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|  सत्यमेव जयते | केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सप्तवी मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 |  GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015 |
| : 079-26305065 | | टेलीफैक्स : 079 - 26305136 |

क फाइल संख्या : File No : V2/10/GNR/2019-20 / 11366 to 11371

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-017-19-20

दिनांक Date : 8/7/2019 जारी करने की तारीख Date of Issue: 10/07/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-CEX-003-ADC-PMR-006-18-19 दिनांक : 31/01/2019 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-PMR-006-18-19, Date: 31/01/2019
 Issued by: Additional Commissioner, CGST, Div: RRA, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
 Name & Address of the Appellant & Respondent
M/s. R V Labour Job Contractor

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 :

(1) 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, संसद 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, 4th 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 दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 रुपये 5 लाख या उससे कम है वहां रुपये 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 5 लाख या 50 लाख तक हो तो रुपये 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 50 लाख या उससे ज्यादा है वहां रुपये 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 पढी 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 filed 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 और 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 contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 43 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 रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं

- (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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This appeal has been filed by M/s R V Labour Job Contractor, While House, Opp.Dudhsagar Diary, Near Sahyog Gas Building, Mehsana, Gujarat [for short-'appellant'] against Order-in-Original No.AHM-EXCUS-003-ADC-PMR-006-18-19 dated 31.01.2019 [for short-'impugned order'] passed by the Additional Commissioner of CGST & CE, Gandhinagar Commissionerate [for short-adjudicating authority].

2. Briefly stated, the fact of the case is that during the course of audit of M/s Mehsana District Co-Operative Milk Products Union Ltd, Gugaon, Haryana [for short-'MDCM'] by the Central Excise Officers of Audit, Gugaon, it was observed that the said unit is engaged in the 'job work' contract with the appellant and paying 'job charges' for packing of Dehi, Butter Milk, Ice Cram of per piece. As it appeared that the activities carried out by the appellant falls under the category of "Packaging" , "Cleaning " services as defined under Section 65(205) (zzzf) and 65(1015) (zzzd) of Finance Act, 1994 respectively till 30.06.2012 and not falling under negative list of services w.e.f 01.07.2012, verification regarding tax liability was done by comparing with ST-3 returns filed by them and net taxable income as per books and accounts pertaining to the period of 2012-13 to 2016-17. It was observed that the appellant had received contract income from various units and received net taxable income of Rs.11,79,25,917/- during the said period. Accordingly, a show cause notice dated 22.11.2017 was issued to the appellant for recovery of short payment of service tax amounting to Rs.1,49,41,951/- with interest and imposition of penalty. Vide impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty equal to the duty demanded.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- As per work contract given by MDCM, they have to fill ice-cream in retail packs and related works such as carrying empty crates, brining packing materials from go-down, counting and arranging the pack till dispatch; that the works carried out are the ancillary process of manufacture of ice-cream as defined under Section 2(f) of CEA. It is settled law that the process resulting to manufacture is not coming under the purview of service tax. Even after the introduction of negative list, any process amounting to manufacture or production of goods are kept out of service tax net.
- The only reason the adjudicating authority mentioned in the impugned that the activity is out of manufacturing process is that the appellant is having labour contract license and the subject activities is more king to packing service rather than manufacturing process.
- They submitted various cases laws in favour them including Hon'ble Supreme Court's decision [2018 (15) GSTL] which are identical to the present issue.



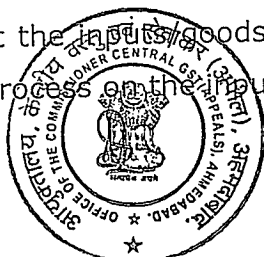
4. Personal hearing in the matter was held on 03.07.2019. Shri M.H.Ravel, Consultant reiterated the grounds of appeal and submitted further additional submissions with case law citations.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. In the instant case, the issue to be decided is as to whether the job work i.e packing, unpacking, printing of required information on packing material, other miscellaneous work and loading and unloading material entrusted to the appellant by MDCM is liable to pay service tax or otherwise.

6. I find that the appellant was doing the said job work as per valid work contract/agreement. As per work order/agreement, the appellant has carried out the work of filling of ice-creams in retail packs and in crates and arranged them or loaded them in vehicles for dispatch. The packing of ice-creams includes works relating to carrying the empty crates, bringing of packing materials, perform cleaning cups etc, printing of required information on packing materials and counting/arranging the packs till dispatch. The adjudicating authority has contended that the works carried out by the appellant is more akin to cleaning and packaging service rather than manufacturing activities and therefore, taxable upto 01.07.2012 on the said category and after that it qualifies as a 'service' in terms of Section 65B (44) of the Finance Act, 1994.

7. As per notification No.214/1986 dated 25.03.1986, the expression "job work" means "processing or working upon of raw materials 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 the aforesaid process". In the instant case, the process undertaken by the appellant is on the materials or goods supplied by the principal manufacture i.e MDCM. The MDCM supplies the goods or materials for the works i.e packing, unpacking, printing of required information on packing material etc on free of cost and the appellant carries out the work as per given work contract/agreement so as to enable MDCM to dispatch the goods finally to their customers. Therefore the activities of works carried out by the appellant as mentioned above qualify as 'process' of goods, hence, the activity squarely fall under the scope of 'job work'.

8. Further, I find that in Eaton Fluid Power Ltd's case [2014 (308) E.L.T. 602 (Tri.-Mumbai)], it has specifically observed that a job work may or may not amount to manufacture, and just because activities undertaken result in a new commodity, it cannot be said that there was no job work involved. Therefore any activity whether amounting to manufacture or not, could qualify as job work activity, subject to the condition that the inputs/goods owned by the principal manufacture and the job worker carried process on the inputs/goods.



9. As stated above as per work order/agreement, the appellant is required to be carried out the work of filling of ice-creams in retail packs and in crates and arranged them or loaded them in vehicles for dispatch. The scope of work mentioned in the work order stipulates the works starting from unloading of crates from the vehicles to dispatch the finished ice-cream packets in vehicles i.e the entire work includes carrying the empty crates, cleaning empty crates, bringing of packing materials, filling of ice-creams in retail packs, printing of required information on packing materials and counting/arranging the packs till dispatch. The adjudicating authority has come to the conclusion that the appellant provides service viz packaging and cleaning service only on the basis certain elements/character of works mentioned in the work order/agreement, which is not correct. I have perused the conditions prescribed in the work order/agreement. I observe that the condition for payment towards works to be carried out not stipulates in the form of wages to labours deployed etc or wages for particular character of work. From the records, I find that the rate for work is fixed for performing of work per crate. Looking into the facts, it is presumed that the appellant is getting job work charges by performing the entire works, starting from unloading of crates from the vehicles to dispatch the crate, after carrying out intermediate works as mentioned above. Therefore, the process carried out on goods supplied by MDCM is more of the same kind of manufacturing activity than rendering service.

10. I find that the Hon'ble Tribunal, Mumbai in case of M/s Shri Samarth Sevabhavi Trust [2016 (41) S.T.R. 806 (Bom.)] has held that agreement has to be read as a whole - Terms and conditions of agreement more relevant than nomenclature of document. By citing Hon'ble Supreme Court's decision, the Hon'ble Tribunal has held that:

8. This interpretation of agreement between respondents and its principal is in tune with the judgment of Supreme Court in the case of Super Poly Fab-riks Ltd. v. Commissioner of Central Excise, Punjab reported in 2008 (10) S.T.R. 545 (S.C.). Paragraph No. 8 of the said judgment can be relied upon to drag the point at home, which reads as under:-

"8. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive."

Therefore, in the instant case, the work order/agreement when read together with the material fact of job works carried out in whole, as stated in foregoing paras, I am of the opinion that the activity does not call for levy of service tax on the appellant. Looking in to such circumstances, I do not find any merit in the argument of the adjudicating authority that the work carried out by the appellant more akin to cleaning and packing services and covered under cleaning/packaging service as defined under Section 65(105) (zzzf)/65(105) (zzzd) or service as



defined under Section 65 B (44) of the Finance Act, 1994, over looking the valid work agreement.

11. Further, I find that the Hon'ble Supreme Court in case of Commissioner V/s M/s Surya Trading & Services [2018 (15) GSTL J 209] has dismissed the appeal filed by the department by upholding that the specific job work activity undertaken under a contract is not liable for service tax, if payment therefor was given based on quantity of output. The relevant para is as under:

"2. Heard the Learned Counsel for the appellant and perused the relevant material.

3. In view of the order dated 23-10-2017 passed by this Court in Civil Appeal Nos. 18369-18370 of 2017 titled as 'Commissioner of Service Tax, Mumbai-I v. M/s. Reach Trading and Service', the present Civil Appeal is also dismissed in the same terms."

The Appellate Tribunal in its impugned order had followed its decision in Commissioner v. Vintage Service Co. [Final Order Nos. A/93095-93097/2016-WZB/STB, dated 28-9-2016] which was delivered in Revenue's appeals filed against same impugned order-in-appeal which was set aside by that order. In the aforesaid order the Tribunal had relied upon the decisions reported in 2010 (19) S.T.R. 370 (Tri.-Bang.), 2014 (35) S.T.R. 602 (Tri.-Mum.) and 2016 (41) S.T.R. 806 (Bom.) and held that the specific job work activity undertaken under a contract is not laible to Service Tax under the category of Manpower Recruitment and Supply Agency service if payment therefor was given based on quantity of output."

11. In view of above discussion, I do not find any merit in the impugned order where the valid contract was overlooked by considering the activities undertaken by the appellant as taxable service and confirming short payment of service tax thereof with interest and imposition of penalty. In view of the Supreme Court's decision supra, I find that the specific job work activity undertaken under a valid contract should not be liable for service tax. Therefore, I set aside the same.

12. Therefore, I allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

उमाशंकर

उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date : .07.2019

Attested

Mohan V.V.
(Mohan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.

BY R.P.A.D

To

M/s R V Labour Job Contractor,
While House, Opp.Dudhsagar Diary,
Near Sahyog Gas Building, Mehsana, Gujarat



Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Principal Commissioner, Central Tax, Gandhinagar.
3. The Additional Commissioner, CGTST, Gandhinagar
4. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
5. The Assistant Commissioner, Mehsana Division.
6. Guard file.
- ✓ 7. P.A file.