



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

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| (क) | फाइल संख्या / File No. | GAPPL/COM/STD/203/2022-APPEAL / 321 - 28 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-003-APP-159/2022-23 and 31.03.2023 |
| (ग) | पारित किया गया / Passed By | श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 05.04.2023 |
| (ङ) | Arising out of Order-In-Original No. KLL DIV/ST/PARAS MANI TRIPATHI/127/2022-23 dated 14.06.2022 passed by the Deputyt Commissioner, CGST & C.Ex., Division-Kalol, Gandhinagar Commissionerate | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | Office of the Assistant/Deputy Commissioner, CGST & CE, Division-Kalol, Gandhinagar Commissionerate, 2 nd Floor, Janta Super Market, Kalol, Gandhinagar-382715 |
| (छ) | प्रतिवादी का नाम और पता / Name and Address of the Respondent | M/s Praveenbhai Bhovanbhai Delvadiya (PAN-AAWPD8670M), 49, Indralok Society, Opp. ESIV Hospital, Kalol, Gandhinagar, Gujarat-382721 |

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-



(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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।

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।

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

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

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

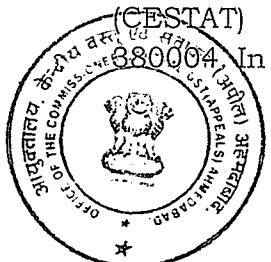
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: In case of appeals other than as mentioned above para.



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 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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) एके प्रति अपील के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

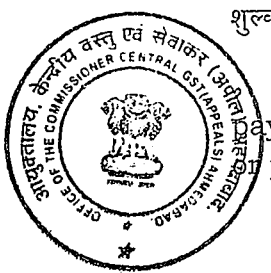
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

(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।

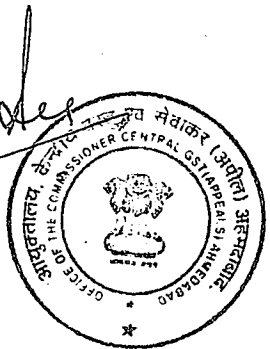
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, penalty, where penalty alone is in dispute."



अपीलिय आदेश / ORDER-IN-APPEAL

The Assistant Commissioner, CGST & Central Excise, Kalol Division, Commissionerate - Gandhinagar (hereinafter referred to as the 'Appellant Department'), in pursuance of the Review Order No.12/2022-23 dated 16.09.2022 issued under Section 84 of the Finance Act, 1994 from F.No. GEXCOM/REV/ST/OIO/19340/2022-REV-O/o COMMR-CGST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal against the Order-in-Original No. KLL DIV/ST/PARAS MANI TRIPATHI/127/22-23 dated 14.06.2022 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner, CGST, Kalol Division, Commissionerate - Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Praveenbhai Bhovanbhai Delvadiya (Ramdev Corporation), 49, Indralok Society, Opp ESIC Hospital, Kalol, Dist.: Gandhinagar (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent were holding Service Tax Registration No. AAWPD8670MST001 for providing services falling under the category of Contractor (Others). Based on the information received from the Income Tax department, discrepancies were observed in the total income declared in the ITR as compared to the ST-3 returns of the respondent for the period F.Y. 2015-16. Letters dated 25.04.2019, 13.06.2020 and 06.07.2020 were issued to the respondent to provide documents like Balance Sheet, Profit & Loss Account, Income Tax Returns, Form-26AS and Sales Ledger for the F.Y. 2015-16 to verify whether they had discharged their Service Tax liabilities properly. However, they did not respond. It appeared to the jurisdictional officers that the nature of activities carried out by the respondent as per the Income Tax data were covered under the definition of service and hence they were liable to levy of Service Tax at appropriate rate. Accordingly, the differential Service Tax payable by the respondent was determined on the basis of difference between the value of "Sales/Gross Receipts (derived from Value reflected in ITR)" as provided by the Income Tax Department and the taxable Value declared in their ST-3 returns for the Financial Year 2015-16 as below:



| Sr. No | Details | Amount (in Rs.) |
|--------|--|-----------------|
| 1 | Taxable Value as per Income Tax Data i.e Total Amount Paid/credited under Section 194O, 194H, 194J, 194I of the Income Tax Act,1961 OR Sales/Gross Receipts from Services (as per ITR) | 2,23,00,331/- |
| 2 | Taxable Value declared in ST-3 Returns | 0/- |
| 3 | Difference of Value mentioned in 1 & 2 above (Sr.No.1 – Sr.No.2) | 2,23,00,331/- |
| 4 | Amount of Service Tax payable including Cess (@14.5%) | 32,33,548 /- |

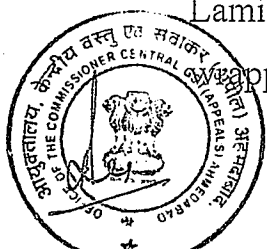
2.1 A Show Cause Notice was issued to the respondent from F.No. GEXCOM/SCN/ST/1130/2020-CGST-DIV-KLL-COMMRTE-GANDHINAGAR dated 20.10.2020 (in short SCN) vide which it was proposed to demand and recover Service Tax amounting to Rs. 32,33,548/- under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest. Penalties were proposed under Section 70 and 78 of the Finance Act, 1994 (FA,1994).

2.2 The SCN was adjudicated by the adjudicating authority vide the impugned order, wherein the demand of Service Tax amounting to Rs. 32,33,548/- was dropped. However, penalty amounting to Rs. 15,900/- was imposed under Section 70 of the FA, 1994 for late filing of Service Tax Returns for the period April-September-2015 beyond due date.

3. Being aggrieved with the impugned order, the Appellant Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order.

3.1 The proceedings initiated by the SCN was dropped on the findings that the respondent has received the differential taxable income of Rs. 2,23,00,231/- for the period F.Y. 2015-16 for rendering 'Manpower Supply Service' to Body Corporates viz. (i) M/s Mother Lam P. Ltd.; (ii) M/s Sundek (I) Ltd.; (iii) M/s Cedar Décor P. Ltd. ; and (iv) M/s Associated Décor Ltd. Hence, 100% Service Tax liability was on the service recipient under Reverse Charge Mechanism in terms of Notification No. 30/2012-ST dated 22.06.2012, as amended vide Notification No. 07/2015-ST dated 01.03.2015. The decision of the adjudicating authority was perverse and in the wrong perspective of the statutes.

3.2 The agreements executed between the respondents and service recipient i.e M/s CEDAR Décor P. Ltd shows that the agreement was entered for the job of Laminate Sheet Cutting, scrapping, packing, sampling, racking, roll godown, PP wrapping, sampling, laminates loading and paper unloading. The respondents



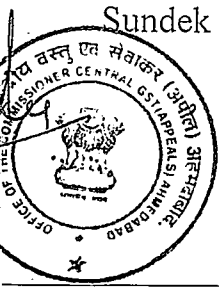
would be responsible for payment of minimum wages as per government norms to all workmen employed by them, maintain all statutory records and registers as required, obtain legal licence from the state if they employ more than 10 workmen, obtain PF number and ESIC number as well as group insurance policy in respect of all workmen employed by them.

3.3 As per the agreement entered into by the respondent with M/s Sundek India Ltd., it was observed that the agreement pertained to "Labour Contract" for the manufacture of laminated sheets, sample cutting, sanding etc. The respondents would be responsible for payment of minimum wages as per government norms to all workmen employed by them, maintain all statutory records and registers as required, obtain legal licence from the state, if they employ more than 10 workmen, obtain PF number and ESIC number as well as group insurance policy in respect of all workmen employed by them. An experienced supervisor was required to be appointed by the respondent and a lump-sum amount would be paid to the respondents for the said labour contract.

3.4 With effect from 01.07.2012, the negative list regime was introduced in Service Tax and "Service" was defined under Section 65B (44) of the Finance Act, 1994 and the negative list was covered under Section 66D of the Finance Act, 1994. The nature of activities carried out by the respondents were covered under the definition of "Service" and not covered under the negative list. The respondents have mainly contended that their services were classifiable under 'Manpower Service' and the service recipients being 'Body Corporates', they are eligible for benefit of 100% -Reverse Charge Mechanism. With effect from 01.07.2012, the definition of "Supply of Manpower" was defined vide Rule 2(1)(g) of the Service Tax Rules, 1994 which stipulated two major ingredients for services to be covered under 'Manpower Supply'. They are :

- Services should be manpower supply under control of principal employer.
- Security services, cleaning services, piece basis services or job basis contract can be manpower supply services, only if there is superintendence or control of the principal employer.

3.5 As contracts executed between parties would determine the nature of work and as per the sample copy of agreements between M/s Cedar Décor (P) Ltd & M/s Sundek India Limited, no mention about Manpower Supply was available in the

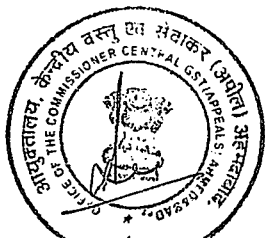


agreements and the clauses of the agreement show that there is no superintendence or control of the Principal on the manpower supplied by them. As the services provided by the respondents do not merit classification under "Supply of Manpower Services", they are not eligible for any RCM benefit.

3.6 The adjudicating authority has grossly erred in classifying the services under Manpower Supply and dropping the demand of Service Tax amounting to Rs. 32,33,548/- alongwith interest.

4. A cross-objection to the appeal was filed by the respondents on 18.01.2023 wherein they submitted that:

- The respondents have declared their services as Manpower Supply and were providing manpower to their clients as per the agreements entered upon. In their agreement with M/s Sundek, they had agreed to provide labour.
- Bills were raised by the respondents on monthly basis for providing Manpower Supply and their services conformed to the provisions of Contract Labour (Regulation & Abolition) Act, 1970. The nature of job mentioned as loading, unloading, cutting, sanding on piecemeal basis does not alter the nature of the services provided by the respondent.
- Unlike those in cases of job-work, the contracts executed between the respondent and the service receivers do not contain details of job specifications, quantum of output generation, delivery schedules etc which confirm the fact that they were engaged in labour supply only.
- The personnel engaged by the respondent were under their supervision and control and they were holding the discretion to recruit personnel of their choice. The respondents also maintained various records like attendance registers for the personnel supplied by them and also produce extract of the same from time to time. They were also responsible for payment of wages as per minimum wages regulations, as applicable in the state of Gujarat and the mode of payment was also as per the Government regulations.
- In terms of the amendment carried out vide Notification No. 07/2015-ST dated 01.03.2015, in respect of Manpower Supply and security services provided by an individual, HUF, or partnership firm to a body corporate,

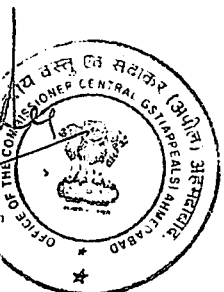


only service receiver were supposed to pay Service Tax as against the earlier system of partial reverse charge. In the case of the respondents, the service receiver, M/s Sundek India Ltd., has confirmed that they had paid the service tax.

- In case the services rendered by the respondents be classified as job-work, the service recipients would be eligible for the credit, and therefore, the exercise would amount to revenue neutral situation.
- In support of their contentions they cited the following citations :
 - Decision of Hon'ble Supreme Court in the case of Adiraj Manpower Services Pvt.Ltd. Vs Commr. of Cen.Ex., Pune-II reported as 2022 (58) GSTL 137 (SC).
 - Decision of CESTAT in the case of Popular Vehicles & Services Ltd. Vs Commissioner of Cen.Ex., Kochi reported as 2010 (18) STR 493 (Tri.Bang.)
 - Decision of CESTAT, WZB, Ahmedabad in the case of Dineshchandra R Agarwal Infracon Pvt. Ltd Vs CCE, Ahmedabad reported as 2010 (18) STR-39 (Tri.Ahmd).
 - Decision of CESTAT, SZB, Chennai in the case of Sakthi Auto Components Ltd. Vs Commissioner of C.Ex., Salem reported as 2009 (14) STR 694 (Tri.Chennai).

5. Personal Hearing in the case was held on 10.02.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the respondents for hearing. He reiterated the submissions made in the cross-objection to appeal.

6. I have carefully gone through the facts of the case, grounds of appeal, the written submissions made by the respondent as well as oral submissions made at the time of personal hearing. It is observed that the issue to be decided in this case is whether the impugned order passed by the adjudicating authority, dropping the Service Tax demand of Rs. 32,33,548/- alongwith interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to period F.Y. 2015-16.



6.1 I find that the SCN in the case was issued on the basis of data received from Income Tax department. The respondents are registered with the department and had filed their ST-3 Returns during the period F.Y. 2015-16. The SCN has classified the services of the respondent under the category 'Contractor (Others)' and the demand was raised on the basis of differential value of services appearing in the Income Tax Returns compared with the value shown in the ST-3 Returns. However, upon verifying the ST-3 Returns submitted by the respondent, it is observed that they have classified their services under the category of 'Manpower Recruitment /supply agency services'. From the above, it is clear that the SCN was issued without verifying the facts available on records. Therefore, I find that the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021. The relevant portion of the said Instructions is reiterated as :

...

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

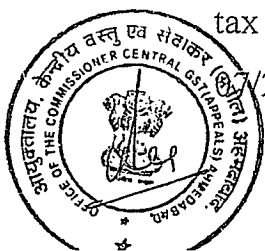
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Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and mechanically without application of mind, and is vague.

7. It is observed that during the relevant period, the appellant have provided services under Labour Supply to the following companies :

- (i) M/s mother Lam Pvt.Ltd.
- (ii) M/s Sundek India Ltd.
- (iii) M/s Cedar Décor Pvt.Ltd.
- (iv) M/s Associates Décor Ltd.

The adjudicating authority, after examining the Form 3CB (F.Y. 2015-16) with Tax Audit Report prepared under Section 44AB of the Income Tax Act,1961, alongwith sample copies of invoices and work order, has arrived at the conclusion that the respondent had provided services in relation to Manpower Supply service to the companies, who are body corporate. They had issued invoices and service tax was to be paid by the service recipient in terms of Sr. No. 8 of Notification No. 2015-ST dated 01.03.2015.



8. It is the contention of the appellant department that the respondent had provided services to M/s Cedar Décor Pvt. Ltd on the basis of an agreement. The agreement mentions that the respondents were entrusted the work of 'Laminate Sheet Cutting, scrapping, packing, sampling, racking, roll godown, PP wrapping, sampling, laminates loading and paper unloading' by the service receiver. Therefore, as per the agreement, the services rendered by the respondents cannot be classified under 'Manpower Recruitment/Supply service' as the agreement is of 'Labour Contract' for manufacture of agreed upon job. It is also contended that for any services to qualify for 'Manpower Recruitment/Supply service' as defined under Rule 2(1)(g) of the Service Tax Rules, 1994, two ingredients should be satisfied namely :

- i) Services should be manpower supply under control of the principal employer.
- ii) Security services, cleaning services, piece basis services or job basis contract can be manpower supply services only if there is superintendence or control of principal employer.

As the services provided by the respondent do not fulfill the above criteria, they are ineligible to be classified under 'Manpower Recruitment/Supply service' and, therefore, the benefit of 100% RCM is not available to them.

9. The "supply of manpower" under Rule 2(i)(g) of the Service Tax Rules, 1994 means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.

9.1 As regards the contention of the department that the contracts executed by the respondent with their service receivers are labour contracts for manufacture of agreed upon job, I find that both the contracts entered into with M/s Cedar Décor P. Ltd. and with M/s Sundek India Ltd., do not specify the work output to be performed on daily/periodical basis. The agreement with M/s Cedar Décor Pvt. Ltd contains mode of payment to contractor on the basis of finished materials at plant per month for which the figures of the finishing and stores department will be considered final. Invoices are issued accordingly, which is evident from sample copies of Invoices submitted as cross-objection. It is also observed that Clause-15 of the agreement specifies that 'the contractor is required to be present at site during all working days unless permission is granted', which clearly establishes that the supervisory control of the workforce is entrusted with the



contractor/principal employer. Hence, the contention of department regarding no control of the principal employer over the manpower is not backed by the terms of the contract and hence is not sustainable. It is also observed that the appellant department is silent about the services provided by the respondent to the remaining two companies, namely, M/s Mother Lam Pvt. Ltd and M/s Associates Décor Ltd., which implies that the department has considered that the services provided to them are classified under 'Manpower Recruitment/Supply Agency Service'. It is also observed that the nature of job undertaken by the respondent in respect of all the four service receivers are found to be identical. Hence, I find that there is no merit in the contentions of the department that the contracts executed by the respondents with service receivers are labour contracts for manufacture of agreed upon job.

9.2 I further find that, during the relevant period, the respondent were engaged in providing 'Labour supply' service to four companies namely, M/s Mother Lam Pvt. Ltd, M/s Sundek India Ltd., M/s CEDAR Décor Pvt. Ltd, and M/s Associates Décor Ltd. It is also undisputed that the respondent are a 'Proprietorship firm', whereas all their service receivers are 'Body Corporates'. The respondents have classified their services under 'Manpower Recruitment/supply Agency Services' in their ST-3 Returns. Therefore, they are eligible for availing the benefit of payment of Service Tax through the service recipients under 100% Reverse Charge Mechanism.

10. It is observed from the Form 26AS of the respondent for the period F.Y. 2015-16 that Rs. 30,26,340/- was credited from M/s CEDAR Décor Pvt. Ltd, Rs. 42,56,026/- was credited from M/s Mother Lam Pvt. Ltd, Rs. 56,24,236/- was credited from M/s Sundek India Ltd. and Rs. 93,93,729/- was credited from M/s Associates Décor Ltd. Therefore the fact of services provided by the respondent to these four 'Body Corporates' for the declared taxable value during the relevant period is undisputed. It is also observed that in their Ledger Account, the respondents have shown these incomes under 'Labour Supply Service Income'. It is also observed that M/s Sundek India Limited (a Body Corporate and one of the service recipients) have given Declaration/Certificate dated 11.01.2023 in support of the fact that the Service Tax accrued on the basis of 'Manpower Supply Services' provided by the respondent firm during the period F.Y. 2015-16 was paid them under '100%- Reverse Charge Mechanism' in terms of Notification No.

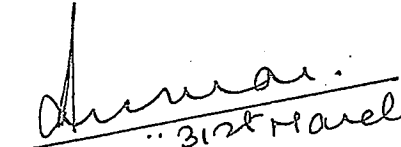


07/2015-ST dated 01.03.2015. Therefore, the contentions of the respondent are found to be sustainable. It is noteworthy to mention that these facts have not been contested by the appellant department.


11. In view of the discussions made above, I am of the considered view that there is no merit in the department appeal as regards the dropping of demand amounting to Rs. 32,33,548/- by the adjudicating authority.

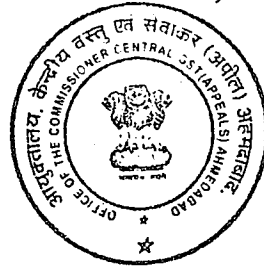
12. Therefore, the appeal filed by the Appellant Department against the impugned order is dismissed being devoid of merits.

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


.. 31st March, 2023..
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 31st March, 2023

Attested


(Somnath Chaudhary)
Superintendent (Appeals)
CGST & CE, Ahmedabad



By Regd. Post A. D

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|--|------------|
| 1. The Deputy/Assistant Commissioner CGST, Division- Kalol, Commissionerate - Gandhinagar | APPELLANT |
| 2. M/s. Praveenbhai Bhovanbhai Delvadiya (Ramdev Corporation), 49, Indralok Society, Opp ESIC Hospital, Kalol, Dist.Gandhinagar | RESPONDENT |

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy/Asstt. Commissioner, CGST, Division-Kalol, Commissionerate - Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals, Ahmedabad (for uploading)
5. ~~Guard file~~
6. PA File