising out of Order-in-Original No.36/Pr.Commr./ST/GHY/2021-22 dated 23.03.2022 passed by Principal Commissioner, CGST & Central Excise, Guwahati)

M/s Emami Limited

(EPIP Complex, Amingaon, Kamrup District, Assam-781031)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Guwahati

(GST Bhawan, 1st & 2nd Floor, Kedar Road, Machhkowa, Guwahati-781001)

Respondent

WITH

2. Service Tax Appeal No.75493 of 2022

**(Chandan Kakati Vs.Principal Commissioner,CGST & Central
Excise, Guwahati**

3. Service Tax Appeal No.75494 of 2022

**(Shri Pradip Das Vs.Principal Commissioner,CGST & Central
Excise, Guwahati**

4. Service Tax Appeal No.75498 of 2022

**(M/s Vaishno Devi Enterprise Vs. Principal
Commissioner,CGST & Central Excise, Guwahati**

(Arising out of Order-in-Original No.36/Pr.Commr./ST/GHY/2021-22 dated 23.03.2022 passed by Principal Commissioner, CGST & Central Excise, Guwahati)

APPERANCE :

Shri Arvind Baheti & Ms.Sreeja Chakraborty, both Chartered Accountants for the Appellant

Shri P.K.Ghosh, Authorised Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77828-77831/2024

DATE OF HEARING : 14 NOVEMBER 2024

DATE OF PRONOUNCEMENT : 13 DECEMBER 2024

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Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding service tax of Rs.4,25,53,028/- along with interest and equivalent amount of penalty under the Finance Act, 1994 and the appellant, Shri Chandan Kakati (Contractor No.1) is also in appeal against the demand of service tax of Rs.19,14,731/- along with interest and equivalent amount of penalty under the Finance Act, 1994 and appropriation of Rs.20,000/- paid during the investigation. The appellants, Shri Pradip Das (Contractor No.2) and M/s Vaishno Devi Enterprise (Contractor No.3) are also in appeals against imposition of penalties only to the tune of Rs.10,000/- each under Section 77 (1) of the Finance Act, 1994.

2. The facts of the case are that M/s Emami Limited is engaged inter-alia in the manufacture and clearance of ayurvedic and cosmetic items as finished goods falling under Chapter 30 and 33 of the Central Excise Tariff Act, 1985 from its manufacturing facility located in EPIP Complex, Amingaon, Assam. The Appellant operated under the erstwhile Cenvat Credit Scheme and had been discharging its excise duty liability on the finished good cleared from its factory premises in retail packs, in accordance with Section 4A of the Central Excise Act, 1944. It may be noted, that by virtue of Chapter note 6 and 5 of Chapter 30 and Chapter 33 respectively as also in terms of the definition of manufacture as contained in Section 2(f) of the Act, the activity of packaging of finished goods from bulk to retail packs amounts to "manufacture".

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2.1 During the relevant period, the Appellant had awarded Job contracts/work orders to interalia the following contractors for carrying out the activity of packaging of its bulk goods into retail packs within the factory premises, in terms of the following job contracts/work orders:

Serial No.	Name of the Contractor	Job Contracts/Work Orders Dated	Period of the job-work
1	Mr. Chandan Kakati (hereinafter referred to as " Contractor No. 1 ")	Letter dated 1 February 2012 and 1 February 2017	April 2014 to March 2018
2	Mr. Pradip Das (hereinafter referred to as " Contractor No. 2 ")	9 August 2016	October 2016 to March 2018
3	Vaishno Devi Enterprise (hereinafter referred to as " Contractor No. 3 ")	Letter dated 1 February 2016	March 2016 to September 2016

The said contracts were similarly styled in so far as the scope of work, rights and obligations of the parties are concerned. These agreements inter-alia provides for the following:

"(2) Employment of Labourers: The required number of labourers would be decided and employed by you, who would work under your supervision and control only. You shall be accountable for any act or conduct of such labourers deployed by you, and the company would not be responsible for any under Performance of them.

(6) Rejections: Any excess rejections, as compared to the norms mutually agreed and fixed by the Company, shall be to your account and shall be deducted from your job charges at mutually agreed rates;

(7) Rate Schedule: You will be entitled to payment of job charges on piece rate basis for the quantity of retail packs produced by you on behalf of the Company, as per the Schedule annexed

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hereto, forming an integral part of this arrangement and subject to change on the nature and change in packing styles of the product. Since, the activity of packaging our products from bulk to retail packs amount to 'manufacture' as defined in sec. 2 (f) of the Central Excise Act, 1944, Therefore, your services fall under the definition of "Business Auxiliary Service" and exempted from the levy of Service Tax vide General Exemption No. 8 of Service Tax, hence no service tax would be payable on the same.

(13) Statutory Compliance: You will ensure compliance of all statutory formalities and regulations in respect of the job work carried by you including social security, legislations in respect of any workers; employed by you, in force or notified in future during the currency of this agreement."

2.2 Further, the execution of the above work by the contractors involved a typical process in which a monthly production plan was shared with the contractors at the beginning of every month. The bulk finished goods along with the packing material was made available to the contractors for the conversion of the same into retail packs. Thereafter, finished goods packed throughout the day was duly verified by the Appellant and was entered in the packing register which was counter-signed by both the parties i.e., the Appellant and the contractors. At the end of each month, job work invoices were raised by the Contractors based on the quantity packed at the pre-agreed rates and were submitted with the Appellant along with the Annexure containing details of item-wise packing activities undertaken during the month. Any wastage was deducted from the value of the invoice and payment was made to the contractors after making the statutory

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deductions. No service tax was discharged by the contractors and/or the Appellant on these contracts.

2.3 Acting upon intelligence, proceedings were initiated vide search conducted at the premises of Contractor No.1, with the aim of establishing that the manpower supply services were mis-declared as job-work contract. Statements of all 3 contractors and the Appellant was recorded. Thereafter, a show cause notice dated 16 October 2019 was issued to the Appellant, demanding service tax to the tune of Rs.4,25,53,028/- from the Appellant on a reverse charge basis and from Contractor No.1 on forward charge to the tune of Rs.19,14,731/- along with interest and penalty, by invoking the extended period of limitation. Further, penalty to the tune of Rs.10,000/- was also sought to be imposed on each of the 3 contractors. The impugned notice relied upon the following in order to allege mis-declaration/mis-classification:

- (i) Statements rendered by the three contractors.
- (ii) Wage Computation Sheet and the corresponding bills recovered from the premises of Contractor No.1.
- (iii) Manner of reflection of the job work charges in the Profit and Loss Account of Contractor No.1.
- (iv) GST Registration under manpower supply services by Contractor No.2 with respect to the alleged job contracts.
- (v) Trade licenses and licenses from Labour Commissioner to Contractor No.3 which specified its business activity as "Labour Contractor".

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2.4 The Appellant denied and disputed the allegations contained in the impugned notice on multifarious grounds. The contractors also retracted the statements made by them during the course of investigation as the questions pertaining to the old/new tax regime were jumbled along with the old/revised contractual understanding and the contractors were pressurized to tender incriminating statements. However, the Ld. Adjudicating Authority without appreciating and/or dealing with several contentions of the Appellant and the contractors confirmed the entire demand of service tax along with interest and equivalent penalty vide order dated 23 March 2022.

2.5 Hence the present appeals.

3. The Id. Counsel appearing on behalf of the appellants submits that the evidence relied upon by the Department in order to allege the misdeclaration/misclassification along with the submissions of the Appellant against each one of them have been encapsulated in the table herein below:

Table A

<u>Sl. No.</u>	<u>Evidence relied upon by the Department</u>	<u>Contentions of the Appellant</u>
1	Statements tendered by the three contractors in so far as they are incriminating	1.1. Statements could be admitted as evidence only when the witness has been examined by the Adjudicating Authority in accordance with the provisions of Section 9D of the Central Excise Act, 1944, which is equally applicable to service tax demands in view of Section 83 of the Finance Act, 1994. However, in the instant case the prescribed procedure has not been followed and as such the statements of the

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		contractors have no evidentiary value. Reliance in this regard is being placed on the judgement of the Hon'ble CESTAT, Kolkata in the case of Ms. Narsingh Ispat Limited Vs. Commissioner of CGST and Central Excise [2024 (3) TMI 1037] as also in the case of Ms. Prinik Steels (P) Ltd. Vs. Commissioner of C. Ex., Cus., ST [2023 (12) TMI 299]. 1.2. There has been pick and choose of statements in order to suit the case of the Revenue, which is not permitted by mixing two different contracting periods of Contractor No.2 1.3. The statements of Contractor No. 1 are full of contradictions and inconsistencies and as such the same cannot be relied upon [Refer - Commissioner of C. Ex., Gurgaon Vs. Reliant Packing Films - 2009 (248) E.L.T. 169 (PH)]. 1.4. Contractor No. 1 and Contractor No.3 were coerced to give statements on dotted lines which were subsequently retracted. It is a settled principle in law that retracted statements have no evidentiary value [Refer - Amrik Singh Saluja Vs. Union of India - 2016 (331) E.L.T. 57 (Del.)].
2	Wage Calculation Sheet and manner of reflection in the Profit and Loss Account by Contractor No. 1	2.1 No negative inference can be drawn from the wage calculation sheet as the contractor 1 was expected to have a sense of his costs. 2.2 Assuming the same to be worthy of credence, despite being unsigned, the same reflects "packing charges" and the cost of supervisor, corroborating it to be not a manpower supply arrangement on the test of supervision and

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		control as required under Rule 2(g) of the Service Tax Rules, 1994. 2.3 Payment vouchers prepared by the Accounts Department has been inadvertently considered as the job work bill by the department. 2.4 No negative inference can be drawn from the usage of the terminology "gross receipts during the year from supply of labours" (Pg-425/PB) in the financial statements of the Contractor No. 1. The expression "labour" means "work" and not the same as "labourer" which means "workmen". Absence of "commission income" and reflection of "wages" in the profit and loss account of Contractor No. 1 only goes against the revenue. 2.5 In any event, reflection in the books of accounts is not determinative of the legal effect of a transaction [Refer - Greenwich Meridian Logistics (I) Private Limited Vs Commissioner of Service Tax, Mumbai [2016 (43) S.T.R. 215].
3	GST Registration under manpower supply services by Contractor No. 2 with respect to the alleged job contracts.	3.1 The Appellant would like to submit that an agreement for manpower supply was entered into between the parties on 01 April 2018. Further, registration for both manpower supply and works contract was obtained by Contractor No. 2 under the GST regime. The same has been conveniently overlooked by the Ld. Adjudicating Authority. 3.2 The license given by the Assistant Labour Commissioner to the contractor is for "Manufacturing of Cosmetic

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		Production” which shows that the Contractor was undertaking manufacturing activities and as such service tax was not leviable. This aspect has also been ignored by the learned adjudicating authority
6	Trade licenses and license from Labour Commissioner to Contractor No. 3 which specified its business activity as “Labour Contractor”.	6.1Trade License/Labour License cannot be determinative of the nature of the arrangement and the legal effect thereof as the engagement was not on an exclusive basis. If the license was to be the basis, then demand with respect to Contractor No. 1 (Description in the license – “Packing, Unloading and Material Transportation) and Contractor No.2 (Description in the license – “Manufacturing of Cosmetic Production”) cannot be proceeded with on this limited ground alone

3.1 He further submitted that the conclusions drawn in the impugned order, are based on a mis-appreciation of the evidence and contrary to the facts on record as elaborated herein above and the observation made in the impugned order to purportedly conclude that the appellant was involved in receiving manpower supply services are clearly unsustainable.

3.2 It is his further submission that the observations of the Ld. Adjudicating Authority in the impugned order have been made without proper appreciation of the facts and evidence. The observations of the Ld. Adjudicating Authority along with the rebuttals of the Appellant have been summarised in the table hereunder:

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Sl. No.	Observations of the Ld. Adjudicating Authority	Rebuttals of the Appellant
1	That the control of the amount of requirement of manpower was vested with the Appellant and the same was requisitioned by the appellant to the Contractor;	1.1 No requisition slips have been enclosed in support of this allegation for the relevant period. 1.2 Contractor No.1 was also carrying out certain processes on the packing material at his own premises based on an undertaking given by the Appellant under the cover of job work challans in terms of the work order dt. 1 February 2017, which has been conveniently lost sight of 1.3 No evidence adduced in support of this allegation except the unreliable Statement dated 4 January 2019 of Contractor No.1 and the Statement dated 25 February 2019 of Contractor No.2. The Statement reflects the position prevalent post 1 April 2018. 1.4 Only production plan was given by the Appellant to inform the job worker about the quantum of work to be done. 1.5 However, from 01.04.2018; the Appellant and Contractor No. 1 & 2 have entered into a fresh agreement for supply of man-power and requisition were accordingly raised from time to time depending on business requirement. There appears to be some confusion in the mind of the Ld. Adjudicating authority and there is some apprehension with the investigating authorities that the same understanding was there in the pre-GST period.

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2	That no raw material was supplied to the contractors in terms of job work contract;	2.1 Attention is drawn towards the definition of 'job work' specified in Rule 2 (n) of the CCR: (n) "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly; 2.2 The allegation militates against the very definition of job work which specifies that semi-finished goods may also be supplied to the job worker, for completion of a part or whole of the process resulting in manufacture or finishing of an article or any operation which is essential for aforesaid process. 2.3 Further, the allegation of the Ld. Adjudicating authority is baseless because if raw material / semi-finished was not supplied then how would packaging charges be mentioned in their Wage calculation sheet since packing has to be done of a particular product only. 2.4 Moreover, Contractor No.2 in this statement dt. 23.09.2019 in Question No. 5 on being asked "Do you work on raw material in bulk supplied by M/s. Emami Ltd. or otherwise" had clearly stated that "We were involved in packing and converting the bulk quantity into smaller packs".
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3	That the onus of damage/loss of raw material or finished goods was on the Appellant and not the contractors;	3.1 Damages and loss of packing material/finished goods beyond the mutually agreed limits was to the account of the Contractors as evidence from clause 6 & 12 of the work orders/job contracts. Contractor No.2 has categorically deposed in the affirmative in his Statement dated 23 September 2019 in response to Q. No. 13 & 14. Further, the invoices showing recovery of damage/high wastage from Contractor No. 1 has also been enclosed as Exhibit N.
4.	That neither the Appellant nor the contractors maintained any packaging register;	4.1 Clause 3 of the work order/job agreement required maintenance of a packaging register. The Statement of Contractor No.2 itself acknowledges that the packaging register was maintained by Appellant. There was no specific requirement that the packaging register has to be maintained by the Contractors. Copies of the daily production report duly signed by both the parties have also been referred as Exhibit C.
5.	Although, jobs/work orders provided for physical verification, no evidence of any such verification having been conducted and hence supervision/control of manpower was with Appellant.	5.1 Daily production report/packaging register duly signed by both the parties could not have been prepared without a physical verification. Damaged goods also could not have been identified without a physical verification. Further in respect of the job work carried out by Contractor No. 1 at its own premises, it is inconceivable that the materials could be received without verification. The RUD 8, 9 & 13 relied in the Notice pertaining to Wage calculation sheet of

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		Contractor 1 and Contractor 3 and Profit & Loss statement of Contractor 1 itself traverse this allegation as the cost of the Supervisor was being borne by the Contractor NO. 1 & 3. Contractor No. 2 in response to Q. No. 2 & 5 of the Statement dated 23 September 2019 has deposed that the labourers worked under the supervision of the Supervisor engaged by Contractor No. 2. 5.2 Physical verification has also not been negated by the contractors in their statements.
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3.3 He further submitted that the services provided by the contractors during the relevant period was not manpower supply services but job work services as it satisfies all the conditions laid down in the Board Circular Dated 15 December 2015 and in the case of another contractor providing similar services to the appellant during the relevant period, the department has itself accepted that the said contract was a job-works contract

3.4 Further he submitted that at the outset, reliance is being placed on the notes to Chapter 30 and Chapter 33 of the CETA as also the definition of “manufacture” as contained in terms of Section 2(f) of the Central Excise Act, 1944 to bring home the contention that the activity of packing bulk FG into retail packs amounted to manufacture. In terms of Section 66D(f) of the Finance Act, 1994, services by way of carrying out any process amounting to manufacture or production of goods was

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covered under the negative list of services and therefore outside the ambit of the charging section 66B of the Finance Act.

3.5 It is also submitted by the Id.Counsel that the Tribunal has taken a consistent view that the packing activity undertaken by contractors at the premises of the principal amounts to manufacture and as such the same shall be covered under the negative list of services in terms of Section 66D(f) of the Finance Act, 1994. Reliance in this regard is being placed on the following judgements of the Tribunal:

- (i) Commissioner of Service Tax – II, Kolkata Vs. Anmol Biscuits Limited – 2022 (62) G.S.T.L. 171 (Tri.– Kolkata)
- (ii) Ms. Suresh Contracts Vs. Commissioner of Central Excise & ST, Salem – 2023 (5) TMI 393 (Tri.– Chennai).
- (iii) Ms.Fire Controls Vs. Commissioner of Central Excise, Customs and Service Tax, Mysore - 2019 (8) TMI 1028 (Tri. Bang.)
- (iv) Divya Enterprises Vs. Commissioner of Central Excise, Mangalore – 2010 (19) S.T.R. 370 (Tri. – Bang.)
- (v) Shivshakti Enterprises Vs. Commissioner of Central Excise, Pune – 2016 (41) S.T.R. 648 (Tri.– Mumbai)

3.6 He further contended that it would be pertinent to note that with respect to another contractor, M/s. Lucky Enterprise, engaged by the appellant for the same activity, with similar terms of agreement during the overlapping period 2014-15, the service tax demand was raised upon the said contractor based on the differences in the ST 3 returns vis-à-vis the Income Tax returns. However, the said proceedings were subsequently dropped vide Order-In-Original dated 19 January 2022 by classifying the same as job work services.

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3.7 It is further submitted that the expression “manpower supply service” has been defined under Rule 2(g) of the Service Tax Rules, 1994 as under:

“supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control”

3.8 It is his further submission that in the instant case, it would be evident from the contracts entered into with the contractors that the superintendence and control of the labourers lied with the Contractors themselves. Further, the wage calculation sheet, which has been relied upon the department, itself incorporates the cost of supervisor which shows that the supervising of the labour was being done by the Contractors. Further, the profit and loss account of Contractor No.1 also includes staff salary besides wages which clearly shows that the workers were on the rolls of the Contractor No.1 and supervised by their staff.

3.9 He also submitted that vide Circular bearing No.190/9/2015 -ST dated 15 December 2015, the Board laid down the essential principles to determine the nature of an activity as manpower supply service or job work service. The said principles have been enumerated below with a comparison to the facts of the case to show that the Appellant was receiving job work services and not manpower supply services:

Sl. No.	Principles laid down in the Circular dated 15 December 2015	Facts involved in the present case
1	The contractor (service provider) is engaged for undertaking specific jobs.	In the present case, the contractors were engaged specifically for packaging of various products from bulk to retail packs [Refer – Scope of

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		work]
2	The contractor is at liberty to decide the number of workers which are required for undertaking the jobs	The Appellant shared the monthly production plan with the Contractors based on which the required number of labourers were decided and engaged by the contractors themselves. [Refer – Scope of work and S.No. 2 of the terms of appointment]
3	The job worker may undertake job in his premises or in the premises of the service provider	In the present case, the contractor no. 1, 2 and 3 carried out the work in the premises of the Appellant. Additionally, the contractor no. 1 also undertook job work at his own premises.
4	The value of service is payable on per piece basis depending upon item and style	The contractors raised their bills on per piece basis for the quantity of finished goods packed during the respective months as evident from the tax invoice and packing register, countersigned by both the parties.
5	Service provider is liable to compensate the service recipient if the work is not as per the standard norm	Any loss or damage arising during production/packing activity above the mutually agreed limited was borne by the contractors in terms of the agreement. The value of the loss/damage was deducted from the invoices raised by the contractors. The same has also been admitted by Contractor No. 2 in his statements.
6	In case the work is executed by the service provider at the cite of the service recipient, the service provider would indemnify the service receiver of any loss to inputs and infrastructure	The contractors were responsible for any damage caused to any property belonging to the Appellant. (Refer Clause 12)
7	The personnel deployed for the assigned job would be under the control/supervision of the service provider	The supervisors of the contractors were responsible for the supervision of the labourers. Same is evident from the wage calculation sheet and the profit and loss account of the contractors.
8	Payment would be made at pre-agreed per piece basis	The payment was made as per the piece rate charges mentioned in the schedule to the agreements.

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3.10 He further submitted that the extended period of limitation cannot be invoked in the facts of the present case as the entire exercise is revenue neutral as the appellant would have been eligible for Cenvat Credit of the purported tax demand. Further, the entire issue involves interpretation of law and as such extended period of limitation is not invocable.

3.11 Again he submitted that the entire exercise is revenue neutral in so far as whatever service tax was payable on reverse charge basis, if at all, by the Appellant on the impugned services, the same would have been available as Cenvat Credit to the Appellant. It is a settled principle in law that extended period of limitation cannot be invoked in revenue neutral situation. Reliance in this regard is being placed on the judgement of the Hon'ble CESTAT, Kolkata in the case of M/s Aditya Dhanraj Enterprises Private Limited Vs. Commissioner of CGST and Excise, Ranchi [2024 (3) TMI 405]. Therefore, the demand upto the period September 2016 is clearly hit by extended period of limitation. The split of the entire demand between normal period and extended period has been captured in Annexure A of the Synopsis.

3.12 In so far as the invocation of extended period of limitation with respect to Contractor No.1 is concerned, it is submitted that there was a confusion among the field formation officers regarding the nature of an activity to be termed as job-work vis-à-vis manpower supply services which was only clarified by the Board vide its Circular dated 15 December 2015 (supra). Therefore, when there was confusion in the field formations necessitating a clarification, it cannot legitimately be

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expected that the contractor in the present case who is not an organized institution but proprietorship/partnership concern, not highly educated and not well aware of such clarifications to comprehend and depose with precision, the difference between the said two activities and the legal effect thereof. It is a settled principle in law that extended period of limitation is not invocable when the issue involves interpretation of law. Reliance in this regard is being placed on the judgement of the Hon'ble Supreme Court in the case of International Merchandising Co, LLC Vs. CST, New Delhi – 2022 (67) GSTL 129 (SC).

3.13 He further submitted that the contractors were not required to obtain service tax registration under Section 69 of the Finance Act, 1994 as the activity undertaken by them amounted to manufacture and as such penalty cannot be imposed on them.

3.14 In terms of the above, it is evident that the activity undertaken by the contractors amounted to manufacture and the same was covered under the negative list of services. Therefore, service tax was not leviable on the said activity. When there is no service tax liability, the question of service tax registration does not arise. In this regard, attention is drawn towards the relevant portion of Section 69 of the Finance Act, 1994, which provides for the persons who are required to be registered under Service Tax. Section 69 states as follows:

"69. (1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form, as maybe prescribed, make an application for registration to the [superintendent of Central Excise."

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3.15 A bare perusal of the above quoted provision makes it abundantly clear that a person is required to take registration under service tax, only if the said person is liable to pay service tax under the provisions of the Act. In the instant case, the activity undertaken by the Appellant is specifically excluded from service tax liability, hence, there is no obligation for the Appellant to take registration under service tax laws. Accordingly, no penalty is imposable on the contractors.

3.16 He further submitted that the decision of the Hon'ble Supreme Court in the case of Adiraj Manpower Services Private Limited Vs. CCE reported in 2022 (2) TMI 858 is distinguishable on facts and therefore, has no application to the facts of the present case. In the said case, the appellant was registered for provision of manpower supply services and discharging tax thereunder in the positive list regime. The Appellant entered into an agreement effective 1 August 2012 terming the service activities as job work with "Tonnage rates" and did not charge service tax on a forward charge basis by claiming the benefit of exemption at Sl. No. 30(c) of Notification No. 25/2012 which reads as under:

"Carrying out an inter mediate production process as job worker".

The Hon'ble Tribunal and the Hon'ble Supreme Court on a reading of the totality of the agreement came to the conclusion that the appellant was not a job worker therein but only a manpower supplier inasmuch as there was complete absence in the agreement of any reference to –

- (i) The nature of the process of work;
- (ii) Delivery Schedule;
- (iii) Specification in regard to work;
- (iv) Consequences of breach;

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However, in the instant case the agreement with the Contractors conspicuously provides for the nature of work to be packaging from bulk to retail packs, specifications and delivery schedule in terms of the production plan, measurement of such packaging in terms of the packaging register and rejections being to the account of the contractor. Moreover, in the instant case we are not concerned with an exemption notification but with the entry in the negative list, which had not fallen for consideration before the Hon'ble Supreme Court. He therefore, prays for allowing their appeals by setting aside the impugned order.

4. The Id.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions and perused the records.

6. The sole issue for consideration before us is that whether the appellant or the job workers are liable to pay service tax on the activity of packing of its bulk pack into retail pack or not ?

7. Admittedly, the item which is manufactured falling under Chapter 30 and 33 of the Central Excise Tariff Act, 1985. The Chapter Note 6 & 5 of Chapter 30 and 33 respectively defines the "manufacture" as contained in Section 2 (f) of the Act that the activity of packaging of finished goods from bulk to retail packs amounts to "manufacture". Therefore, the activity of packing of its bulk into retail pack, amounts to manufacture. Therefore, no service tax is payable by the other appellants or the job workers. In this case, the case has been made out against the appellant on the basis of the statement recorded during the investigation. As such, the statement was later on retracted and this statement was never tested in terms of Section 9D of the Central Excise

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Act, 1944. Therefore, this statement cannot be a legal evidence and have no evidentiary value in the eyes of law. Therefore, on the basis of statement recorded during the course of investigation without testifying the same under Section 9D of the Act, the service tax cannot be demanded from the appellant.

8. Another reason for demanding service tax from the appellant is that the wages calculation shows the amount reflected in the profit and loss account by Shri Chandan Kakati, Contractor. The classification of the activity is to be decided in accordance with the law laid down by the Parliament not by the manner in which the assessee is maintaining its accounts. In that circumstances, the nomenclature given by the contractor does not have any binding effective clause of the activity undertaken by them. Admittedly, the activity of packing of its bulk pack into retain pack, the said activity amounts to manufacture in terms of Section 2 (f) of the Central Excise Act, 1944. Therefore, on this ground, the service tax cannot be demanded shown as packing charges.

9. Another reason for demanding service tax is that the Contractor, Shri Pradip Das, has registered with the "man power supply" services with the Department. In fact, the activity undertaken by the assessee is not disputed that they are doing packing of bulk into retail packs. Mere taking registration from the GST Department and the trade license from the Licensing Commissioner, does not classify the activity undertaken by the assessee.

10. In that circumstances, we hold that mere activity undertaken by the appellant is packing of bulk pack into retail pack, which amounts to manufacture in terms of Chapter Note 6 & 5 of Chapter 30 and 33 of

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the Central Excise Tariff Act, 1985. Therefore, we hold that the activity undertaken by the appellant amounts to manufacture and if the activity amounts to manufacture, on the said activity, the service tax cannot be charged and the same is out of the purview of the service tax provisions.

11. In that circumstances, we hold that no service tax is payable by the appellant. As no service tax is payable by the appellants, consequently, no penalties can be imposed on the appellants.

12. In view of this, we set aside whole of the demand of service tax along with interest and the penalties imposed on the appellants.

13. The appellants have also contested the issue of limitation. We find that some of the demand has been confirmed by invoking extended period of limitation. As the activity itself is a activity of manufacture, therefore, it is not a case of suppression of facts by the appellants and it is only the issue of interpretation of law. Therefore, the extended period of limitation is also not invokable.

14. In view of this, we set aside the impugned order and allow all the appeals with consequential relief, if any.

(Pronounced in the open court on **13.12.2024**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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