



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
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**DIN :20201264SW000000CD09**

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)12/GNR/2020-21 /16498
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-042/20-21**  
दिनांक Date : **19-11-2020** जारी करने की तारीख Date of Issue 02-12-2020  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **06/DC-DK/MEH/19-20** दिनांक: **19.03.2020** , issued by  
Deputy Commissioner(Preventive), CGST and Central Excise, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

**M/s Komal Enterprises,**  
**F/119, Dharti Manan Plaza,**  
**Jail Road, Mehsana**

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 :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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, 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 प्रकिया 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.



o/c

(क) 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।

(A) 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.

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

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

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।

(c) 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-बी/35-इ के अंतर्गत:-

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

(क) 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 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 Appellate 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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

This order arises out of an appeal filed by M/s Komal Enterprises, F/119, Dharti Manan Plaza, Jail Road, Mehsana (hereinafter referred to as the 'appellant') against Order in Original No.06/DC-DK/MEH/19-20 dated 19.03.2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner (Preventive), Central GST & Central Excise, Gandhinagar Commissionerate (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated, the facts of the case are that the appellant is engaged in supply of service under the category of 'Manpower Recruitment & Supply Agencies'. During inquiry initiated against the appellant, 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 per contract basis. Since no service tax was paid by the appellant towards the said service, a show cause notice dated 19.10.2015 was issued to them for demanding Service Tax liability 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 appellant 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, covering the period from 2015-16, was issued for demanding Service Tax amounting to Rs.58,46,691/- along with interest and imposition of penalty under Section 76 and 77(2) of the Finance Act, 1994. Thereafter, another periodical Show Cause Notice dated 19.03.2019 was issued covering the period from 2016-17 to 2017-18 (upto June 2017) demanding service tax amounting to Rs.41,90,546/- along with interest and imposition of penalty under Section 76 and 77(2) of the Finance Act, 1994. The said Show Cause Notice dated 19.03.2019 was adjudicated by the adjudicating authority vide the impugned orders wherein he had confirmed the demands along with interest and imposed penalty on the appellant.

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

- The adjudicating officer has passed the order without following judicial discipline in as much as he has not followed the order passed by the Hon'ble Commissioner (Appeals) and Joint Commissioner of CGST, Gandhinagar on this very issue;
- The adjudicating authority has not considered the complete tenor of the contract. The scope of the work as mentioned in the work order of MDCMPU is 'Packing Activity of Milk'. As per the work order, 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 milk which enables them to marketable;



- The activity of packing i.e. filling of milk in pouches and related packing activities are the processes incidental or ancillary to the manufacture of milk. Therefore, the activity of pouch packing is a process of 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944;
- 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. In the present case, they carried out the work of packing of milk pouches/bottles and ancillary works from bringing packing materials to packing section to till dispatch of milk pouches in crates at the dairy premises and hence the process or the work carried out by them are amounting to manufacture. It is settled law that any process resulting into manufacture is not coming under the purview of service tax;
- Even after the introduction of negative list with effect from 01.07.2012, any process amounting to manufacture or production of goods are kept out of service tax net as the same being covered under negative list as defined under Section 66D(f) of the Finance Act, 1994;
- 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 not considered the above vital facts while confirming the demand;
- In the case of M/s Shri Samarth Sevabhai Trust – 2016 (41) STR 806 (Bom.), Hon'ble Tribunal held that when there is no supply of labour as per agreement, the service provided are not covered under Manpower Recruitment & Supply service and not taxable. The ratio of the aforesaid decision is squarely applicable in the instant case;
- The entire tenor of the agreement and the invoices issued by the service provider clearly indicates the execution of a lump-sum work and this lump-sum work would not fall under the category of providing of service of 'manpower supply'. On the contrary, it is a complete contract for manufacturing of milk. They relied on the case laws in the cases of Midas Care Pharmaceuticals [2010 (18) STR 768 (Tri.-Mum.)], Rubicon Formulations Pvt. Ltd. [2010 (19) STR 515 (Tri.-Mum)], Mistair Health & Hygiene Pvt. Ltd. [2015 (40) STR 148 (Tri.-Mum)], Munish Forge Pvt. Ltd. [2015 (37) STR 662 (Tri.-Del)] and Ferro Scrap Nigam Ltd. [2014 (36) STR 955 (Tri.-Del.)] in support of their contention;
- The adjudicating authority has not followed the OIA No.AHM-EXCUS-003-APP-017-19-20 dated 08.07.2019 issued by the Commisisoner (Appeals). The adjudicating has also erred in not following the order of Hon'ble Supreme Court of India in the case of M/s Surya Trading and Services [2018 (15) GSTL J 209] wherein Hon'ble Supreme Court has held that specific job work activity undertaken under a valid contract should not be liable for service tax. In the case of appellant themselves, the Hon'ble



Commissioner had dropped the demand vide OIA No. AHM-EXCUS-003-APP-74-19-20 dated 18.03.2020 on the same issue; and

- No penalty is imposable in the case as (i) the mens rea is absent in the case; (ii) the appellant has acted on the bonafide belief that he was not liable to pay service tax and (ii) there was clear doubt about the taxability of the work done and it was a matter of interpretation of statute. They have relied upon various case laws in support of their contention in the matter.

5. Personal Hearing in the matter was held on 29.09.2020. Shri M.H. Raval, Consultant, appeared for the hearing on behalf of the appellant. He re-iterated the submissions made in Appeal Memorandum. He further submitted a written submission dated 29.09.2020 explaining in brief their contentions and arguments in the matter.

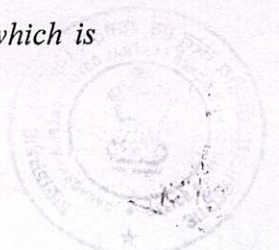
6. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. In the instant case, the issue to be decided is as to whether the work i.e packing, unpacking, printing etc on packing material, loading and unloading of materials and other miscellaneous works entrusted to the appellant by MDCMPU at their premises is liable for payment of Service Tax under the service category of "Manpower and Supply Service " or otherwise.

7. I find that the issue in respect of the appellant's past period was decided by me vide OIA No.AHM-EXCUS-003-APP-74-19-20 dated 18.03.2020 on an appeal filed by the department. Since in the present dispute, the facts are exactly the same, and it is related to the succeeding period, I would like to reproduce the operative part of the OIA dated 18.03.2020:

*"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 their contract between MDCMPU 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 to till the dispatch of the finished goods of Therefore, the purpose of the agreement/work order is merely for due supply of manpower by the respondent to MDCMPU. 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, 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 to till dispatch of finished goods of MDCMPU at their premise. 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. In 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.

11. The department has also 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*. Looking into the activities carried out by the respondent in the instant case and the definition of the term 'manufacture' under Section 2(f) of the Central Excise Act, 1944 and chapter note of the product in question, the decision of Hon'ble Supreme Court *supra* is wrongly relied on by the department. Especially, there is decision by the Hon'ble High Court and Supreme Court, wherein, it has been held that specific job work activity undertaken under a contract is not liable for Service Tax.

11.1 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 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 Further, 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, I find that the activities carried out in whole 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.”

8. I find that the demand in the present case pertains to periodical demand for subsequent period of the period covered under the above OIA i.e. from 2016-17 to 2017-18 (upto June,2017). There is no change in facts of the case or in the legal provisions. That being so, I do not find any reason to take a different view in the matter. Hence, following my above decision, it is held that in the present case also the activities carried out in whole by the



respondent at the premises of MDCMPU is akin to manufacturing activities and does not call for levy of Service Tax. In view thereof, the impugned order is deserved to be set aside for being not sustainable in law both on merits and facts.

9. Further, I find that when the issue for the earlier period on similar set of facts and legal provisions stand decided by the decisions of higher authorities, the adjudicating authority is bound to follow the same in the interest of principles of judicial discipline. The adjudicating authority, in spite of the above facts being brought to his notice by the appellant during the adjudication proceedings, completely overlooked the same and decided the case without any discussion on the same in gross violation of principles of judicial discipline. The impugned order passed by the adjudicating authority is bad in law in this count also.

10. In view of the foregoing the facts, I set aside the impugned order for being not legal and proper and allow the appeal of the appellant.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

*Akhilesh Kumar*  
19 November, 2020  
( Akhilesh Kumar )  
Commissioner (Appeals)  
Date: 19.11.2020.

Attested:

*Anilkumar P.*

(Anilkumar P.)  
Superintendent(Appeals),  
CGST, Ahmedabad.  
By R.P.A.D/Speed Post.

To,  
M/s Komal Enterprises,  
F/119, Dharti Manan Plaza, Jail Road,  
Mehsana.



Copy to:

- 1) The Chief Commissioner, CGST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar Commissionerate.
- 3) The Assistant Commissioner, CGST, Mehsana Division, Gandhinagar Commissionerate.
- 4) The Asst. Commissioner (System), CGST, Gandhinagar Commissionerate.  
(for uploading the OIA)
- 5) P.A File
- 6) Guard File.