

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-1) का कार्यालय केन्द्रीय उत्पाद शुल्क :
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(GTA)67/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-166-16-17

दिनांक Date 22.11.2016 जारी करने की तारीख Date of Issue

श्री उमाशंकर, आयुक्त (अपील-1) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar Commissioner (Appeals-I) Central Excise
Ahmedabad

ग _____ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No GNR-STX-DEM-DC-59/2015 dated :31.12.2015
Issued by: Deputy Commissioner, Central Excise, Din: Kalol, A'bad-III.

घ अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants/Respondents

M/s. Sakeen Alloy Pvt. Ltd.

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

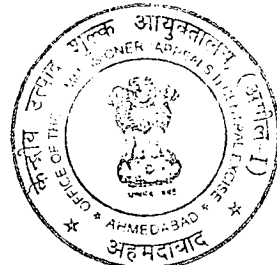
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

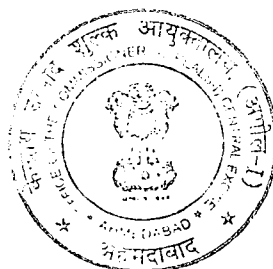
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(4)(i) ..इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(4)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Sakeen Alloys Private Limited, Block No. 244, Visnagar-Mehsana Road, At. Village – Savala, Taluka Visnagar, District Mehsana [for short - 'appellant'] has filed this appeal against OIO No. GNR-STX-DEM-DC-59/2015 dated 31.12.2015, passed by the Deputy Commissioner, Service Tax, Gandhinagar Division, Ahmedabad-III Commissionerate [for short - 'adjudicating authority'].

2. Briefly stated, a show cause notice dated 7.4.2015 was issued to the appellant based on an audit objection raised by CERA, *inter-alia*, alleging that they had failed to discharge service tax in respect of 'Manpower Supply Agencies Services' received by them during the period from April 2013 to October 2013, under reverse charge mechanism. As per notification No. 30/2012 dated 20.6.2012, effective from 1.7.2012, the recipient of the service was liable to pay service tax on 75% of the value of services, provided by way of supply of manpower.

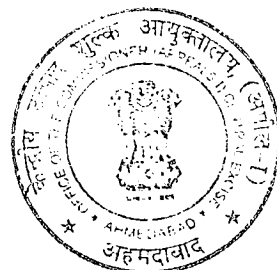
3. The notice was adjudicated vide the impugned OIO, wherein the adjudicating authority, confirmed the demand along with interest and imposed penalty under the Finance Act, 1994.

4. The appellant, in this appeal, has raised the following averments:

- the first notice in the matter was issued for the period from July-2012 to March-2013, on the same grounds, which was adjudicated vide OIO dated 16.1.2015 by AC, Central Excise, Mehsana Division, wherein the demand was dropped, which was accepted by the department;
- the adjudicating authority found that the rates were quoted per tonne in the contracts; that there was no evidence to prove that the contracts were for supply of manpower;
- the labour contractors had executed the work of loading, unloading, packing and production; that there was no control or superintendence on the person by the appellant since they were under the control of the labour contractor;
- that in the case of manpower supply, the value of the service has a direct correlation to manpower deployed while in the contracts entered into in the present case, the value of service has no correlation to the number of manpower employed as the consideration is fixed per metric tonne.

5. Personal hearing in the matter was held on 18.11.2016. Shri M.H.Raval, Consultant, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments, raised during the course of personal hearing.



7. Since the issue revolves around 'Manpower Supply and Agency services' and notification No. 30/2012 dated 20.6.2012, the relevant text is quoted here-in-below, for ease of reference:

SECTION 65. Definitions. — In this Chapter, unless the context otherwise requires, -

[(68) "manpower recruitment or supply agency" means any [person] engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, [to any other person];]

[(105) "taxable service" means any [service provided or to be provided], -

[(k) [to any person], by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner:]

[Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate;]

Relevant extracts of notification No. 30/2012 dated 20.6.2012, effective from 1.7.2012

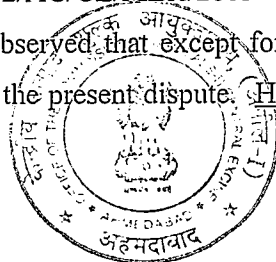
Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %

8. The adjudicating authority has in his findings confirmed the demand on the grounds that:

- The copies of contract provided appear to be an afterthought, since
[a] the rates mentioned in the contract and the bills differ;
[b] the bills and the contract has been written by the same person;
[c] the work contract was accepted by the appellant on the face of the said letter(contract);
[d] in respect of one contract it does not bear the signature of the appellant, in so far as enhancement of rate in the contract, is concerned;
[e] copies of contracts in respect of two contractors were nor provided;
- The contract does not contain a specific clause relating to whether the appellant had superintendence or control over manpower.

Hence, the adjudicating authority, confirmed the demand on the appellant [who is registered as a body corporate] under Rule 2(1)(d) of Service Tax Rules, 1994 read with notification No. 30/2012-ST dated 20.6.2012, by holding that the appellant was liable to pay 75% service tax on the amount of Rs. 16.79 lacs amounting to Rs. 1,55,693/- under the reverse charge mechanism.

9. The show cause notice in this case was issued in terms of Section 73(1A) of Finance Act, 1994. The demand in respect of the earlier notice covering the period from July 2012 to March 2013, was dropped vide OIO No. 2/AC/CE/MEH/2015 dated 16.1.2015. However, on going through the said OIO, it is observed that except for one labour contractor, the other contractors are not the same, as in the present dispute. Hence,



the averment that though the earlier demand was dropped and accepted by the department, it was ignored by the adjudicating authority, is not a tenable argument.

10. The appellant has also relied on a draft circular issued from F. No. 354/127/2012-TRU dated 27.7.2012. However, he has missed the main crux that it is a draft circular on which comments, views and suggestions were sought. On going through CBEC's website, it appears that this circular was never issued. Therefore, the reliance placed by the appellant on the said draft circular does not hold ground.

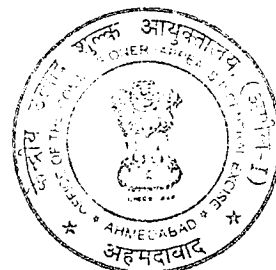
11. Now, moving on to the dispute, what exactly would fall within the purview of *Manpower Recruitment or Supply Agency service*, is the primary issue which is to be decided. The definition of manpower recruitment or supply agency is already reproduced in paragraph 7, *supra*.

12. On going through the contracts, reproduced in the impugned OIO, it is observed that in all the cases the charges were to be paid by the appellant to the contractor not on the supply of manpower but on completion of specific task viz. bundling of TMT, production [Garamkam] and cleaning of various areas of factory, plate cutting, ingot cutting and work related to rolling mill. In-fact, the charges quoted and paid by the appellant, was on per tonne basis, as per the contract. But the adjudicating authority has not questioned the veracity of the contract. As the appellant's entire argument, that the service provided by the contractors would not fall within the ambit of *Manpower Recruitment or Supply Agency service*, hinges on the veracity of the contracts produced, it would be prudent to first go into the genuineness of the contracts, in question. Hence, before arriving at a finding, as to whether the appellant is liable for service tax under the said service, it is necessary to first seek answers to the following unanswered questions:

1. whether the contracts were registered?
2. whether the copy of the contracts were provided to the audit team? If not, why it should not be considered as an after thought in view of Tribunals judgement in the case of Ujwal Ispat Private Limited [2007(218) ELT 221], wherein in para 12, the Hon'ble Tribunal held as follows :

"The Kararnama relied upon by the appellants was submitted after four years and was never brought to the notice of the department during the intervening period and it was only during cross examination, Shri Uprade stated that they have undertaken the work as specified in the Kararnama. It was submitted that Kararnama is an afterthought"

3. reasons why the contracts in respect of two contractors, has still not been provided?
4. who was liable under the Workmen's Compensation Act, 1923, - the appellant or the contractor, in case a worker supplied by the contractor, was injured ? Whether there has been any such instance in the past.
5. whether contractors have paid for other statutory insurance requirement.
6. whether the machines and other equipment, where these contract labourers were working, were handed over to them, by the factory.
7. Any damages recovered from contractors?



It is felt that delving further into these questions, would enable one to come to a conclusion as to whether the contracts are genuine or an afterthought. I find that the appellant has not addressed the primary doubt raised by the adjudicating authority that the contracts were in fact an afterthought, to avoid payment of service tax. No plausible proof is provided by the appellant to prove the authenticity of the contracts.

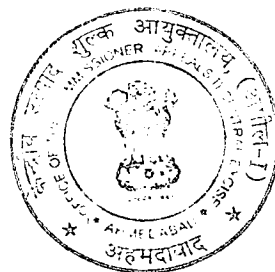
13. I further find that the appellant has also relied on the same case laws which were relied upon, before the adjudicating authority. The adjudicating authority brushed aside the case laws, without either discussing it or rebutting it. The appellant has also relied on CBEC's circular no. 190/9/2015-ST dated 15.12.2015, the relevant text of which is reproduced 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.

14. As facts are not clear, it is felt that the adjudicating authority should pass a fresh order, keeping in mind the aforementioned observations/directions. Needless to state, that the case laws relied upon by the appellant and the aforementioned CBEC's circular should also be discussed, while arriving at the decision. On these limited grounds, and without expressing any opinion on the merits of the case, the impugned order is remanded to the original adjudicating authority, for fresh decision. While remanding the matter, I rely on the case of M/s. Associated Hotel Limited [2015(37) STR 723 (Guj.)]. The appeal is disposed of accordingly.

15. In view foregoing, the appeal succeeds by way of remand and the impugned OIO is set aside.



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16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
16. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 24/11/2016

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

BY R.P.A.D.

To,

M/s. Sakeen Alloys Private Limited,
Block No. 244, Visnagar-Mehsana Road,
At. Village – Savala,
Taluka Visnagar,
District Mehsana

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Central Excise, Ahmedabad-III
3. The Additional Commissioner (System), Central Excise, Ahmedabad-III
4. The Deputy/Assistant Commissioner, Central Excise, Gandhinagar Service Tax Division, Ahmedabad-III.
5. Guard file.
6. P.A

