



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

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

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/270/RAJ/2016	18/ADC/RKC/2016-17	07.10.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-097-2017-18**

आदेश का दिनांक / Date of Order:	<b>16.10.2017</b>	जारी करने की तारीख / Date of issue:	<b>18.10.2017</b>
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**कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अथवा आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जरी मूल आदेश से सूचित /  
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 Appellant & Respondent :-**  
M/s. Tirth Enterprise,, Gokul Park, Street No. 4, Block No. 18, Opp. Ranuja Mandir Kotharitya Road,,Rajkot

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) सर्वोच्च न्यायालय में सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, अर. के. पुरम, नई दिल्ली, को की जाती 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 बतलाए गए अपीलों के अलावा क्षेत्र सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टैट) की पश्चिम क्षेत्रीय पीठिका, - द्वितीय तल, बकुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधिसूचिका, 2001, के नियम 6 के अन्तर्गत निर्धारित फॉर्म नंबर प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, आउट की आरंभ 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की साक्ष के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजिम्मेदार क्षेत्र के बैंक द्वारा जारी रेकॉजिट बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस साखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की साखा स्थित है। संबंधित आदेश (स्टै ऑर्डर) के लिए आवंटन-वच के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होता। /  
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/-.

(iii) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं एक साथ जिस आदेश के विरुद्ध अपील की जाती है, उसकी प्रति साथ में संलग्न की (उपरोक्त से एक प्रति प्रस्तावित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, आउट की आरंभ 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की साखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजिम्मेदार क्षेत्र के बैंक द्वारा जारी रेकॉजिट बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस साखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की साखा स्थित है। संबंधित आदेश (स्टै ऑर्डर) के लिए आवंटन-वच के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होता। /  
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 fee 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-धारा (2) एवं (2A) के अंतर्गत टर्न की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकती एवं इसके साथ अप्रयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति का संलग्न करे (इनमें से एक प्रति प्रस्तुत होगी चाहिए) और अप्रयुक्त द्वारा सहायक आयुक्त अथवा उपयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को आवेदन टर्न 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 Form 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.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (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 अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर राशि के 10 प्रतिशत (10%), जब राशि एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस क्रॉड एप्ल के अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "जमा किए गए शुल्क" में निम्न शामिल है।
- (i) धारा 11 डी के अंतर्गत रकम
  - (ii) सेल्वेट जमा की गयी गयी राशि
  - (iii) सेल्वेट जमा नियमवाली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किये गए अपील न्यायाधिकरण के समस्त विचारणीय स्थान अर्थात् 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 अधिकार विभागाधिकारिता मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारंगत के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद भवन, 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-35E 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 गयी केन्द्रीय उत्पाद शुल्क के छूट (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 on 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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्राधान्यों के तहत सज्ज की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीका अथवा समकक्षिण 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन 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 विभागाधिकारिता निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो 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 is 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, उपरोक्त इस से किया जाना चाहिए। इस लेख के होते हुए भी की निम्न पढी कार्य से बचने के लिए पदाधिकारिता अपील 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, not withstanding 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) पदाधिकारिता न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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 अपील न्यायाधिकरण (क्याबे विधि) नियमवाली, 1982 में उल्लिखित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान अर्पित किया जाना 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.

(G) उच्च अपील न्यायाधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्राधान्यों के लिए, अपील न्यायाधिकरण वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख लें। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

ORDER IN APPEAL

85

The present appeal has been filed by M/s. Tirth Enterprise, Gokul Park Street No. 4, Block No. 18, Opp. Ranuja Mandir, Kothariya Road, Rajkot (hereinafter referred to as 'appellant') against Order-In-Original No. 18/ADC/RKC/2016-17 dated 07.10.2016 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as 'lower adjudicating authority').

2. The facts of the case, in brief, are that inquiry initiated against appellant for non-payment of service tax revealed that the appellant had employed 14 persons during the period from F.Y. 2007-08 to December, 2011, for carrying out the work of assembling of connecting rod and its cap as per service purchase order entered with M/s. Amul Industries Private Limited, Rajkot (hereinafter referred to as "Amul") within the factory premises of Amul. It appeared that the said activity of supplying labour is covered under "Manpower Recruitment or Supply Agency" service defined under Section 65(68) of the Finance Act, 1994 and taxable under section 65(105) (k) *ibid*, but the appellant was not paying any service tax for the said activity. SCN No. V.ST/AR-I/RJT/JC/249/2012 dated 05.10.2012 was issued to the appellant demanding service tax of Rs. 5,60,771/- for the period from financial year 2007-08 to 20.12.2011, under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act"); to recover interest under Section 75 of the Act and to impose penalty under Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994 and under Section 76, Section 77 and Section 78 of the Act and proposal to appropriate Rs. 1,22,656/- paid by the appellant after vacating the protest. The Show Cause Notice was adjudicated by the lower adjudicating authority vide impugned order wherein he confirmed demand of Service Tax of Rs. 5,60,771/- and appropriated Rs. 1,22,656/- against the demand of service tax so confirmed vacating under protest; ordered recovery of interest, ordered recovery of late fee of Rs. 2,000/- per ST-3 returns not filed upto 30.03.2011 and Rs. 20,000/- per returns not filed from 01.04.2011 onwards under Section 70 of the Act; imposed penalty under Section 77(1) of the Act at applicable rate, imposed penalty of Rs. 10,000/- under Section 77(2) of the Act and imposed penalty of Rs. 5,60,771/- under Section 78 of the Act.

3. Being aggrieved with the impugned order, appellant preferred appeal, *inter alia*, on the ground that the demand was confirmed on the basis of definition applicable from 01.07.2012 whereas period involved is 2007-08 to 2011-12; that the lower adjudicating authority has confirmed demand on the basis of the Order dated 31.03.2015 of the Commissioner (Appeals), Central Excise, Rajkot by applying principles of 'later is better', however decisions referred by the appellant were on identical facts and also by following decisions of Hon'ble CESTAT, Ahmedabad and other Benches; that the order referred by the lower adjudicating authority was after considering the decisions where the services





were specifically covered by category of 'Cargo Handling Service' and also on the fact that the said assesseees were supplying man power to the respective company, whereas in the present case, no manpower was supplied; that the said activity is covered under Notification No. 8/2005-ST dated 01.03.2005 and exempt from payment of service tax; that it is a fact that the contractor working with the same company; that the appellate authority has dropped the proceedings initiated against another such contractor and the department has also accepted such decision; that no service tax is payable and consequently no interest is also recoverable and no penalty is imposable.

4. Personal hearing in the matter was attended to by Shri Paresh Sheth, Advocate, who reiterated Grounds of Appeal and submitted that they were undertaking processing of connecting rods in the premises of Amul Industries; that they were undertaking job work and payment of M/s. Amul Industries is also on the basis of job work done and not on number of persons engaged for the work; that number of persons vary from day to day; that in a similar case of M/s. Amul Industries doing same job in the case of Jagubha Narubha Jadeja already decided by the then Commissioner (Appeals) vide Order-In-Appeal dated 30.07.2014 in favor of them and against department; that there are many such orders passed by Hon'ble CESTAT as being submitted by them in their compilation being submitted during P.H.

#### **FINDINGS: -**

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and the submission made during the personal hearing. The issue to be decided in the present appeal is whether, the impugned order confirming demand of service tax by classifying the services provided as "Manpower Recruitment or Supply Agency Services" is proper, or otherwise.

6. For deciding the issue whether or not the services rendered by the appellant would fall under the category of "manpower recruitment or supply agency", I would like to reproduce the definition of "manpower recruitment or supply agency", substituted by the Finance Act, 2003, w.e.f. 14.05.2003, as provided under Section 65(68) of the Act, which is as under:

***"manpower recruitment or supply agency"*** means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person.

(Emphasis supplied)

7 From the above, it is clear that service, directly or indirectly, in any manner for recruitment or supply of man power, temporarily or otherwise, to any other person, falls under the definition of "Manpower recruitment or supply agency" service. I find that the lower adjudicating authority has referred the above mentioned definition, however, the appellant wrongly pleaded that the said definition is applicable from 01.07.2012. Since the lower adjudicating authority has correctly referred the definition of "Manpower recruitment



or supply agency", as prevailed at the material time, the contention of the appellant is not tenable.

7.1 I find that the lower adjudicating authority in Para 24 of the impugned order has stated that:

"24. I find from the Service Purchase Orders No. (1) 07-08/PS/000072 dated 06-03-2008 (2) 09-10/PS/000073 dated 13-09-2009 and (3) 11/12/PS/000007 dated 01-07-2011 of M/s. Amul Industries Pvt. Ltd. that the Noticee is providing services regarding ASSEMBLY OF CONNECTING ROD. The said orders are indicating purchase of service from the Noticee that means the Noticee is providing the services to M/s. Amul Industries Pvt. Ltd. From the invoices issued, it also find that the Noticee is one kind of contractor to provide the services and the said invoices are prepared for labour charges only. Therefore, as per the Service Purchase Orders and invoices issued, the Noticee was responsible for recruitment or supply of persons for that particular task. The laborers recruited as per the requirement of the service recipient company and worked as per the instructions of the service recipient..."

(Emphasis supplied)

7.2 The appellant has not provided copies of Service Purchase Orders with Memorandum of Appeal. However, from above observations made by the lower adjudicating authority, I find that M/s. Amul has executed the contract to Shri Bhupatsinh Narubha Jadeja, Proprietor of the appellant to undertake the specific activity, who acted as a contractor and undertook the said activity by supplying sufficient manpower and thereby he has provided services of "Man power supply agency" as defined under Section 65(68) of the Act and the services so provided are taxable services under Section 65(105)(k) of the Act.

7.3 I find that service tax is leviable on the services under manpower recruitment or supply agency, if business or industrial organizations engage such services for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. CBEC vide Circular No. 96/7/2007-S.T. dated 23.08.2007, has clarified that employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual and such cases would be covered under taxable under "manpower recruitment or supply agency", the relevant part thereof is reproduced as under:

010.02/ 23-8-07	<p>Business or industrial organisations 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.</p> <p>Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)].</p>	<p>In the case of supply of manpower, <u>individuals are contractually employed by the manpower recruitment or supply agency.</u> The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. <u>Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.</u></p> <p>Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the</p>
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*Amul*



		definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.
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(Emphasis supplied)

7.4 CBEC vide Instruction No. B1/6/2005-TRU dated 27.07.2005 has also clarified as under: -

*22. Manpower Recruitment Service*

*22.1 Prior to 16/6/ 2005, service tax was leviable on services provided by manpower recruitment agencies in relation to recruitment of manpower. Amendments have been made to levy service tax on temporary supply of manpower by manpower recruitment or supply agencies.*

*22.2 A large number of business or industrial organizations engage the services of commercial concerns for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Services rendered by commercial concerns for supply of such manpower to clients would be covered within the purview of service tax.*

*22.3 In these cases, the individuals are generally contractually employed by the manpower supplier. The supplier agrees for use of the services of an individual employed by him to another person for a consideration. The terms of the individual's employment may be laid down in a formal contract or letter of appointment or on a less formal basis. What is relevant is that the staff are not contractually employed by the recipient but come under his direction.*

*22.4 Service tax is to be charged on the full amount of consideration for the supply of manpower, whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. Even if the arrangement does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or the contributions are paid to the respective authority) these amounts are still part of the consideration and hence form part of the gross amount.*

(Emphasis supplied)

7.5 In view of above clarifications, when the industrial organization engage the services of commercial concern for temporary supply of manpower for a specific period and for a specific task, service rendered by such commercial concern is covered within the purview of service tax. As per the contract, the appellant was responsible to carry out specific job for which recruitment or supply of persons was made by the appellant who had the employer-employee relation with manpower so supplied. However, the labors recruited worked under the instruction and direction of Amul (the client). Therefore, in view of clarifications issued by CBEC, the appellant has provided services of supply of manpower by way of temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks which is covered within the purview of service tax under the category of "supply of manpower" as defined under Section 65(68) of the Act and taxable under Section 65(105) (k) of the Act. I find that emphasis is to be given on the wordings "any service, directly or indirectly, in any manner", which clearly reflect that the





inclusion of 'indirectly' clause in the definition has very wide meaning and does not restrict the scope of the service. Accordingly, I find no justified reason to deviate from the findings of the lower adjudicating authority.

7.6 The appellant has contended that the said activity is covered under Notification No. 8/2005-ST dated 01.03.2005 and is exempt from payment of service tax. The Notification No. 8/2005-ST dated 01.03.2005 reproduced as under:

*"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production or processing of goods for, or on behalf of, the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act :*

*Provided that the said exemption shall apply only in cases where such goods are produced or processed using raw materials or semi-finished goods supplied by the client and goods so produced or processed are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.*

*Explanation. - For the purposes of this notification, -*

*(i) the expression "production or processing of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production or processing, subject to the condition that such production or processing does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).*

*(Emphasis supplied)*

7.7 I find that the said Notification grants exemption from payment of Service Tax in respect of "Business Auxiliary Services" as defined under Section 65(19) of the Act, which is not the case here. Therefore, the argument of the appellant on this count is not acceptable.

7.8 I further find that under the provisions of Notification No. 214/86-C.E. dated 25.03.1986, goods manufactured on job work basis are exempted from payment of Central Excise duty, if such goods are used in the manufacture of goods on which duty of excise is leviable or such goods are cleared from the factory of supplier of raw material on payment of duty. This exemption is applicable if the supplier of raw materials gives an undertaking to the Assistant Commissioner having jurisdiction over the factory or the job worker that the said goods shall be used in the manufacture of the dutiable final products in his factory or the same shall be removed on payment of duty from his factory. In such cases, the supplier of raw materials is required to produce the evidence that the said goods have been used or removed in the manner prescribed above. However, in the instant case, neither any undertaking nor any evidence has been produced by the principal manufacturer M/s. Amul. The appellant has also failed to produce any evidence to regard their activity as job-work defined in the Central Excise Law. Therefore, the contention of the appellant fails on this count also.

7.9 I further find that Hon'ble CESTAT in the case of K.K. Appachan reported as 2007 (7) STR 230 (Tri. – Bang.), and J & J Enterprise reported as 2006 (3) STR 655 (Tri. – Del.)



have settled the issue that if a service provider just provides manpower to carry out certain work with the machines and equipments of the service recipient, then in such case, the services rendered by the service provider would be covered under the category of "Manpower recruitment or supply agency" which apply squarely in the instant case.

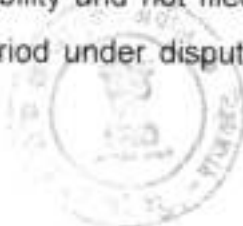
7.10 I find that decision in the case of Manish Enterprises reported as 2016 (42) STR 352 (Tri. – Mumbai) relied upon by the appellant is not relevant to the facts and circumstances of the present case as the Hon'ble CESTAT has held that the activity carried out by the manpower amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944, whereas in the instant case the activity carried out by the laborers supplied by the appellant does not amount to manufacture of goods. The appellant has also relied the decision in the case of Arvind Mills Ltd. reported as 2014 (35) STR 496 (Guj.) wherein the assessee deputed some of its employees to its group company, who cannot be said to be Manpower supply or Recruitment Agency and therefore not liable to service tax. Since these are not the facts of the instant appeal and therefore the said decision is not relevant.

7.11 The appellant contended that payment of M/s. Amul Industries is on the basis of job work done and not on number of persons engaged for the work. I find that the activity/contract clearly shows a task in a factory premises to be carried out by the appellant for that the appellant would require to deploy the requisite workmen/staff to undertake the specified task which may relates to any activity. No specific movement of raw materials are found to have taken place and no specific activity other than deploying the manpower was found to have been undertaken by the appellant. It is pertinent to note here that charges for man power supply can be fixed on the basis of any output unit/measurement. It is settled law that the method of preparing and maintaining of record does not alter taxability of an event. Therefore, the contention of the appellant is not tenable.

7.12 In view of the above discussions, I am of the considered view that the services provided by the appellant falls under the category of "Manpower Recruitment or Supply Agency" service" as defined under Section under Section 65(68) of the Act and are liable to service tax under Section 65(105) (k) of the Act. I, therefore, do not find any reason to interfere with the impugned order and uphold the same.

8. Since demand of service tax is upheld, the provisions of levy of applicable interest under provisions of Section 75 of the Act automatically follow.

9. Regarding levy of late fee under Section 70 of the Act, I find that the appellant had failed to assess their correct tax liability and not filed their correct ST-3 returns showing correct taxable value during the period under dispute, the order for recovery of late fee





under Section 70 of the Act is proper. The appellant failed to obtain service tax registration and have contravened Section 67 and Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994, the penalty of Rs. 10,000/- imposed under Section 77 of the Act is reasonable.

10. As regard to penalty imposed under Section 78 of the Act, I find that the appellant never disclosed their activities to the department and these were revealed only after investigation was initiated. Therefore, I find that the appellant has suppressed the facts with intent to evade payment of Service Tax and hence invocation of extended period under Section 73(1) of the Act is justified. The appellant has rendered themselves liable for imposition of penalty under Section 78 of the Act as held by the Hon'ble Supreme Court in the case of UOI V/s. Dharmendra Textile Processors [2008 (231) ELT 3 (SC)] and UOI V/s. Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)] rendered in the context of Section 11AC of Central Excise Act, 1944 and the ratio of which is applicable to Section 78 of the Act, in the present case. Therefore, I uphold the penalty under Section 78 of the Act.

11. In view of the above factual and legal position, I uphold the impugned order and reject the appeal filed by the appellant.

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

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

*Ranjit*  
16/10/2012  
(कुमार संतोष)  
आयुक्त (अपील्स)

By Speed Post

To

M/s. Tirth Enterprise, Gokul Park Street No. 4, Block No. 18, Opp. Ranuja Mandir, Kothariya Road, Rajkot	मेसर्स तीर्थ एंटरप्राइज़, गोकुल पार्क स्ट्रीट नं. ४, ब्लॉक नं. १८, रनुजा मंदिर के सामने, कोठारीया रोड, राजकोट
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→ Return  
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2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise Division-I, Rajkot
4. Guard File.

