

रजिस्टर्ड डाक ए.डी. द्वारा

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

क फाइल संख्या : File No : V2(GTA)49/STC-III/2016-17/Appeal-I / 4440 to 4444

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-049-17-18

दिनांक Date : 21.07.2017 जारी करने की तारीख Date of Issue: 25.07.2017

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

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

Arising out of Order-in-Original: GNR-STX-DEM-DC-16/2016 Date: 01.08.2016 Issued  
by: Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Sakeen Alloys Pvt Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, चंसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

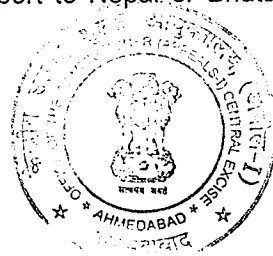
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

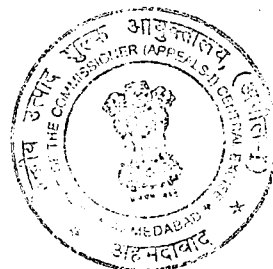
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated



(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedurè) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 63 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 अर्जी एवं अपील को लागू नहीं होंगे।

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.

(6)(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।

(6)(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-16/2016 dated 01.08.2016, passed by the Assistant Commissioner, Service Tax, Gandhinagar Division, Ahmedabad-III Commissionerate [for short - 'adjudicating authority'].

2. Briefly stated, a show cause notice dated 11.04.2016 was issued to the appellant, *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 November 2013 to September 2015, 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. The said notification has been amended by notification No.07/2015-ST dated 01.03.2015 and from 01.04.2015 onwards, the recipient of the said service was liable to pay service tax on 100% of the value of services.

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 20.06.2016. 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. I observe that the appellant's case, involving the same issue for the periods from April 2013 to October 2013 was decided by me vide OIA No.AHM-EXCUS-003-APP-166-



16-17 dated 22.11.2016. In the said OIA, the case was remanded to the adjudicating authority since the facts relates to the payment of service under the service category of "Manpower Supply and Agency services" and the genuineness of contract details relating to the said service discussed in the impugned order is not clear. Since the issue of the instant appeal revolves the same issue for the period from November 2013 to September 2015, the instant case is also required to be remanded on the same grounds. The grounds on which the case was remanded vide OIA dated 22.11.2016 is reproduced hereunder:

"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.

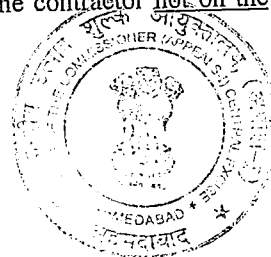
Hence, the adjudicating authority, confirmed the demand on the appellant [who is registered as a body corporate] under Rule 2(1)(d) of Service Tax Rules, 1994 read with notification No. 30/2012-ST dated 20.6.2012, by holding that the appellant was liable to pay 75% service tax on the amount of Rs. 16.79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



5

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 Ujawal 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 C3EC'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. "

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

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

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 2/07/2016

Attested

*(Signature)*  
(Mohanana V.V)  
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

