



सत्यमेव जयते

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

By Regd. Post

DIN :- 20230964SW000000BED5

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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/STD/187/2022-APPEAL / 5494-78 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-003-APP-086/2023-24 and 28.08.2023 |
| (ग) | पारित किया गया / Passed By | श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 11.09.2023 |
| (ङ) | Arising out of Order-In-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-032-21-22 dated 31.05.2022 passed by the Assistant Commissioner (Sevottam), CGST & CE, Gandhinagar Commissionerate | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | Office of the Assistant/Deputy Commissioner, CGST & CE, Division - Mehsana, Gandhinagar Commissionerate, 2nd Floor, Sardar Patel Vyapar Sankul, Mal Godoun Road, Mehsana-384002 |
| (छ) | प्रतिवादी का नाम और पता / Name and Address of the Respondent | M/s Keyline, 10, Suramya Residency, AT & PO-Lakhavad, Taluka & Dist - Mehsana, Gujarat-384001. |

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, 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 कूरेखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में या किसी भण्डागार से किसी भण्डागार में या किसी भण्डागार से 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.

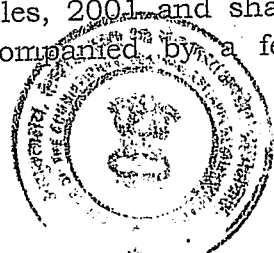
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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: 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 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 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) एक 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।

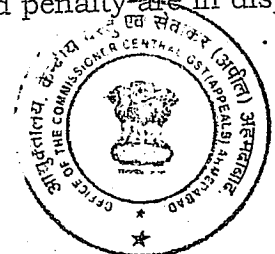
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



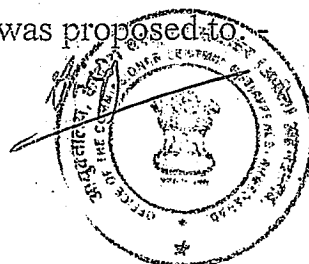
अपीलिय आदेश / ORDER-IN-APPEAL

This appeal has been filed by the Assistant Commissioner , Central GST, Mehsana Division, Gandhinagar Commissionerate [hereinafter referred to "the department"] in terms of Review Order No. 04/2022-23 dated 28.07.2022 issued under Section 84 of the Finance Act, 1994 from F.No. GEXCPM/REV/ST/OIO/17230/2022-REV- O/o COMMR-CGST-GANDHINAGAR by the Commissioner of CGST, Gandhinagar, against Order-in-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-032-21-22 dated 31.05.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, Sevottam, CGST & CX, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority] in respect of M/s Keyline, 10- Suramya Residency, At & PO – Lakhavad, Tal & Dist.: Mehsana, Pin-384001 (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent were holding Service Tax Registration No. AAPFK7287CSD001 for providing taxable services. 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 and F.Y. 2016-17. Letter/email dated 08.05.2020 was issued to the respondent requesting them to provide the details of services provided during the period F.Y. 2015-16 and F.Y. 2016-17. 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 | Period (F.Y.) | Differential Taxable Value as per Income Tax data (in Rs.) | Rate of Service Tax | Service Tax liability to be demanded (in Rs.) |
|--------|---------------|--|---------------------|---|
| 1 | 2015-16 | 0 | 14.5% | 0 |
| 2 | 2016-17 | 43,40,144/- | 15% | 6,51,022/- |
| | Total | 43,40,144/- | | 6,51,022/- |

3. Show Cause Notice was issued vide F.No.V.ST/11-A-47/Keyline/2020-21 dated 30.06.2020 to the Respondent, wherein it was proposed to-



- i) Demand and recover Service Tax amounting Rs. 6,51,022/- not paid on the differential income under Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994;
- ii) Impose penalty under the provisions of Section 77(2), 77C, 78 of the Finance Act, 1994.

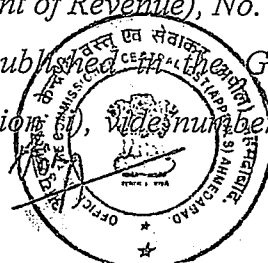
3. The SCN was adjudicated vide the impugned order, wherein the demand of Service Tax amounting to Rs. 6,51,022/- was set aside by extending the benefit of Reverse Charge Mechanism (RCM) in terms of Sr. No. 8 of the table of Notification No.30/2012-ST dated 22.06.2012, as amended. As the demand was set aside the interest and penalty did not sustain.

4. Upon examination and review in terms of legality and propriety of the said order, the department found that the impugned order is not legal and proper. 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 :-

4.1 The adjudicating authority has dropped the entire proceedings initiated vide Show Cause Notice F.No.V.ST/11-A-47/Keyline/2020-21 dated 30.06.2020 on the basis that the respondent has received the income of Rs.43,40,144/- for F.Y 2016-17 by providing Manpower Supply service and since the Respondents are a partnership firm and the service recipient viz. M/s. Hubtown Bus Terminal (Mehsana) Pvt Ltd. is a body corporate, 100% tax liability is on the service recipient under RCM, as per Notification No.30/2012-ST dated 22.06.2012.

4.2 The relevant portion of Notification No.30/2012-ST ibid, as amended vide Notification No.7/2015-ST dated 01.03.2015, is reproduced hereunder:

"In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E),



dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services, -

.....

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or security service- or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

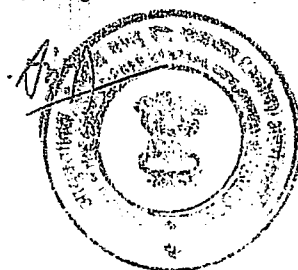
(II) The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following table, namely:

| | | | |
|---|---|------------|-------------|
| 8 | <i>in respect of services provided or agreed to be provided by way of supply of manpower for any purpose [or security services]</i> | <i>Nil</i> | <i>100%</i> |
|---|---|------------|-------------|

4.3 The impugned Order dated 31.05.2022 holding that the services provided by the assessee is in the nature of Manpower Supply and thereby extended the benefit of payment of 100%-Service Tax by the Service recipient by way of 100% Reverse Charge Mechanism (RCM benefit) provided vide Notification No.30/2012-ST, *ibid*, is perverse and in the wrong perspective of the statutes.

4.4 On going through the Agreement (copy attached) entered by the Respondent with M/s. Hubtown Bus Terminal (Mehsana) Pvt. Ltd. (HBTPL for brevity), it is seen that :

- a) The Agreement lists the commercial terms & conditions for carrying out House Keeping Services at the Commercial Facility (CF) for Hubtown Bus Terminal (Mehsana) Pvt. Ltd., at Mehsana, Gujarat.



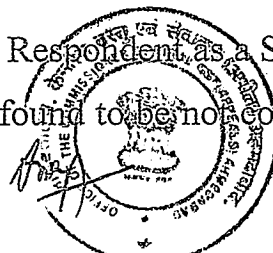
- b) M/s. Keyline is a House Keeping Agency and has assured HBTPL that they have necessary qualifications, expertise, experience and manpower to perform the work and services desired by HBTPL.
- c) M/s. Keyline, after becoming acquainted with the site, the scope and extent of work and services required by HBPTL, has agreed to provide House Keeping work and services.
- d) The payments shall be done by the service recipient based on the actual deployment of resources which will be determined on the basis of attendance.
- e) The Contract value is inclusive of all statutory liability towards Service Provider's staff including PF/ESIC/WCT/Workmen Compensation Act, etc. (if applicable). The payments in this regards shall be made by Service Provider for which receipt need to be attached with the bills.

4.5 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. As per Section 65 B(44) of the Finance Act, 1994 as amended from time to time, "service" means any activity carried out by a person for another for consideration, and includes a declared service, but.....

Thus the Important ingredients of "service" are:

- **Any activity-** The focus of the levy is now shifted to an activity which has a wide coverage. The word "activity" is not defined in the Finance Act, 1994 as amended from time to time. Any execution of an act or operation carried out or provision of a facility will also be included. A single activity is also covered in its ambit and it is not necessary that such activity should be carried on a regular basis. Even a passive activity or forbearance to act or to refrain from an act or to tolerate an act or a situation, would be regarded as service.
- **Carried out by a person for another-** For a transaction of service, there must be two parties, one, the service provider and the other, service receiver. By implication, self service is outside the ambit of taxable service. However, certain exceptions are provided which are explained later.
- **For a consideration -** Under the Indian Contract Act, 1872, the definition of "consideration" is, "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

4.6 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, as amended from time to time. The Respondent has mainly contended that they are providing "Manpower service" and, hence, the Service Recipients, being a body corporate, are liable to pay 100% Service Tax under Reverse Charge Mechanism thereon.

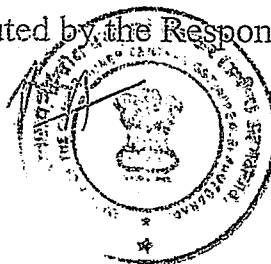
4.7 It is to submit that with effect from July 1st, 2012, Section 65 (68) and Section 65(105) (k) were rescinded and new definition of 'Supply of Manpower' was inserted under Rule 2(1)(g) of the Service Tax Rules, 1994, which is reproduced herein below:

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

As per the above definition, the existence of the 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.

4.8 It is a well-settled principle that contract executed between the parties would determine the nature of work. As per the terms and conditions of the Agreements entered into by the Respondent with HBTPL, as explained at Paragraph No.8 above, it is seen that there is no whisper of supply of manpower in the aforesaid contract entered with M/s Hubtown Bus Terminal (Mehsana) Pvt Ltd.. It can be seen from the Agreements [a sample copy of Agreement dated 04.01.2017 and 29.04.2016 is attached herewith as Exhibits] that, more than once, it has been specifically and categorically mentioned therein that the Respondent is a House Keeping Agency and the commercial terms and conditions laid down in the agreement is for carrying out Housekeeping services at the Commercial Facility of the M/s. Hubtown Bus Terminal (Mehsana) Pvt. Ltd. Further, one of the terms laid down at Para 8.0 of the Agreement is that the Contract value is inclusive of all statutory liability towards Service Provider's staff including PF/ESIC/WCT/Workmen Compensation Act, etc. (if applicable). This aspect clearly makes it evident that there is no superintendence or control of the Principal on the manpower deputed by the Respondents. Hence, it



becomes apparently clear that the Respondents were not providing manpower supply service but were providing housekeeping services through manpower engaged under its control and supervision, to undertake the services listed in the Agreement, as can be seen from the terms and conditions of the said Agreements/Contracts entered with said service recipient. The contracts were awarded not for supply of manpower but for execution of the work of Housekeeping at the service recipient's premises. Hence, services provided by the Respondents under said contracts are not covered under the definition of Supply of Manpower Services and hence are not eligible for any RCM benefit.

4.9 The adjudicating authority's conclusion that the services rendered by the Respondent is Manpower Supply services is misconstrued. The impugned order setting aside the demand of Rs. 6,51,022/- raised vide Show Cause Notice dated 30.06.2020 by extending the benefit of RCM is bad in law and not legal and proper. As explained above, as per the terms and conditions of the agreement entered into by the Respondent with the service recipient, the services rendered are of Housekeeping and not in the nature of Man power supply. No RCM benefit is provided vide Notification No.30/2012-ST, ibid, for Housekeeping service. Thus, the adjudicating authority has grossly erred in interpreting that the services provided by the Respondent falls under the category of Manpower supply and thereby setting aside the demand by way of extending the RCM benefit of Notification No.30/2012-ST, ibid.

4.10 In view of the above facts and reasons stated above, the Order-In-Original No. ORDER-IN-ORIGINAL NO. AHM-CEX-003-REASSIGNED-AC-NLC-033-21-22 DATED 31.05.2022 passed by the Assistant Commissioner(Sevottam), CGST & Central Excise, Gandhinagar Commissionerate in case of M/s. Keyline, Mehsana, is not proper and legal and deserves to be set-aside by allowing the appeal of the Revenue on the grounds mentioned hereinabove.

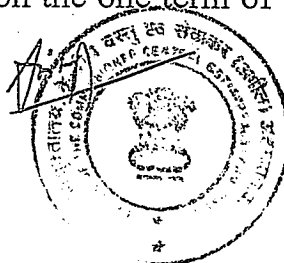
5. Personal Hearing in the matter was conducted on 10.02.2023. Shri Hitesh Prajapati, Chartered Accountant, appeared on behalf of the Respondent. He stated that the firm is partnership firm and the service tax liability is on the service recipient under reverse charge mechanism.



5.1 On account of a change in the appellant authority, personal hearing in the matter was conducted again on 14.07.2023. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of the Respondent. He submitted that they have not received copy of departmental appeal and requested to provide the same that enable him to file cross objections.

6. Subsequently, the Respondent filed Cross Objection to the appeal on 07.08.2023, inter alia, contending that ;

- They have provided manpower services to M/s Hubtown Bus Terminal (Mehsana) Pvt Ltd. which is covered under Full Reverse Charge Mechanism as per Notification No. 30/2012-ST. Hence, on these services respondent is not liable to pay service tax.
- As per Notification No.30/2012-ST. Manpower supply for any purposes or security services by individual, HUF, firm or AOP to Body Corporate is covered under full reverse charge mechanism.
- Respondent had submitted detailed reply to SCN by attaching copy of agreement entered with M/s Hubtown Bus Terminal (Mehsana) Pvt Ltd. (Service Recipient) in para 6.2 of the contract it is clearly mentioned that service provider will charge based on number of manpower (persons) deployed and they will work under the supervision and control of the service recipient which clearly suggest that services provided by the respondent is supply of manpower services, since, it is provided to Body corporate, service recipient is liable to pay service tax.
- Order-in-Original has been passed by adjudicating authority by dropping the demand by confirming that services provided by the respondent is rightly falls under manpower services and it is provided to body corporate hence, it is liable to paid by service recipient under RCM.
- Unfortunately, department had reviewed this order by wrongly interpreting services provided by the respondent as housekeeping services and not the manpower services merely because in the agreement at more than one places it is mentioned that respondent is House Keeping Agency without understanding the terms of the contract.
- Order passed by the Learned Adjudicating authority is reviewed and departmental appeal is filed merely based on the one term of the contract that



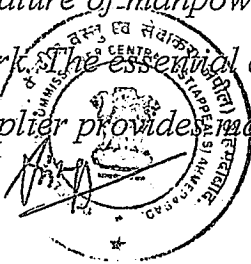
stipulates that the responsibilities like PF/ESI etc. is on the service provider. Relevant paragraph 12 of the said review order is reproduced below.

"Further, one of the terms laid down at Para 8.0 of the Agreement is that the Contract value is inclusive of all statutory liability towards Service Provider's staff including PF/ESIC/WCT/Workmen Compensation Act, etc. (if applicable). This aspect clearly makes it evident that there is no superintendence or control of the Principal on the manpower deputed by the Respondents."

Thus, merely based on the fact that such responsibilities are on service provider, it can not be Manpower Supply services. This assumption is totally flimsy and without any application of mind. In manpower supply services, it is pre-condition that the person who is working under supervision of service recipient shall be employee of service provider. Thus, the fact that PF/ESI liability is of service provider, is in fact, in favour of the assessee that manpower supplied are employee of the service provider, without which there cannot be manpower supply services. Thus, order is reviewed without application of mind and based on the argument which is in fact proving the case that services provided are manpower supply services.

- Except above mentioned argument, there is no other argument put forwarded by the department which even give a hint that services are not manpower supply services. Thus, order passed by the learned authority is not only just and proper but also reasonable and speaking order and hence shall no interference is required.
- Manpower deployed by the respondent doesn't becomes employees of the service recipients, responsibility of statutory dues remains with the respondent only. Merely respondent is liable for statutory dues that doesn't mean that they are working under the supervision and control. Service recipients pays us fixed charges based on number of employees deployed in any case they are not liable to pay anything extra on this.
- Further, relevant extract from the Circular Number 190/9/2015-ST Dated 15/12/2015 is reproduced below:

"2. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. 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 providers 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."

- Respondent would like to invite your attention to the different clauses mentioned in the agreement which clearly suggest that requirements mentioned in the above referred circular for proving manpower supply services are fulfilled by the respondent.
- In para 5.0 of the contract, it is clearly mentioned that the work shall have to be carried out strictly in conformity with technical specifications and direction of Project/O&M Manager. This condition clearly shows that the respondent has to do disposal of manpower only and they will work under the direction and control of the service recipient.
- Further, we are charging to service recipients based on number of employees deployed (i.e., Per person price) which shows that we are required only to make manpower available, and no further responsibility is given to us. It shows that our person will be used to clean the premises only as and when instructed by the service recipient. That means the value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In clause 6.2 of the contract, it is clearly mentioned that total 28 manpower will be supplied out of that 2-supervisor having monthly rate 12,000 per person and 26 Housekeeper will be supplied having monthly rate 9,900 per person.
- Responsibility of the respondent is only to the extent and quality of manpower. No clause in contract which says that no payment is made if no cleaning of any area or any day is done. Deployment of manpower is always rests with the service recipient. Whether service recipient able to give them work or they remain idle having no impact the revenue of the respondent.
- From the above, it is crystal clear that services provided by the respondent is nothing but manpower supply of services and fulfils all the conditions prescribed in the Circular Number 190/9/2015-ST Dated 15/12/2015.



- Hence, we are requesting to appellate authority to set aside the appeal filed by the department and upheld the Order-in-Original passed by the adjudicating authority.

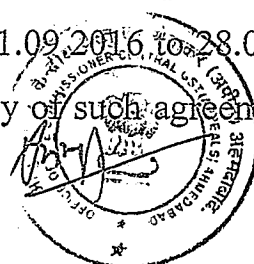
7. I have gone through the facts of the case, grounds mentioned in the appeal filed by the department and the materials available on the record. The issue before me for decision is as to whether the impugned order dropping the demand of Service Tax amounting to Rs.6,51,022/- alongwith interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F. Y. 2016-2017.

8. It is observed that the respondent – a Partnership firm was registered with the Service Tax department for providing taxable services. They were engaged in providing “Manpower Recruitment /Supply Agency Service” and holding Service Tax Registration No. AAPFK7287SD001. However, the SCN in the case was issued merely on the basis of data received from the Income Tax department without ascertaining the nature of service provided by the appellant or classifying them. It is apparent that no further verification has been caused to ascertain the nature of service and whether any exemptions/abatements were claimed by the appellant. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is re-produced as under :

...
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
 ...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and is vague.

9. It is also observed that during the period F.Y. 2016-17 the respondent have provided services to M/s Hubtown Bus Terminal (Mehsana) Pvt. Ltd. The respondents are a Partnership firm and the service recipient are Body Corporate. They have also entered into an agreement/contract for the period 01.09.2016 to 28.02.2017 with M/s Hubtown Bus Terminal (Mehsana) Pvt. Ltd. A copy of such agreement/contract was

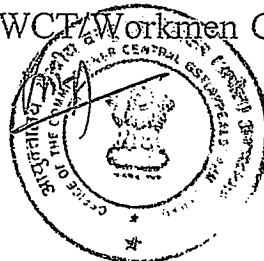


also submitted before the adjudicating authority which is recorded at para 18 of the impugned order. Para-5 of the said agreement mentions that the Manpower supplied by the respondents would carry out their work in conformity with the technical specifications and direction of 'Project/O&M Manager'.

10. It is the contention of the appellant department that the services provided by the respondent to the 'Body Corporate' cannot be classified under "Manpower Recruitment /Supply Agency Service" as the contract mentions the work as 'House Keeping Service'. In this regard I find that 'House keeping Service' have not been separately classified under the standard classification of services under the Finance Act, 1994. Moreover, in the Negative list regime also no such category of service is identified. 'House Keeping services' are covered under "Manpower Recruitment /Supply Agency Service" as the said service is provided by way of deployment of skilled/unskilled Manpower. Further, as per Para-6.2 of the agreement/contract submitted, the service provider was mandated for issuing Invoices in terms of number of Manpower supplied during the month/period. Hence, the grounds raised by the department are untenable.

10.1. Further, the department also contended that the condition of 'Superintendence or control of the Principal employer' was not fulfilled by the respondents. In this regard the respondent has contended that, at Para - 5 of the contract it is specified that the manpower deployed by the respondents would carry out their work in conformity with the technical specifications and direction of the Project/O&M Manager. Upon verifying the said agreement I find force in the argument of the respondent as the said clause clearly proves the fact that the workforce/manpower deployed by the respondents for carrying out the house keeping service were under the temporary control of the 'Body Corporate'/service receiver. Hence this argument of the department also do not fetch merit.

10.2 The department has further contended that the condition laid down at Para 8.0 of the agreement, further confirms that there was no control or superintendence of the principal on the manpower provided by the respondents. These observations confirm that the appellant department is in acceptance of the fact that manpower was deployed by the respondents for carrying out the contracted work. Further, regarding the said contention I find that the mere fact that the PF/ESIC/WCT/Workmen Compensation



act etc. being under the purview of the respondent, do not alter the fact that the manpower provided by them were not under the superintendence or control of M/s Hubtown Bus Terminal (Mehsana) Pvt. Ltd. This aspect is also discussed supra and the contentions of the department are flimsy and devoid of merits.

10.3 The appellant department has contended that the benefit of RCM in terms of Notification No. 30/2012-ST dated 20.06.2012 was wrongly extended to the respondents by the adjudicating authority. In this regard I find it proper to refer to the relevant portion of the Notification No. 30/2012-ST dated 20.06.2012, as amended. The same is reproduced below :

*Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 30/2012-Service Tax*

New Delhi, the 20th June, 2012

GSR(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

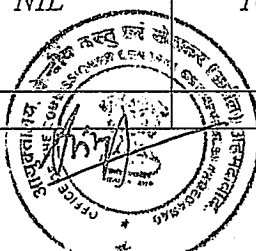
I .The taxable services,-

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

| <i>Sr. No.</i> | <i>Description of a service</i> | <i>Percentage of service tax payable by the person providing service</i> | <i>Percentage of service tax payable by the person receiving the service</i> |
|----------------|--|--|--|
| ... | ... | ... | ... |
| 8 | <i>in respect of services provided or agreed to be provided by way of supply of manpower for any purpose</i> | <i>NIL</i> | <i>100%</i> |
| ... | ... | ... | ... |



Examining the above legal provisions with the facts and circumstances of the case and in terms of the discussions carried out supra, I find that the respondents have provided the services of Manpower Supply to M/s Hubtown Bus Terminal (Mehsana) Pvt. Ltd. under a contract during the relevant period. Further I also observed that the respondents are a partnership firm and M/s Hubtown Bus Terminal (Mehsana) Pvt. Ltd. (service receivers) are a Body Corporate. Therefore, the respondents are duly eligible for the benefit of payment of service tax by way of 100% Reverse Charge Mechanism (RCM) in terms of Sr.No.8 of Notification No. 30/2012-ST dated 20.06.2012, as amended. Therefore these contentions of the appellant department are baseless and untenable.

11. In view of the discussions made in the foregoing, I find that there is no merit in the department appeal as regards the dropping of demand vide the impugned order. Hence, the appeal filed by the Appellant Department against the impugned order is dismissed being devoid of merits.

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

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

(SHIV PRATAP SINGH)
Commissioner (Appeals)
Dated: 28 August, 2023



सत्यापित (Attested:)

(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.

By REGD/SPEED POST A/D

1. The Assistant Commissioner
Central GST, Division-Mehsana,
Commissionerate-Gandhinagar.

APPELLANT

2. M/s Keyline
10, Suramya Residency,
AT & PO- Lakhavad,
Mehsana, Gujarat-384001.

RESPONDENT

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate: Gandhinagar.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.

