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आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001
Tele Fax No. 0281 - 2477952/2441142
Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/10/BVR/2017	मूल आदेश सं / O.I.O. No. BHV-EXCUS-000-JC-38 to 39-2016-17	दिनांक / Date 09.12.2016
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

BHV-EXCUS-000-APP-124-2017-18

आदेश का दिनांक / Date of Order:	30.01.2018	जारी करने की तारीख / Date of issue:	07.02.2018
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Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढे बोर्डे ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री सुरेश नंदनवार, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर (लेखा परीक्षा), अहमदाबाद को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s Sureel Enterprise Pvt. Ltd., 513-B, National Highway Road,, Chhatral, Tal: Kaloi (N.G.) -382729

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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 accompanied 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 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाले अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

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

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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगी। /

For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संभाव्यविधि पर या बाद में पारित किए गए हैं। /

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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

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.

ORDER-IN-APPEAL

M/s. Sureel Enterprise Pvt. Ltd., C/o M/s Nirma Limited, Kala Talav, Bhavnagar (henceforth, "appellant") has filed the present appeal against the Order-in-Original No. BHV-EXCUS-000-JC-38 to 39-2016-17 dated 09.12.2016 (henceforth, "impugned order") passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (henceforth, "adjudicating authority").

2. Subsequently, the Board Vide Order No. 05/2017-Service Tax issued vide F.No. 137/13/2017-ST dated 16.11.2017 by the Under Secretary (Service Tax), CBEC, New Delhi has transferred the said Appeal Petition to the Commissioner, Central Tax Audit, Ahmedabad for passing Order-in-Appeal.

3. Briefly stated, the facts of the case are that two show cause notices, based on departmental audit, were issued to the appellant as detailed below:-

Sr.No.	Show Cause Notice And Date	Amount involved in Rs.	Period
1	V/15-135/Dem-ST/HQ/2014-15 dated 13.02.2015	1,29,73,572	October 2012 to March 2014
2	V/15-49/Dem-ST/HQ/2015-16 dated 20.06.2015	46,14,216	April 2014 to February 2015
	Total	1,75,87,788/-	

The above show cause notices were issued under Section 73(1) of the Finance Act, 1994 for recovery of Service Tax along with interest and penalty on the consideration (i.e. price charged shown as conversion charges) received from M/s. Nirma Limited, Kala Talav, Bhavnagar under the category of "Manpower Recruitment or Supply Agency"

4. The appellant has filed the appeal mainly on the ground that they are carrying out the activity of job work for the principle and receiving payments on the basis of quantum of work per kg and not per person per day. The appellant has cited number of decisions which were relied upon in his defence reply to the show cause notice. The appellant has also contested the charge of suppression of facts and imposition of penalty.



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A personal hearing was held on 09.01.2018, wherein Shri Vikramsingh Jhala appeared on behalf of the appellant and reiterated the grounds of appeal. Further he submitted additional submission along with relied upon judgments.

6. I have carefully gone through the appeal papers. Considering that the appeal against impugned order passed on 09.12.2016, has been filed on 03.02.2017, I find that the appeal has been filed within the time limit of 3 months prescribed under Section 85 of the Finance Act, 1994. I also note that the appellant has paid the pre-deposit amount of Rs. 13,19,084/- vide challan No. 00660 dated. 31.12.2016 @ 7.5% of demand of Rs. 1,75,87,788/-.

7. The issue to be decided is whether the services provided by the appellant to M/s. Nirma Ltd. are to be considered as job work to manufacture detergent powder/detergent cake or to be classified under the category of "Recruitment and Supply of Manpower Agency" and liable to pay service tax under the said category or otherwise. In order to examine the issue, I consider it important to go through the contract/agreement made by the appellant with M/s. Nirma Limited in this case. After going through the said agreement, I hereby highlight the important clauses of this agreement.

" 1. The company shall provide land, building, plant, machinery, and other infrastructure required for the purpose of converting raw material into detergent powder and cake at said site to you.

2. The company will provide the raw materials for the purpose of conversion into detergents. You will manufacture detergents in the form of powder and cake for and on behalf of the company from time to time as may be required by the company strictly in accordance with the standards and specification provided by the company to you.

3. The said products shall be packed in the packing material provided to you by the company.

4. You will employ necessary / requisite staff as may be required and will supervise their work so as to ensure that the company get the specified quantity Detergent at a specified quality.

5. In case, the quantum of finished products, do not meet the expected yield or a consumption of raw material is in excess of the specified norms, you will be liable for the same. The decision of the Company will be final in this regard.

6. The Company shall not be responsible for any of the claims / liability including the wages / other benefits arising out of the employment of the workmen / staff maintained by you. All such claims / liability will be borne by you and you will keep the company indemnified all the times.

7. *You will be paid conversion charges as per the mutually agreed basis.*
8. *You will not disclose or divulge to any person trade secrets, formulation or any other confidential information which you have acquired during the conversion.*
9. *You will not sub-contract the manufacture of the products to any other person or persons without our written consent."*

I find that the appellant are providing and deploying their labour in the factory premises of M/s. Nirma Limited, Kala Talav, Bhavnagar itself for production of Synthetic Detergent, etc. and for said manpower supply services, the appellant have charged the amount from M/s. Nirma Limited claiming the same as a job work done at the factory premises of M/s. Nirma Ltd, Kala Talav, Bhavnagar. From the nature of activity being carried out by the appellant and the agreement between M/s. Nirma Limited and the appellant it appears that M/s. Nirma Limited is having total control on the appellant, for the activities carried out by their labours in the factory premises of M/s. Nirma Limited. Therefore, it is clear that the activities carried out at the factory premises in relation to raw materials provided by M/s. Nirma Limited with the aid of the Plant and Machinery of M/s. Nirma Limited, by the labours supplied by the appellant cannot be termed as job work. The appellant are not job worker within the meaning and scope of the definition of job work as provided in Rule 2(n) of the Cenvat Credit Rules, 2004, because they have merely hired labour [as they are engaged in supply of manpower] and supplied the same to M/s. Nirma Ltd. for specific period. Neither raw materials are supplied to M/s Sureel Industries nor M/s. Nirma Ltd. is receiving back any semi-finished goods. From the above discussion, it appears that the relation between M/s. Nirma Limited & the appellant is not of a job worker but of Service Recipient & Service Provider.

For better understanding of the premises where the entire process is carried out, I refer to the definitions of job work, factory and also manufacturer provided in the Cenvat Credit Rule, 2004 and Central Excise Act, 1944.

The definition of 'Job Work' is given under Rule 2(n) of Cenvat Credit Rules, 2004 which is reproduced as under;

"job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is



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essential for aforesaid process and the expression "job worker" shall be construed accordingly".

From the above definition, it is clear that raw material or finished goods to be supplied to the job worker for job work, whereas in the contract in the present case talking about providing land, building plant and machinery and other infrastructure to carry out the concerned process. In other word, the person carrying out job work must be having all the infrastructure including plant and machinery to carry out the manufacturing process either by own or on rent. This essential element of job work is not complied as per the definition.

Further para 3.8 of Chapter 5 of Central Excise Manual provides the procedure for job workers which is reproduced as below-

"If the inputs or capital goods are cleared to job worker, they should be received back within 180 days. If these are not received, the manufacturer to provider of output service is required to debit the Cenvat Credit attributable to such input or capital goods. However, the manufacturer or provider of output service shall be entitled to take the Cenvat credit as and when the goods sent to the job worker are received back. If part of the goods is received back within 180 days and the rest of the goods are received after 180 days, the obligation for debiting the credit shall arise only in respect of Cenvat Credit attributable to that part which is not reached within 180 days."

Rule 16 A of the Central Excise Rules, 2002 provides for removal of goods for job work etc. which is reproduced below-

"Any inputs received in a factory may be removed as such or after being partly processed to a job worker for further processing, testing repair, re-conditioning or any other purpose subject to the fulfilment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction".

It is clear from the above that normally goods are sent to the job worker to carry out the required process under challan. But in the present case no goods were cleared by the appellant, on the contrary all the processes were carried/supplied out in the premises of M/s. Nirma Ltd. for which the appellant has deployed their manpower/work men/staff. Further, the clause No.8 of the contract talks about the formulation given to the appellant by M/s. Nirma Ltd. i.e. the appellant had to carry out the process at the factory

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premises of M/s. Nirma Ltd. and using formulation given by M/s. Nirma Ltd. by deploying necessary/requisite workmen/staff, as required.

Further, As per Section 2 (e) of Central Excise Act, 1944, definition of "Factory" is as under:-

"factory means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"

The term manufacture is explained as per 2(f) of the said Act as under:-

(f) "manufacture" includes any process, -

i) incidental or ancillary to the completion of a manufactured product;

ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to iii) manufacture; or

which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

From the above definitions, I find that M/s Nirma Limited is a Manufacturer and also having control over entire factory and as per agreement, they have not given land or factory or plant and machinery on rent or on sale to the appellant. As the manufacturing activity is done in the premises of M/s Nirma Limited itself, and the appellant does not have any control over the factory in any manner. Therefore, the present activity carried out by the appellant cannot be considered as "Job Work".

8. Further the clause number 5 mentioned above states that **"In case, the quantum of finished products, do not meet the expected yield or a consumption of raw material is in excess of the specified norms, you will be liable for the same. The decision of the Company will be final in this regard."** From this clause, I find that the final control on the work is of M/s Nirma Limited and not of the appellant. When the final decision rests with M/s Nirma Limited, then it can be easily concluded that M/s. Nirma Ltd is having absolute control as far as factory premises including plant and machinery, inputs as well as final products are concerned.

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However, regarding the manpower required in the factory, M/s. Nirma has utilized the services of the appellant which has arranged the required manpower. The clause 4 of the agreement refers as under :-

"4. You will employ necessary / requisite staff as may be required and will supervise their work so as to ensure that the company get the specified quantity Detergent at a specified quality."

Thus, M/s. Nirma Ltd has solicited the services of the appellant for providing necessary / requisite staff which has been specifically outlined in the agreement as above.

From the above, I find that the appellant has only provided man power as required by M/s Nirma Limited and as per the agreement, the control of the man power is done by M/s Nirma Limited only. Therefore the appellant has played role for providing of Man power. Hence in the present case, the appellant is Service provider and M/s Nirma Limited is Service Receiver. Now let me examine whether this service can be considered as "Manpower Recruitment or Supply Agency" or otherwise. For better understanding, I refer to the definition of the same. The definition of "Manpower Recruitment or Supply Agency" prior to 15.06.2005 under clause 68 of Section 65 of Finance Act, 1994 was given as below:


"Any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, temporarily or otherwise, to a client."

The definition of "Manpower Recruitment or Supply Agency" for the period from 16.06.2005 to 17.04.2006, as defined under clause 68 of section 65 of Finance Act, 1994 read as under:

"Any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, temporarily or otherwise, to a client."

The definition of "Manpower Recruitment or Supply Agency" from 18.04.2006 as per clause 68 of section 65 of Finance Act, 1994 reads as under:

"any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client."



From the foregoing definitions I find that though the service was titled "Manpower Recruitment or Supply Agency", for the period from 16.06.2005 to 17.04.2006, it was defined under clause 68 of section 65 of Finance Act, 1994, as providing service for *recruitment of manpower only*. However w.e.f. 18.04.2006 it has been reworded to service provided for "*recruitment or supply of manpower*". Therefore post 15.06.2005 the supply of manpower has also been included in the scope of service.

From the various clauses of the contract discussed supra I find that the service provided by the appellant is nothing but supply of manpower to M/s. Nirma Ltd. for specific period.

In view of above facts, I find that the activities of supply/deployment of labours by the appellant in the factory premises of M/s. Nirma Limited, Kala Talav, Bhavnagar, is not the Job Work but is the service of providing manpower falling under the category of "Manpower Recruitment or Supply Agency" as defined above and therefore, service tax is leviable on the consideration (i.e. price charged shown as conversion charges) received from M/s. Nirma Limited, Kala Talav, Bhavnagar.

9. The appellant has claimed exemption of by virtue of serial number 30(c) of Notification No. 25/2012-ST dated 20.06.2012 on the ground that final goods are cleared on payment of duty and so conditions laid down therein are satisfied. The aforementioned notification is related to the taxable service or processing of goods for, on behalf of the client referred in section 65(19)(v) of the Finance Act, 1994 whereas the present case is in respect of the taxable service of manpower supply referred in section 65(68) of the Finance Act, Therefore the Notification relied upon by the appellant is entirely in different context and is not applicable in the present case.

The appellant has also contended that the invoices are issued on the basis of Conversion Charges and also the rate is charged on the basis of quantum of work per kg basis and not on the basis of number of worker/man power supplies on per day basis. However the manner of raising the invoices whether on quantum of work or on the basis of number of worker will not obviate the fact that the appellant had supplied manpower for manufacture of detergent powder, etc. at the factory premises of the service recipient. This is all the more so when all the facilities for manufacture of goods including plant & machinery



are available at the factory premises of the service recipient and only manpower is deployed by the appellant.

10. The appellant have cited various case laws in their favour. The main case laws are discussed as under:-

(i) Maruti Udyog Ltd -reported at 2000(118)ELT 43(Tribunal-LB)

The above case law pertains to availment of CENVAT Credit by job worker while in the instant case the issue involves the service tax liability in the category of "Manpower Recruitment or Supply Agency". It was held then that *"the mere fact that BSL are the supplier of the inputs as well as the job worker doing the job of assembling the seats on behalf of MUL should not be the reason to disallow the benefit of procedure set by the department."* Hence the cited case law is not relevant in this case. Also the case pertains to availing of credit of duty paid on inputs and the period involved is when the Modvat Rules were in vogue, which are now replaced with CENVAT Credit Rules which has given a paradigm shift to the eligibility of credit of the duty/tax paid on goods/services, and therefore also the ratio of the said decision does not help the appellants.

(ii) Rameshchandra C Patel- reported at 2012(25)STR 471 (Tri-Ahmd)

In the above case, it was held that *"the department has totally failed to show in which manner the service provided by the appellant can be categorized under manpower recruitment or supply."* However in the said case it was not held that the activities under taken to be job work.

(iii) Divya Enterprises reported at 2010(19) STR 370(Tri.-Bang.)

This case law is regarding the agreement indicating execution of lump sum work of loading, unloading, bagging, etc. However in the present case in the agreement, it speaks about manufacture of detergent powder and detergent cakes at the premises of the recipient of the service simply by supplying requisite man power and all the facilities including plant and machinery, electricity, etc. required for manufacturing were provided by the recipient of the service. Hence the case is distinguishable.

(iv) Hemant Deshmukh- reported at 2014(35)STR 602(Tri.-Mumbai)

In this case it was held that remuneration was paid as per lump sum work and not as per labour supplied. The case is distinguishable in light of the observations at (iii) above. .

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(v) Ritesh Enterprises-reported at 2010(18) STR 17(Tri.-Bang)

In this case also, it was held that remuneration was paid as per lump sum work and not as per labour supplied. The case is distinguishable in light of the observations at (iii) above.

(vi) Satara Sahakari Shetu Audyogik Oos Todani Vahtook Society-reported at 2014(36) STR123(Tri-Mum)

The case pertains to Harvesting and Transportation of sugarcane and it was held that it was held by the Tribunal that it was Business Auxiliary service, wherein in this case the issue pertains to production of goods at the factory premises of the recipient of service by supplying requisite staff. Moreover the above order of CESTAT Mumbai has been assailed by the department before Hon'ble High Court of Mumbai and the High Court has admitted departmental appeal on 14.03.2016.

(vii) Samarth Sevabhavi Trust -reported at 2014(36) STR83(Tri.-Mum)

The above case is similar to case mentioned at Sr. No. (vi) above and as mentioned in the said matter department has filed an appeal with Hon'ble High Court and the High Court has admitted departmental appeal on 14.03.2016.

(viii) Bhogavati Janseva Trust-reported at 2014(34) STR410(Tri.MUM)

The above case is also similar to case mentioned at Sr. No. (vi) above and as mentioned in the said matter department has filed an appeal with Hon'ble High Court the and the High Court has admitted departmental appeal on 14.03.2016.

(ix) K.Damodara Reddy reported at 2010(19)STR593(Tri.-Bang.).

In the above case the appellant had carried out the activities of loading of cement bags into wagons, spillage cleaning, stenciling, wagon door opening/closing, wagon cleaning etc., and the appellants were compensated for the various items of work at separate rates prescribed under the contract., whereas in the present case the appellant has made agreement for production of goods at the premises of the service recipient by supply of staff as per requirement.

(x) S.S Associates -reported at 2010(19)STR 438(Tri.-Bang)

This case law is distinguished in view of discussions at (iii) & (ix) above.



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(xi) Amrit Sanjivani Sugarcane Transport Co. P Ltd-reported at 2014(36)STR 360(Tri-Mum).

The above case is also similar to case mentioned at Sr. No. (vi) above and as mentioned in the said matter department has filed an appeal with Hon'ble High Court and the High Court has admitted departmental appeal on 14.03.2016.

(xii) Shivshakti Enterprises-reported at 2016(41)STR648(Tri.-Mumbai)

In this case reliance was placed on the case of *Shriram Sao TVS Ltd.* - 2015 (39) S.T.R. 75, wherein the issue involved was service of lump sum contract for harvesting, loading and unloading of sugarcane. As mentioned at (vi) above the facts of the case are at variant. Moreover as mentioned the issue involved has been assailed by the department and the appeals before the Hon'ble High Court have been admitted in a number of cases.

(xiii) D.S.Chavan Engineering Works -reported at 2015(40) STR1150(Tri.-Mumbai)

In the above case, at Para 7 the Hon'ble tribunal had observed that

"7. As regards service tax liability under the 'Manpower Recruitment and Supply Agency Service', on perusal of the work order issued by NTPC, we find that the work order specifically talks about the acceptance of work on a firm rate basis for welding, and gas cutting on various locations of NTPC. A perusal of the work order does not indicate that the appellant is required to supply only the manpower. On the contrary, scope of the work order indicates a specific job of welding and gas cutting to be undertaken by the appellant." Whereas in the instant case, the agreement clearly shows that the production is to be carried out by employing necessary/requisite staff, as may be required and all other facilities will be provided by the recipient of the service.

Therefore, in view of the above, I find that the activity carried out by the appellant in the case on hand was nothing but supply of manpower and is therefore, liable to service tax.

Moreover I find that with the advent of Negative list based service Tax system w.e.f. 01.07.2012, service tax is levied on the value of all services provided, other than those services specified in the negative list. Section 66B of the Finance Act, 1994 as amended reads thus.

SECTION [66B. Charge of service tax on and after Finance Act, 2012. —There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent.] on the value of

all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.]

Consequentially the provisions of Section 65 of the Act *ibid*, defining various services were made terminated w.e.f. from 01.07.2012 vide Notification No. 20/2012-ST Dated 05/06/2012.

The period involved in the impugned order is from October 2012 when the provisions of the negative list based service tax were employed. There can be no denial that service by way of manpower for manufacture was supplied by the appellant, which service does not fall under the purview of negative list and therefore also the charge of service tax under Section 66B is to be upheld.

11. In view of preceding discussion, I hold that the Service Tax of Rs 1,75,87,788/- is required to be recovered from the appellant. Therefore, I uphold the impugned order for recovery of the said amount, along with interest. It is observed that where any Service Tax has not been levied or paid or has been short-levied or short-paid by the reason of suppression of facts or fraud or collusion or willful mis-statement or contravention of any of the Act or the Rules made there under with intent to evade payment of Service Tax, Section 78 of the Act provides for mandatory penalty and the person, liable to pay such Service Tax, shall also be liable to pay a penalty, in addition to such Service Tax and interest thereon. It is settled law that penalty is imposable on the basis of law operating on the date on which the wrongful act is committed, and it is levied on the totality of facts and circumstances of each case under the relevant provisions. The appellant has suppressed the facts regarding provision of service of manpower and the evasion of duty would have gone unnoticed had the same not been detected during audit. I may observe that in the scheme of self-assessment, it is the lawful responsibility cast on each person to pay the taxes perfectly in accordance with law, breach of which if noticed subsequently, would deprive them of the benefit illegitimately accrued. Moreover in the present regime of liberalization, self-assessment and filing of ER - 1 returns online, no documents whatsoever are submitted by the assessee to the department and therefore the department would come to know about such wrong avilment of Cenvat credit only during audit or preventive/other checks. As per facts in this case, the appellant could not establish that the matter was within the knowledge of the Department prior to audit or that they had submitted the relevant details



142 / documents to the authorities before that date. I therefore, find that this is a fit case for penalty under Section 78.

In view of the findings given in the foregoing paras, the appellant is also liable to pay penalty as confirmed in Order-In Original.

12. In view of forgoing, the appeal is rejected.

13. 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.



(Suresh Nandanwar)
Commissioner
Central Tax Audit,
Ahmedabad.

Date: .01.2018

By R.P.A.D.

To,
M/s. Sureel Enterprise Pvt. Ltd.,
C/o M/s Nirma Limited,
Kala Talav,
Bhavnagar

Copy to:

1. The Chief Commissioner of CGST, Ahmedabad Zone.
2. Commissioner of CGST, Bhavnagar.
3. The Additional /Joint Commissioner, CGST, Bhavnagar.

4. The Asstt./Deputy Commissioner, CGST, Division, - II, Bhavnagar

5. Guard File.