



आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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**By Regd. Post**

DIN :- 20231264SW0000000EBB

(क)	फाइल संख्या / File No.	GAPPL/COM/STD/53/2023-APPEAL / 9143-42
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-137/2023-24 and 29.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. AC/S.R./39/ST/KADI/2022-23 dated 18.10.2022 passed by the Assistant Commissioner, CGST & CE, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant Commissioner, CGST & CE, Division-Kadi, Gandhinagar Commissionerate
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Patel Associates & Labour Contractor, Ratanlal H patel, Umiyanagar, Nandasan Village, Kadi, Mehsana, Gujarat-382715.

कोई व्यक्ति इस अपील-आदेश से असंतोष 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, 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 :-

(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 भण्डागार या भण्डार 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Giridhar Nagar, Ahmedabad: 380004. 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या 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, or penalty, where penalty alone is in dispute."



**अपीलिय आदेश / ORDER-IN-APPEAL**

The present appeal has been filed by the Assistant Commissioner , Central GST, Kadi Division, Gandhinagar Commissionerate [*hereinafter referred to "the appellant"*] in terms of Review Order No. 15/2022-23 dated 09.01.2023 issued under Section 84 of the Finance Act, 1994 by the Commissioner of CGST, Gandhinagar against Order-in-Original No. AC/S.R./39/ST/KADI/2022-23 dated 18.10.2022 [*hereinafter referred to as "the impugned order"*] passed by the Assistant Commissioner, Central GST, Kadi Division, Gandhinagar Commissionerate [*hereinafter referred to as "the adjudicating authority"*] in respect of M/s Patel Associates & Labour Contractor, Ratanlal H Patel, Umiyanagar, Nandasan Village, Kadi, Mehsana, Gujarat-382715 (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent was holding Service Tax Registration No. APYPP8774PST001 under "Manpower Recruitment /Supply Agency Service". Based on the data received from the Income Tax department, discrepancy was noticed 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. Emails dated 05.05.2020 & 18.05.2020 were issued to the respondent requesting them to provide the details of services provided during the period F.Y. 2015-16. However, they did not respond. The activities carried out by the respondent appeared to be covered under the definition of 'service'. 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)" amounting to Rs. 76,81,644/- reflected in the Income Tax Return and the taxable value declared in their ST-3 returns amounting to Rs. 0/- was considered and non-payment of Service Tax amounting to Rs.11,16,554/- was worked out for the F.Y. 2015-16.

2.1 A Show Cause Notice was therefore issued vide F. No. GEXCOM/ADJN/ST/413/2020-CGST-DIV-KADI-COMMRTE dated 20.10.2020 to the Respondent, proposing Service Tax demand amounting to Rs.11,16,554/- under Section 73 (1) alongwith interest and imposition of penalty under the provision of Section 78 of the Finance Act, 1994.

3. The said SCN was adjudicated vide the impugned order, wherein the Service Tax demand amounting to Rs.11,16,554/- was set aside by extending the benefit of Reverse Charge Mechanism (RCM) in terms of Sr. No. 8 of the table of Notification No.30/2012-ST dated 22.06.2012, as amended. As the demand was set aside, interest and penalty also was set-aside.

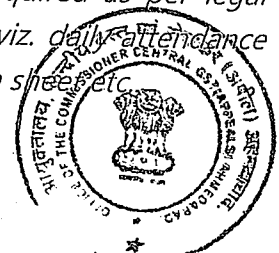
4. Being aggrieved with the impugned order, the department has preferred the present appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order on the grounds mentioned herein below:-

- The adjudicating authority has grossly erred in dropping the entire demand of Service Tax of Rs.11,16,554/- by extending the benefit of a Reverse Charge Mechanism (RCM) provided vide Notification No.30/2012-ST dated 22.06.2012, as amended vide Notification No.07/2015-ST dated 01.03.2015 (Sr.No. 8 of Part-II of

Table), considering the services provided by them as "Manpower supply services" to body corporate along with interest and penalties proposed under said SCN.

- The adjudicating authority has simply gone by the contention of the Noticee without making any verification that they had provided the services by way of supply of manpower for any purpose to their clients viz. M/s. JRS Pharma & Gujarat Microwax Pvt. Ltd. (Unit-2), Nandasan and M/s Sagar Enterprise, Kalol and held that said recipients are liable to pay 100% Service Tax thereon under RCM. There is no mention that the Noticee, to support their case, had submitted documentary evidences and the same were verified in the course of adjudication.
- Contract/Agreement dated 31.03.2015 was entered between (i) M/s. JRS Pharma & Gujarat Microwax Pvt. Ltd. (Unit-2), Nandasan (Formerly known as M/s Gujarat Microwax Pvt. Ltd.) & (ii) M/s Sagar Enterprise, Kalol and the Noticee (hereinafter referred to a "Service Recipients" for the sake of brevity) for carrying out miscellaneous labour works relating to loading & unloading in their factory to the assessee for the period from 01.04.2015 to 31.03.2016 The conditions of said Contract are as below:

- i. *Assessee will perform the miscellaneous labour works relating to loading & unloading time to time in their factory as per the direction of the assessee.*
- ii. *The Service Recipients will pay charges against above works done by them as per the bill raised by the assessee. The assessee will furnish details of contract works done by them. After verification service recipient will make payment after legal deductions. After calculating Service Tax on bill amount, same will be paid along with bill amount to the assessee.*
- iii. *The Service Recipients will provide necessary facilities i.e. Electricity, Machinery, Raw Materials etc. time to time required for above works. The assessee will complete work within fixed time.*
- iv. *The skilled labours required for above works are to be deployed by the labour contractor. And all the responsibilities regarding said laboures and labour related compliance of statutory legal provisions as applicable will be of the labour contractor like:*
  - a. *The entire liability to pay prescribed minimum wages to the laboures deployed as per the Minimum Wages Act or any other Act is of the labour contractor.*
  - b. *The labour contractor is responsible to deposit PF Labour Welfare Fund, Professional Tax deducted from the wages/salary paid to the laboures deployed by them.*
  - c. *The responsibility to pay compensation of monitory loss as per The Employee Compensation Act is of the labour contractor.*
  - d. *The labour contractor will be responsible to prepare and take signature of service recipients on all records required as per legal provisions prevailing or amended in future and viz. daily attendance sheet, salary sheet, right leave sheet, identification sheet etc.*



- e. *Any disciplinary action or change in employment of any one labour or all laboures deployed by the assessee, any such action shall be initiated according to the rules laid down in the factory of the client.*

*In case of violation of above conditions, any penalty or expenditure incurred by any govt. department or any case booked by labourers of the assessee, the responsibility of any loss is of the assessee.*

- v. *The assessee has to deliver faultless production according to condition (i) above and if any damage/ harm is caused by the workers/laboures of the assessee, the assessee will be responsible for the same.*
- The above contract clearly reveals that the said contract has been awarded not for supply of manpower but for execution of miscellaneous labour works relating to loading & unloading time to time in their factory as per the direction of the assessee. Further, the workers deployed to work in their factory were under superintendence or control of the labour contractor (respondent). The control of the workers in every respect was solely with the respondent and service recipients had no effective control or supervision over the workers deployed under the said Contract. Thus, the labour services provided by the respondent would not fall under "Manpower Supply Service".
- From the evidences available on records, it is clear that the respondent has not provided the "Man Power Supply Service", as defined under Rule 2(1)(g) of the Service Tax Rules, 1994. With effect from July 1st, 2012, Section 65 (68) and Section 65(105) (k) were rescinded and new definition of 'Supply of Manpower' was inserted under Rule 2(1)(g) of the Service Tax Rules, 1994, which is reproduced herein below:
- "Supply of Manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control."*
- As per above definition, the existence of following important elements is needed to get covered under the category of manpower supply services:-
- i) Services should be manpower supply under control of 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.
- The agreement is for carrying out loading/unloading/Miscellaneous labour service at the factory of said service recipients. Further, one of the terms laid down at Para 4(b) of the Agreement is that the assessee is responsible for depositing the amounts of Labour welfare fund, Professional Tax, Provident Fund etc. deducted from the salary of the laboures deployed by them. These aspects clearly make it evident that there is neither supply of manpower services nor the evidence that manpower supply has been made and the superintendence or control of the

Principal (service recipients) on the manpower. Hence, it becomes apparently clear that the assessee has not provided manpower supply service but did miscellaneous works relating to loading & unloading time to time in their factory through manpower engaged under their control and supervision to undertake the said works, in terms of Measurements and Rates to said service recipients. Thus, the services provided by the assessee (Respondent) are not covered under the definition of "Supply of Manpower Services" and, hence, consequently, they were not eligible for any RCM benefit under said notification.

➤ With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list, are exempted. The nature of activities carried out by the Respondent as a Service Provider is covered under the definition of "Service" and found to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994. Further, said services were neither exempted vide any exemption notification nor covered under notification issued for allowing benefit of Reverse Charge Mechanism. Hence, same are taxable in the hands of the Respondent. Thus, the adjudicating authority has grossly erred in interpreting that the services provided by the assessee falls under the category of "Manpower supply" and, thereby, dropping entire demand of Service Tax of Rs.11,16,554/- by way of extending the RCM benefit in terms of Notification No.30/2012-ST, dated 20.06.2012, as amended.

➤ In view of the above facts and reasons stated above, the said Order-In-Original No. AC/S.R./39/ST/KADI/2022-23 dated 18.10.2022 passed by the Assistant Commissioner, CGST & Central Excise, Kadi Division, Gandhinagar Commissionerate is not proper and legal and deserves to be set-aside by allowing the appeal of the Revenue on the grounds mentioned hereinabove.

5. Personal Hearing in the matter was conducted on 20.10.2023. Shri Sachin Dharwal, Chartered Accountant, appeared on behalf of the respondent. He reiterated the contents of the written submission submitted during the hearing and requested to reject the departmental appeal. Further he requested to give additional documents by 26.10.2023.

6. Subsequently, the respondent filed Cross Objection dated 17.10.2023 to the appeal at the time of personal hearing, inter alia, contending that:

- The contract pertains to Labour Supply Services and not Manpower Supply Services, both parties to the contract have consistently considered it as a contract for Manpower Supply Services. Moreover, the service recipient of these services has diligently paid the requisite tax under Reverse Charge Mechanism.
- Service tax is an indirect tax levied on the supply of services, and the key concern should be whether service tax has been duly paid on the services rendered. In this context, it becomes immaterial whether the services supplied are categorized as Manpower Services or Labour Services for loading & unloading.



- In the present case, service tax has indeed been duly paid on the services provided by M/s Patel Associates & Labour Contractor to (i) M/S JRS Pharma & Gujarat Microwax Private Limited and (ii) Sagar Enterprise & JRS Pharma, and Gujarat Microwax Private Limited, collectively, by M/s JRS Pharma & Gujarat Microwax Private Limited as a Body Corporate, under Reverse Charge Mechanism, considering the said service as "Manpower Supply Services."
- Therefore, the respondent firmly believes that the adjudicating authority made the correct decision in impugned order. Relevant documents supporting this position have been attached for your reference.
- The respondent maintains full confidence in the decision made by the Adjudicating Authority, which was in accordance with the law, and asserts that the claims made by the appellant lack merit, particularly with regard to the fundamental question of whether the service tax on the said service has been duly paid and requested to set-aside the departmental appeal.

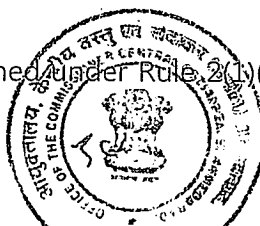
6.1 Subsequently, the respondent also submitted a declaration of payment of Service Tax issued by M/s JRS Pharma & Gujarat Microwax Pvt Ltd and sample invoices for manpower supply / labour supply.

7. I have gone through the facts of the case, grounds mentioned in the appeal filed by the department and the materials available on the record. The issue before me for decision is as to whether the impugned order dropping the demand of Service Tax amounting to Rs.11,16,554/- alongwith interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F. Y. 2015-2016.

8. It is observed that the respondent – a proprietor firm was registered with the Service Tax department for providing taxable services. They were engaged in providing "Manpower Recruitment /Supply Agency Service". The main grounds raised in the appeal memorandum is that the respondent is merely a labour contractor and was not providing Manpower Supply Agency Service as the Contract was to carry out miscellaneous labour work relating to loading & unloading in the factory of the service recipient. As the manpower supplied was not under the control of principal employer, the said service cannot be classified as Manpower Supply Service.

9. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

9.1 The "Man Power Supply Service", is defined under Rule 2(1)(g) of the Service Tax Rules, 1994, as;





*"Supply of Manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control."*

9.2 In the present case, the respondent has entered into a contract which refers the respondent as 'Labour Contractor'. The respondent has supplied labour to their clients to carry out the loading & unloading of goods at the factories. As per the contract the respondent will have to get the work completed within the stipulated time and shall be responsible to provide wages as per Factory Minimum Wages, deduct Provident Fund, Labour Welfare fund etc from the wages of the labourer supplied. Thus, the entire control or supervision of the labourer is on the respondent and not on the service recipient. Hence, I find that the service rendered by the respondent is not covered under 'Manpower Supply service' but is purely labour supply, on which the liability to pay tax is on the service provider and not on the recipient.

9.3 I, therefore find that the RCM benefit granted by the adjudicating authority in terms of Notification No.07/2015-ST dated 01.03.2015 is not admissible to the respondent and hence the appellant shall be required to service tax on the gross amount charged. Further, as per clause (ii) of the contract *"The Service Recipients will pay charges against above works done by them as per the bill raised by the assessee. The assessee will furnish details of contract works done by them. After verification service recipient will make payment after legal deductions. After calculating Service Tax on bill amount, same will be paid along with bill amount to the assessee."* This clause, clearly indicate that the respondent was to collect service tax on the bills raised. Therefore, the contention of the respondent that as the service recipient has already discharged the tax liability they are not required to pay tax is also legally not correct. In terms of Section 68(1) of the F.A., 1994 the liability to pay tax shall be on the service provider in this case on the respondent and not on the service recipient. Since the above service does not fall under aforesaid notification, the service tax liability cannot be shifted on the service recipient, accordingly, the tax liability rest on the respondent. When the demand sustains there is no escape from interest and penalty.

10. In view of the above discussion, I set-aside the impugned order and confirm the service tax demand of Rs.11,16,554/- alongwith interest and penalties and allow the appeal filed by 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.

*G.C.*  
(ज्ञानचंद जैन)  
आयुक्त (अपील्स)

Date: 29.11.2023

Attested

*रेखा नायर*  
(रेखा नायर)  
अधीक्षक (अपील्स)



केंद्रीय जी. एस. टी, अहमदाबाद

**By RPAD/SPEED POST**

To,

The Assistant Commissioner,  
Central GST, Kadi Division,  
Gandhinagar Commissionerate

**Appellant**

M/s Patel Associates & Labour Contractor,  
Ratanlal H Patel, Umiyanagar,  
Nandasan Village, Kadi,  
Mehsana, Gujarat-382715

**Respondent**

**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Gandhinagar Commissionerate.
3. The Assistant Commissioner (H.Q. System), CGST(Appeals), Ahmedabad (For uploading the OIA)
- ✓ 4. Guard File.

