



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

कर भवन,

सातवीं मंजिल, पॉलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

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क फाइल संख्या : File No : **V2/9/RA/GNR/2019-20/1470570/14710**
ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-74-19-20**
दिनांक Date : **18-03-2020** जारी करने की तारीख Date of Issue:
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-CEX-003-ADC-PMR-006-19-20** दिनांक : **28-08-2019** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-PMR-006-19-20**, Date: **28-08-2019**
Issued by: Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
Name & Address of the **Appellant** & Respondent
M/s. Komal Enterprises

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, बहुमाली 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 रुपए 5 लाख या उससे कम है वहां रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहां रुपए 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 अनुसूचि-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 (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 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 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।

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

The Department has filed this appeal, as per Review Order No.07/2019-20 dated 05.12.2019, against Order-in-Original No.AHM-CEX-003-ADC-PMR-006-19-20 dated 28.08.2019 [hereinafter referred to as "impugned order"] passed by the Additional Commissioner of CGST & Central Excise, Gandhinagar Commissionerate [hereinafter referred to as "adjudicating authority"] in the case of M/s Komal Enterprises, F/119, Dharti Manan Plaza, Jail Road, Mehsana [hereinafter referred to as "Respondent"].

2. Briefly stated, the facts of the case are that the Respondent is registered with the Department under the category of 'Manpower Recruitment & Supply Agencies'. During inquiry initiated against the Respondent, it was noticed by the Department that they were providing 'Manpower Recruitment & Supply Service' to Mehsana District Co-Operative Milk Producers Union Ltd [for short-MDCMPU] for packing etc activity of milk products and received consideration/payments on rate fixed as per contract basis.

2.1 Since no service tax was paid by the Respondent towards the said service, a show cause notice dated 19.10.2015 was issued to them for demanding Service Tax amounting to Rs.2,01,82,213/- by the jurisdictional Commissioner of Service Tax, Ahmedabad, covering the period from 2010-11 to 2014-15. Since, the respondent had continued non-payment of Service Tax on the said service, as per details obtained from them, a further Show Cause Notice dated 02.04.2018, for the period 2015-16, was issued under Section 73(1A) of the Finance Act, 1994 for demanding Service Tax amounting to Rs.58,46,691/- along with interest under Section 75 and imposition of penalty under Section 76, and 77(2) of the Finance Act, 1994. The adjudicating authority, vide impugned order, has dropped all proceedings initiated in the Show Cause Notice dated 02.04.2018, by holding that the specific activity carried out by the Respondent as per contract is not a 'Supply of Manpower & Supply service'.

3. Aggrieved with the impugned order, the department has filed the instant appeal on the grounds that:

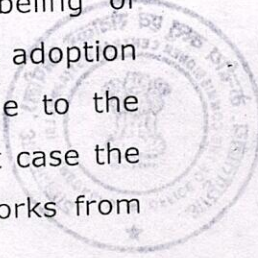
- The adjudicating authority has wrongly termed the activity undertaken by the respondent as manufacturing as envisaged under Section 2(f) of the Central Excise Act, 1944 and drifted the matter from core focal point of taxability. under 'Manpower Supply service'; that the activity relating to shifting/movement etc of milk product carried out by the respondent is nothing but a post manufacturing stage work which does not come under the definition of 'manufacture'.



- On detailed analysis of each clause of work in the work contract, executed between the respondent and MDCMPU, none of the activity mentioned in the contract is of 'packing' or akin to packing related activity as stated by the adjudicating authority.
- It is a settled legal position by the Hon'ble Supreme Court in the case of M/s Aman Marble Industries Pvt Ltd [2003 (157) ELT 393] and M/s Parle products [1994 (73) ELT 492] that the activities carried out on any finished product, which do not change its character and original identity cannot be the part of manufacture process.
- The adjudicating authority has wrongly relied on the order No.AHM-EXCUS-003-APP-017-19-20 dated 08.07.2019 of the Commissioner (Appeals), Ahmedabad as the Commissioner (Appeals) has set aside the OIO by terming the work as job work; that in the said order, nowhere, it has been held that the work undertaken by the assessee amounts to manufacture. Further, the department has not accepted the said OIA and preferred Appeal before CESTAT.
- In terms of various conditions of the work contract makes explicitly clear that the essential character of the contract is to supply of manpower only and the labourers deployed by the contractor did complete the given work of specific task within time as per requirement under the direction of MDCMPU. Therefore, the purpose of the agreement/work order is merely for due supply of manpower by the respondent to MDCMPU.
- The activity carried out by the respondent is leviable to Service Tax under the category of 'Manpower power & supply service'.

4. The Respondent has filed their Cross-Objection to the Department Appeal, wherein, they, inter-alia, submitted that:

- The Show Cause Notice served on them for demanding Service Tax, considering the work carried out as 'Manpower & Supply service' is not correct; that as per work order of MDCMPU, they have to fill milk in pouches/bottles i.e from carrying the empty crates to till dispatch of milk pouches; the said activities were part and parcel of manufacturing of milk and milk products, hence not liable for Service Tax.
- Bare perusal of the work order would reveal that what the respondent has carried out is the packing activity of milk which is the main activity of MDCMPU in relation to manufacture of mil which enables them to marketable.
- The chapter note 6 to the chapter 4, labeling or relabeling of containers or repacking from bulk packs to retails pack or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture; that in the present case the activity of packing of milk pouches/bottles and ancillary works from



bringing packing materials to packing section to till dispatch of milk pouches in crates are amounts to manufacture.

- The case laws relied on by the department of not applicable to the instant case as the product in question before the stage of packing etc is not the finished product of MDCMPU; that if the milk and milk products before packing stage itself is accepted as final product, there would not have the need of the chapter note 6 of the chapter 4.
- The work contract clearly stipulates that the contract was for the execution of the work of stacking, transferring, loading and unloading of finished goods, packing materials and raw materials within the factory premises of MDCMPU; that there is no mentioning of supply of man power.
- As per contract, they raised the invoices/bill per box/tin/bundle/number only and not for supply of labour or per person employed.
- The adjudicating authority has correctly dropped the demand after considering all these facts mentioned above and also on the basis of Hon'ble Supreme Court's order in the case of M/s Surya Trading & Service.

5. Personal Hearing in the matter was held on 27.02.2020. Shri M.H.Ravel, Consultant, appeared for the hearing on behalf of the Respondent and re-submitted a written cross-objection during the hearing. He further stated that an identical issue was decided by the Hon'ble Supreme Court against the department and requested to decide the case accordingly.

6. I have carefully gone through the facts of the case and submissions made by the Department in Appeal Memorandum as well as those made in Cross-Objection filed by the respondent and submissions made the time of Personal Hearing. In the instant case, the issue to be decided is as to whether the work i.e packing, unpacking, printing etc on packing material, loading and unloading of materials and other miscellaneous works entrusted to the respondent by MDCMPU at their premises is exigible for Service Tax under the service category of "Manpower and Supply Service " or otherwise.

7. I find that the adjudicating authority has dropped the demand of Service Tax along with interest and imposition of penalty, as proposed in the Show Cause Notice, on the grounds that the respondent have provided service viz packing, unpacking, printing etc on packing material, loading and unloading of materials etc to MDCMPU is as per contract between them and the said contract is not for number of 'supply of Manpower' but for execution of some specific works in relation to the manufacture of MDCMPU's finished goods; that the activity carried out by the respondent is amounting to manufacture. Therefore, no Service Tax is leviable. On other hand, the

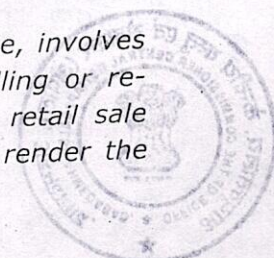


department has contended that the purpose of the agreement/work order is merely for due supply of manpower by the respondent to MDCMPU; that the essential character of the contract is to supply of manpower only and the labourers deployed by the respondent did complete the given work of specific task within time as per requirement under the direction of MDCMPU. Therefore, Service Tax under the service category of 'Manpower & Supply service' is leviable.

8. I have gone through the work order/agreement No.DMD/Manesar/1753 dated 08.05.2010 reproduced by the adjudicating authority in his impugned order at para 14. The work order/agreement is for "Scope of Work-Packing activity of milk" which is entrusted to the Respondent to carry out different works. As per the said work order/agreement, the works starts from unloading of crates from vehicle till the dispatch of the finished goods. Since the adjudicating authority has reproduced the work order/agreement (Sr.No.1 to 24) in the impugned order, the same is not again re-produced here. In short as per the work order/agreement, the work includes unloading of crates from vehicles and stacking them properly, Loading of empty crates to crate washer, arrange properly the milk sachets in the crates after counting, remove the leaky pouches, arranging accurate number of milk pouches to be filled in the crates, general cleaning of machines, floor, drains etc.

9. In the instant case, I find that the process undertaken by the Respondent is on the materials or goods supplied by the principal manufacture i.e MDCMPU. Therefore, the purpose of the agreement/work order is for carrying out specific activities at MDCMPU premises by the Respondent; that MDCMPU supplies the materials or goods to the respondent at their premises for carrying out the works as discussed above, according to the work contract/agreement and the respondent complete the process so as to enable MDCMPU to dispatch the goods finally to their customers. In other words, MDCMPU entrust certain job works to the Respondent to get their goods ready for dispatch. Looking into the said facts, the activities carried out by the Respondent qualify as 'process of goods' which amounts to 'manufacture' as per Section 2(f) of the Central Excise Act, 1944. Section 2(f) *ibid* reads as under:

- (f) "manufacture" includes any process, -
- (i) incidental or ancillary to the completion of a 'manufactured product;
 - (ii) which is specified in relation to any goods in the Section or Chapter notes of [the Fourth Schedule] as amounting to manufacture; or]
 - (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,



and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

9.1 I further find that as per chapter note 6 of chapter 4, labeling or relabeling of containers or repacking from bulk packs to retails packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'.

9.2 It is a fact on records that the Respondent have carried out the work of packing of milk in pouches/bottles and its ancillary works from unloading of packing materials from vehicles to the packing section till dispatch of finished goods of MDCMPU at their premise. It is apparent from the work order that the Respondent are engaged in process to render the products marketable. In the circumstances, as per definition of Section 2(f) ibid and chapter note discussed above, I do not find any merit to interfere the contention of the adjudicating authority that the activity of the respondent in the instant case is amounting to manufacture.

10. Further, it explicit from the copy of invoices furnished by the Respondent that they raised the labour bills for their various works done as per the work contract/agreement and not for the labour deployed for the work. Under the circumstances, there is no merit in the contention of the Department that the work the essential character of the contract is to supply of manpower only. The Department has further contended that the OIA No. No.AHM-EXCUS-003-APP-017-19-20 dated 08.07.2019 passed by the Commissioner (Appeals), Ahmedabad in an identical case relied on by the respondent is not applicable to the instant case as the Commissioner (Appeals) has set aside the OIO by terming the work as job work. I do not find any merit in the said contention also. In the said OIA, the Commissioner (Appeals) has set aside the activity of packing and cleaning etc work of milk products from the beginning i.e unloading of crates from vehicles to till dispatch of finished goods as 'rendering service' but akin to manufacturing activity.

10.1 I find that the Department has not brought any new addition grounds against the decision of Commissioner (Appeals), Ahmedabad supra, except stating that the Department has not accepted the said decision and has preferred appeal before the CESTAT. I find that there is no stay on the said order of Commissioner (Appeals).

10.2. The Department has further relied on the decision of Hon'ble Supreme Court in the case of M/s Aman Marbles Industris and M/s Parle Products Pvt Ltd supra. In the said decisions, it has been held that the activities carried



out on any finished product, which do not change its character and original identity cannot be the part of manufacture process. However, looking into the activities carried out by the Respondent in the instant case as discussed above, the definition of the term 'manufacture' under Section 2(f) of the Central Excise Act, 1944 and the chapter note of the product in question, the decision of Hon'ble Supreme Court supra is distinguishable and wrongly relied on by the Department in their case.

11. Further, I find that the Hon'ble High Court of Bombay in the case of M/s Samarth Sevabhai Trust [2016 (41) STR 806] has held that when there is no supply of labour as per agreement, the services provided are not covered under Manpower Recruitment & Supply service and not taxable. By relying Hon'ble Supreme Court decision in the case of Super Poly Fab-riks Pvt Ltd, the Hon'ble High Court has held as under:

7. Having regard to the nature of contract between the respondents and sugar factory and the scope of definitions mentioned above, it appears that the Appellate Tribunal has rightly come to the conclusion that the respondent's work, though provided services to the sugar factory, did not come within the mischief of the term "Manpower Recruitment or Supply Agency".

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."

9. In view of the above, it is clear that no manpower has been supplied by the respondents to the sugar factory to constitute supply of manpower. This Court had an occasion to deal with the similar issue, as is involved in these appeals, in Central Excise Appeal No. 19 of 2014, and this Court by order dated 27-1-2015 [2015 (38) S.T.R. 468 (Bom.)] has dismissed the said appeal

11.2 I also find that the Hon'ble Supreme Court in the case of Commissioner V/s M/s Surya Trading & Service [2018 (15) GSTL J 209] has dismissed an appeal filed by the Commissioner of Service Tax, Mumbai by holding that specific job work activity undertaken under a contract is not liable for Service Tax, if payment was given based on quantity of output. The decision of the Hon'ble Court 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."

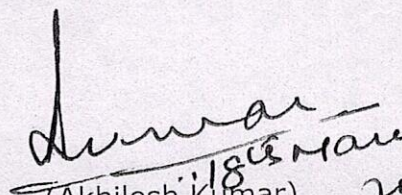




The Appellate Tribunal in its impugned order had followed its decision in *Commissioner v. Vintage Service Co.* [Final Order Nos. A/93095-93097/2016-WZB/STB, dated 28-9-2016] which was delivered in Revenue's appeals filed against same impugned order-in-appeal which was set aside by that order. In the 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 liable to Service Tax under the category of Manpower Recruitment and Supply Agency service if payment therefor was given based on quantity of output.

12. In view of above discussion and the decision of the Hon'ble High Court and Supreme Court supra, wherein, it has been held that specific job work activity undertaken under a contract is not liable for Service Tax, I find that the whole activities carried out by the Respondent at the premises of MDCMPU is akin to manufacturing activities and does not call for levy of Service Tax. In the circumstances, I do not find any merit in the Department appeal. Therefore, I uphold the decision of the adjudicating authority and reject the appeal filed by the Department.

13. The appeal stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)
/03/2020

ATTESTED



(Mohanan V.V)
Superintendent
CGST (Appeals) Ahmedabad



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