



UNITED NATIONS DEVELOPMENT PROGRAMME
UNDP HUMAN DEVELOPMENT SUPPORT AND COORDINATION CENTRAL OFFICE



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1. **Subject:** UNDP/HRP/2019/005

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ORDER IN APPEAL :

M/s. Nalin Logistics & Services P. Ltd. (Now Lada Business Venture P. Ltd, 301/302, Lada Estate, Next to Akshar Vardh, Waghawas, Rajes Bravnagar (hereinafter referred to as 'the Appellant') has presented appeal against the Order-in-Original No. 05/Service Tax Demand/ 17-18 dated 31.01.2018 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Genral GST Division Bravnagar-I, Bravnagar (hereinafter referred to as 'the adjudicating authority').

2 The brief facts of the case are that the Appellant is registered service tax assessee and constructed a residential complex 'Lada Nand' consisting of 170 Flats spread among 'W' to 'K' blocks. Audit reveals that appellant had accounted for various expenses as 'work expenses' in their books of account towards payments made to various labour contractors and hence, Audit was of the view that appellant availed services of 'Manpower Recruitment or Supply Agencies' and was required to pay service tax under Reverse Charge Mechanism under Notification No.30/2012-S1 dated 20.6.2012. However, appellant has not paid service tax of Rs 7,63,874/- on services received by them from July 2012 to March, 2014. Show Cause Notice was issued demanding Service Tax under Section 73 of the Act along with Interest under Section 75 of the Act and Penally under Section 76 77 and 78 of the Act. The said notice was upheld vide Impugned order confirming demand under Section 73 and interest under Section 75 of the Act and imposing penalties under Section 76 Section 77 and Section 78 of the Act.

3 Being aggrieved with the impugned order, appellant preferred the present appeal on the ground that Appellant received 'Input services' falling under 'Construction of Residential Complex' services for providing output services under the Head of 'Construction of Residential Complex' services; that this case stands covered by several decisions on identical issues which was not appreciated in the impugned order; that appellant had discharged service tax liability on the entire project of residential scheme falling under 'Construction of Residential Complex' and were eligible for General Credit of service tax paid, if any and hence, the case is revenue neutral.

[Signature]

4. Personal hearing in the matter was attended by Shri Jayesh Mehta C.A. on behalf of the Appellant who reiterated the grounds of appeal and submitted that they are in the business of construction of residential and paid Rs.52 lakhs of Service Tax during the period involved in the impugned order that they have utilized the services of sub-contractors and paid them on the basis of quantum of work done by them and not for supply of manpower as is evident from Dils also, that they have not asked for supply of Manpower and hence, SCN as well as impugned order is not correct at all that they filed written submission detailing arguments with supporting case laws.

4.1. In written submission appellant stated that (1) construction work outsourced is not liable to tax under "Manpower Supply / Recruitment services" under reverse charge mechanism (2) entire dispute being concerned tax neutral demand raised is illegal (3) as input tax credit immediately available there could have been no intention to evade payment of duty and consequently the extended period of limitation was not invocable and (4) appellant paid service tax of Rs.52.28 lacs for services of construction of residential complex provided by them.

4.2. It is submitted by the appellant that they constructed Residential flats and got the work of construction and related work done through various labour contractors on outsource basis. That labour contractors were paid on the basis of specified work executed by them; that no labour was provided to appellant and the contractors carried out work by employing labours on their own. That adjudicating authority at para 4 of the impugned order also recorded that payment to the contractors were paid by appellant on the basis of quantum of work carried out and not on the basis of number of workers provided or number of manpower hour etc.; that at para 21.9 of the impugned order it is also recorded that the contractors got completed the given work relating to construction of flats, that the lower adjudicating authority has merely relied on observations of the audit team and not considered the submissions of the appellant that appellant has outsourced construction work to 20 different labour contractors having specialization in different work of construction and those contractors were not engaged for supply of manpower; that essence of the definition of Manpower Supply or Recruitment agency is that the service provider must only be responsible for supply of manpower. That labour contractors

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employed by them worked independently by using their own skills and expertise; that the impugned order does not discuss as to how services received by them can be considered as 'Manpower Recruitment or Supply Agency'; that it is not the case that appellant had engaged manpower supply agency and used the manpower under his supervision to carry out the construction activities.

FINDINGS

5. I have carefully gone through the facts of the case, the impugned order, the contentions of the appellants and records of personal hearing. The issues to be decided in the present appeal are whether the services received by the appellant falls under the category of 'Manpower Recruitment or Supply Agency Services' and was the appellant required to pay service tax under reverse charge mechanism or not?

6.1 I would like to reproduce definition of 'Manpower Recruitment or Supply Agency' given under Section 65(66) of the Act, which reads 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."

6.2 The term 'supply of manpower' has been defined under Rule 2(1)(g) of the Service Tax Rules, 1994 as under:

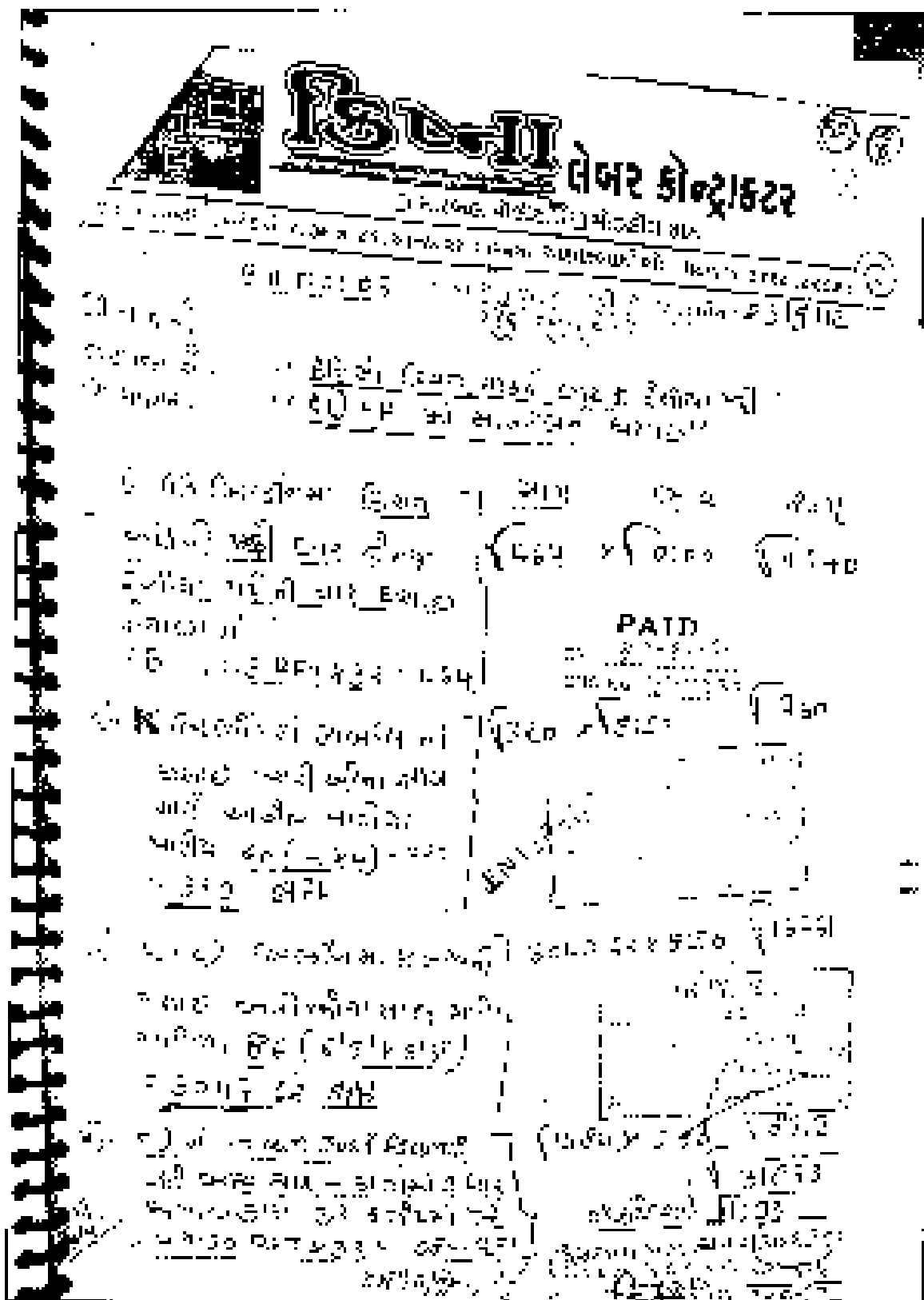
"supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control"

6.3 After proper reading of above reproduced definitions, I find that there has to be (i) supply of manpower and (ii) manpower so supplied has to work under superintendence or control of the service recipient for getting service taxable under category of 'Manpower Recruitment or Supply Agency Service' under reverse charge mechanism w.e.f.1.7.2012.

6.4 The appellant's contention is that the services in dispute are not 'Manpower Supply' and they have submitted list of 28 such contractors from whom they received services while providing their output service of 'Construction of Residential Complex' and stated that no manpower was supplied to them.

[Signature]

Instead, different work relating to construction activities were outsourced. Copies of sample invoices produced by them are as under:



LEELA BUSINESS VENTURE PVT LTD (Former NATRA) LOGISTICS & SERVICES Pvt. Ltd.)	
NAME OF LABOUR CONTRACTORS	
S/R NO.	NAME
1	SH. BOMLA RAJAGOLDENIA SA BANTA
2	BAKSHIRAHAM KHAN
3	ROSEESHAN AGNI
4	YOUNUS ALI ECHUMAI KANTARVA
5	BARISHA LINGARAJA SODANKI
6	AKRISH D BASHKA
7	SHARAD K. A. S. SHIVA
8	SHASHI K. BHAKARJI DARMAR
9	TRAPESH VITALAL GUDANPA
10	YOUNUS DEFAKATUDDIN APASA
11	DELESHA H. M. ALI MAZWARA
12	SANDEEP DATTAR
13	YOUNUS MOHAMMED NAVALSINH
14	SHADAB CONSTRUCTION
15	ALFINS FABRICATION & BOLLUS SALTERS
16	YOUNUS MOHAMMED BODI
17	YOUNUS SATHIYA
18	AL BODIA
19	YOUNUS MOHAMMED BOLANCI
20	ASHIK I. A. BOUZAMER
21	ALOKESHIA S. PADAV
22	SHARIFA MANEKSHIA MARIYAMA
23	ABU SALAMAH S. SHIL
24	YOUNUS MOHAMMED DEEP KANDEY
25	YOUNUS MOHAMMED KANDEY
26	GOPALSHIA BASHIR HAQUE AB
27	SHARIFA MANEKSHIA MARIYAMA
28	AKRISH S. BASHIYA
29	YOUNUS MOHAMMED ALI

6.9 find that the services received by the appellant are specific activity like plastering, tiling, Marble, finishing works, RCC Work etc. and all these works are related to construction activity and specific task done by specific skilled manpower and to carry out such specific work, specific contractors were deployed. find that the lower adjudicating authority has also recorded that Bill were raised by the labour contractors depending upon the nature of work carried out by them. It is not in dispute that relation between the service recipient and service provider are for providing specific work and not for providing manpower only. find that no evidence is adduced either in the SOA or in the repugnant order establishing that service provider has supplied manpower to be

used (i.e. the supervision of appellants). I find that services received by the appellants are in relation to execution of specific work at a pre-fixed rate with their service provider as reflected in their invoices and charged consideration based upon the quantum of work executed. I find that the lower adjudicating authority has not discussed how manpower was supplied by the contractors and used by the appellants without discussing any specific contract/invoice to arrive at such a conclusion. I also find that the lower adjudicating authority has failed to establish that the manpower deployed were under supervision or control of the appellants in any manner. It is on record that the Appellants got the work done from the service provider in relation to construction of residential units without any control over any manpower used in the work by the appellants. Thus, the ingredients required to cover activity under the category of 'Manpower Recruitment or Supply Agency' are missing in the present case. On the contrary, the facts emerging from records indicate specific work of construction activity being undertaken by specific contractors and there is no evidence of supply of manpower *per se* by them. Therefore, the services rendered by the appellants cannot be classified under the category of 'Manpower Recruitment or Supply Agency'.

6.10 I rely on an order passed by the Hon'ble CBSTAT in the case of *Canara Bank* reported as 2017(4) GSTT 523 (Tr. Del.), wherein it has been held that demand of Service Tax under 'Manpower Recruitment or Supply Agency Services' is not sustainable in absence of evidence of supply of manpower with details of number and nature of manpower, duration and other concrete facts for such supply. I also rely on an order passed by the Hon'ble CBSTAT in the case of *K. Dandastareddy* reported as 2010 (19) STR 590 (Tr-Bang.) wherein it has been held that:

"8. We have heard both sides. We find that the appellants had carried out the activities of loading of cement bags into wagons, spillage cleaning, shuffling, wagon door opening/closing, wagon cleaning etc. for M/s. India Cement Co., during the material period. We find that the appellants were compensated for the various items of work at separate rates prescribed under the contract. The appellants did not supply manpower charging for the labour provided on a day-to-day basis or man-hour basis. The appellants carried out the work as a contractor employing its own labour. Such an activity is not classifiable as manpower recruitment or supply agency.

(Emphasis supplied)

6.11 Further rely on final order passed by the Hon'ble CESTAT in the case of M/s. Divya Enterprises reported as 2010(19) STR 370 (Tri-Bang), wherein it has been held that

"9. On a careful consideration of the above reproduced letter and facts from the entire case papers, we find that the contract which has been given to the appellants is for the execution of the work of loading, unloading, bagging, stacking, destacking etc., in the entire records. We find that there is no wharf or supply manpower in the said M/s. Aspin Total & Co. or any other recipient of the services in all these appeals. As can be seen from the reproduced contracts and the invoices issued by the appellant that the entire essence of the contract was an execution of work as understood by the appellant and the recipient of services. We find that the Hon'ble Supreme Court in the case of Super Poly Fabrics Ltd. v. OCF, Panchajanya in paragraph 8 has laid down the ratio which is as under:-

'There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from its terms and conditions thereof. Neither the nomenclature of the document, nor any particular activity undertaken by the parties to the contract would be decisive.'

As identical view was taken by Hon'ble Supreme Court in the case of State of AP v. Kona Elevators (India) Ltd. (supra) and ICI v. Mahindra and Mahindra (supra) in a similar issue. The ratio of all the three judgments of the Hon'ble Supreme Court, is that the tenor of agreement between the parties has to be understood and interpreted on the basis that the said agreement reflected the role and understanding of the parties. The said ratio applies to the current case in hand. We find that the entire tenor of the agreement and the purchase orders issued by the appellants' service recipient clearly indicates the execution of a lump-sum work. In our opinion the lump-sum work would not fall under the category of providing of services of supply of manpower temporarily or otherwise either directly or indirectly.'

(Emphasis supplied)

6.12 I also rely on the clarificator issued by the Board vide Circular No. 180/5/2015-S.T. dated 10-12-2015 issued from F. No. 354/153/2014 TRU, wherein it is clarified that:

"2. The matter has been examined. The nature of manpower supply service is quite a sharp from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service providers' accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The usage of service has a direct correlation to manpower deployed i.e., manpower deployed

multiplied by the rate, in other words, manpower supplier will charge for supply of manpower even if manpower remains idle.
(It has been accepted)

6.13 By respectfully following the above case laws and the aforesaid Board's Circular, I hold that the services received by the Appellant are not covered under the category of "Manpower Recruitment or Supply Agency" and appellant is not required to pay service tax under reverse charge mechanism under the provisions of Finance Act 1994.

7. In view of above, I hold that the impugned order confirming demand by classifying the services received by the appellant under "Manpower Recruitment or Supply Agency" is not correct, legal and proper. Since the demand of service tax has not sustained, demand of interest and imposition of penalty vide the impugned order cannot survive and are required to be set aside.

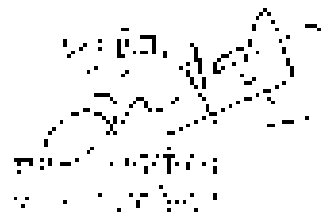
8. I therefore, set aside the impugned order and allow the appeal.


9. अपीलकर्ता द्वारा दल की गई अपील का विचार करके यह फैसला किया जाता है।

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

By R.P.A.D.

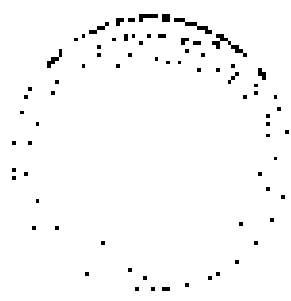
To


R.P.A.D.
आयकर विभाग
बेळगाव


(कुलकर्णी संतोष)
स्थान अधिकारी (अपील-स)

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मेसर्स नगराज लॉजिस्टिक्स & सर्विसेज प्राइवेट लिमिटेड
कॉम्प्लेक्स
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भावनगर



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 3. The Assistant Commissioner, GST & Central Excise, Bhavnagar Division I, Bhavnagar for further necessary action.
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