

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b>	
	केंद्रीय कर शुल्क भवन	7 <sup>th</sup> Floor, Central Excise Building,
	सातवां मजिल, पॉलिटेक्निक के पास	Near Polytechnic
	आम्बावाडी, अहमदाबाद-380015	Ambavadi, Ahmedabad-380015
	079-26305065	टेलिफैक्स 079-26305136

क फाइल संख्या : File No : **V2(ST)291/A-II/2016-17 / 10212 व 10216**  
 ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-141-17-18**  
 दिनांक Date : **26/10/2017** जारी करने की तारीख Date of Issue **26-11-17**

**श्री उमा शंकर**, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-06/07/AC/Patel-Mukesh/16-17** Dated **14.12.2016** issued by Assistant Commr **STC**, Service Tax, Div-VI, Ahmedabad

ध अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

**M/s. Mukesh Prabhudas Patel**  
**Ahmedabad**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
 Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA)(उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



## ORDER-IN-APPEAL

Shri Patel Mukesh Prabhudas, 44 Shivnandan Nagar, Manohar Villa Char Rasta, Nikol – Naroda Road, Nava Naroda, Ahmedabad (hereinafter referred to as 'the appellant') was engaged in providing service of 'Man Power Recruitment & Supply Agency' in as much as he was supplying labourers / workers to his customers. During the audit of the records of M/s Anup Engineering Company Limited, Behind 66kv sub-station, Odhav, Ahmedabad (hereinafter referred to as 'the service recipient') for the period April-2008 to March-2009 indicated that the appellant had supplied labourers / workers to the factory of the service recipient in the activity of manufacture of final products, which appeared to be covered under the definition of 'Manpower Recruitment or Supply Agency' service as defined under Section 65 (68) of the Finance Act, 1994 (F.A., 1994). As the appellant had not paid service tax, three SCNs for the periods of 2006-07 to 2010-11; April-2011 to March-2012 and April-2013 to March-2014 were issued to the appellant and already adjudicated. Thereafter, for the subsequent period of April-2013 to March-2014 another show cause notice dated 25/03/2015 was issued that was also adjudicated confirming demand for Service Tax along with interest and imposing penalty on the appellant under Section 76 & 77 of the Finance Act, 1994.

2. In the present case, a Show Cause Notice F.No.SD-06/04-65/O&A/Anup-Patel Mukesh/2015-16 dated 02/03/2016 (hereinafter referred to as 'the SCN') was issued to the appellant for the period **April-2014 to March-2015** demanding service tax amounting to **Rs.33,982/-** on the taxable value of Rs.10,99,742/- pertaining to 'Man Power Recruitment & Supply Agency' service. This SCN was adjudicated vide Order-in-original No.SD-06/07/AC/Patel-Mukesh/16-17 dated 14/12/2016 (hereinafter referred to as 'the impugned order') by Assistant Commissioner, Service Tax, Division-VI, Ahmedabad (hereinafter referred to as 'the adjudicating authority'). In the impugned order, the amount of Rs.10,99,742/- received by the appellant during the period April-2014 to March-2015 has been ordered to be treated as consideration for supply of labourers under 'Man Power Recruitment & Supply Agency' as defined under Section 65(68) of F.A.A, 1994;the Service Tax demand for Rs.33,982/- has been confirmed along with interest; late fees of Rs.40,000/- under Section 70 of F.A., 1994 read with Rule 7 of Service Tax Rules, 1994 has been imposed for failure to file ST-3 returns within prescribed time limit and for not making the payment of Service Tax and penalties have been imposed on the noticee under Section 77(1)(a) and Section 78(1) of F.A., 1994. The proposal to impose penalty under Section 76(1) of F.A., 1994 has been dropped.

3. Aggrieved by the impugned order, the appellant has filed the instant appeal, along with application for condonation of delay, mainly on the following grounds:

- 1) The learned adjudicating authority has erred in classifying the appellant's services under Section 65(68) that is not applicable w.e.f. 01/07/2012, where the instant matter pertains to the period 2014-15. The appellant was carrying out job-work activities in the factory of the service recipient that consisted of fabrication



work and activities like cutting, slitting, bending, welding etc for the purpose of manufacture of goods that are cleared on payment of Central Excise duty by the service recipient. The workforce employed for job-work is exclusively under the control of the appellant and payment received from the service recipient is for the quantum of job executed. The appellant is never paid any extra amount for sue of additional labour or on per day / hour basis. The contract is for Lump sum Labour job. The adjudicating authority had erred by holding that according to master circular No. 96/7/97, the services of appellants would fall into manpower recruitment supply services. The appellant relies on the case law Divya Enterprises – 2010 (19) STR 438 (Tri-Bang.), section 65 (105) (k) of F.A., 1994 defines taxable service in relation to 'Manpower Recruitment or Supply services' as service provided by a manpower recruitment agency in relation to recruitment of supply of manpower temporarily or otherwise. The work force utilized by the appellant are neither recruited as employees of the service recipient nor supplied by the appellant. The appellant relied on catena of decisions. The appellant is eligible for cum-tax that has not been considered while confirming the demand. The appellant submits that the provisions of Section 80 should have been invoked for waiver of penalties under Section 78 & 77 of F.A., 1994.

4. Personal hearing in the appeal was held on 04/10/2017. Shri Gunjan Shah, C.A. appeared on behalf of the appellant and reiterated the grounds of appeal and pleaded for condonation of delay. He submitted that Section 65(68) was not applicable and that it being a periodical SCN penalty under section 78 was no applicable. The learned C.A. also pointed out that the earlier order was against them.

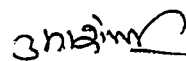
5. I have carefully gone through the facts of the case on records and submissions made by the appellant. Firstly, on considering the application pleading condonation of delay, I find that the impugned order dated 14.12.2016 was communicated to the appellant on 26/12/2016, whereas the instant appeal has been filed on 20/03/2017, showing that there was a delay of 24 days. I condone the delay and take up the appeal for consideration on merit. The disputed issue in the instant appeal pertains to interpretation and classification of the activity undertaken by the appellant. It is on records that the same issue has been decided by the undersigned in respect of the appellant for earlier period of April-2013 to March-2014 *vide* O.I.A. No. AHM-SVTAX-000-APP-058-16-17 dated 22/07/2016, upholding the classification of the impugned activity under 'Manpower Recruitment or Supply Agency' service and accordingly upheld the confirmation of demand of service tax, interest and penalties imposed on the appellant. The appellant has not placed any plea in the grounds of appeal claiming that any appeal has been preferred against the earlier O.I.A. No. AHM-SVTAX-000-APP-058-16-17 dated 22/07/2016. In case the appellant has not preferred any appeal, the matter has reached conclusion and there was no legal sanctity for the appellant to continue the same activity for the subsequent period of April-2014 to March-2015 without obtaining registration, without following statutory procedures and without payment of service tax. The present case cannot be treated as a case of mere interpretation or one of *bona fide* error because the evasion of Service Tax is in the nature of intentional and deliberate disregard of quasi judicial pronouncement for the earlier period.



6. The facts of the case remaining unchanged, I reiterate that the appellant had provided skilled labour for the interim process during the manufacturing process of the service recipient by way of fabrication as per the designs and using the materials supplied by the service recipient and the same amounts to supply of manpower based on contractual agreement. Further, in accordance with C.B.E.C. Circular No. 96/7/2007 dated 23/08/2007 clarifying that where Business or Industrial organizations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks, such cases are covered within the scope of the definition of taxable service under Section 65 (105) (k) as 'Man Power Recruitment & Supply Agency', I uphold the classification in the instant case under 'Man Power Recruitment & Supply Agency' and accordingly find that the confirmation of demand and interest is legally sustainable in the instant case. As regards the claim for cum-tax benefit, I find that the same was denied even in the earlier O.I.A. and such denial is valid in the present case also because the evasion of Service Tax is deliberate and is in utter disregard to the legally settled position for earlier periods in the case of the appellant itself. For the same reason, there is no scope for invoking of the provisions of Section 80 of F.A., 1994 in the present case and the penalties and late fees as confirmed in the impugned order are upheld. The appeal is rejected.

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

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



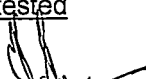
(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 26/08/2017

Attested

  
(K. P. Jacob)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad.

By R.P.A.D.

To

Shri Mukesh Prabhudas Patel,  
44, Shivnandan Nagar,  
Manohar Villa Char Rasta,  
Nikol - Naroda Road, Nava Naroda,  
Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: II, Ahmedabad (North).
5. Guard File.
6. P. A.



