



::आयुक्त (अपील्स) 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 :-DIN- 20200964 SX00001L3980

क	अपील / फाइल संख्या/ Appeal / File No. V2/27/RAJ/2020	मूल आदेश नं / O.I.O. No. 9/JC/VM/Sub-Comm/2019-20	दिनांक/ Date 08.01.2020
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-094-2020**

आदेश का दिनांक / Date of Order:	<b>28.08.2020</b>	जारी करने की तारीख / Date of issue:	<b>02.09.2020</b>
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं 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/ST / GST,  
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

**M/s. Shreeji Shipping Services (India) Ltd., Grain Market, Khand Bazar, Jamnagar**

इस आदेश (अपील) में 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 मामलों सीमा शुल्क, केन्द्रीय उत्पाद 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 पीठिकां, द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- 380016 को की जानी चाहिए। /

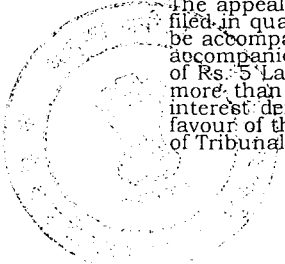
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarva Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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। स्थान 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। स्थान 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 (1) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के अंतर्गत 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 प्रतियाँ 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 of 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 अपीलीय प्राधिकरण (सेन्टेट) के प्रति अपीलों 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 करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि: इस धारा के अंतर्गत जमा कि. जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनवेट जमा की ली गई गलत राशि
  - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि: इस धारा के प्रावधान वित्तीय (मं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होगा। / 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 पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मंचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जिवन दीप भवन, मंदम 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:
- 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
  - 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 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
  - 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.
  - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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.
  - उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्यम 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.
  - पुनरीक्षण आवेदन के साथ निम्नलिखित 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 in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
  - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य में वचन 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, 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.
  - 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-I in terms of the Court Fee Act, 1975, as amended.
  - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित 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.
  - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / 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 ::**

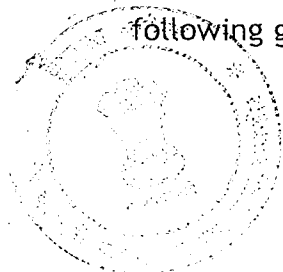
M/s Shreeji Shipping Service (India) Ltd, Jamnagar (*hereinafter referred to as "Appellant"*) filed Appeal No. V2/27/RAJ/2020 against Order-in-Original No. 9/JC/VM/Sub-Comm/2019-20 dated 8.1.2020 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central GST and Central Excise, Rajkot (*hereinafter referred to as 'adjudicating authority'*).

2. The brief facts of the case are that during audit of the records of the Appellant, it was found that the Appellant had shown large amount of consideration as Pure Agent under Manpower Recruitment or Supply Agency Service; that they were providing 'Manpower Supply service' to their group companies by issuing invoices in two ways (i) showing the amount being collected as fee for the service provided and (ii) showing the amount being collected as payment of salary; that they had paid service tax on the invoices raised for Fees for service and booked the said amount under the head 'Professional Fees-Salary'; that they failed to pay service tax on second type of invoices issued for payment of salary by claiming deduction as 'amount charged as Pure Agent' from gross income received under the category of Manpower Recruitment or Supply Agency Service in the ST-3 Return for the period from January, 2017 to March, 2017. It appeared to the Audit that the Appellant had resorted to such tactics to hide major part of the consideration received for manpower supply service with intention to evade payment of service tax.

2.1 Show Cause Notice No. V.ST/15-5/Audit/Tech/SCN-JC-3/2019-20 dated 21.6.2019 was issued to the Appellant calling them to show cause as to why Service Tax of Rs. 52,35,362/- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act'*) along with interest under Section 75 and proposing imposition of penalty under Sections 77 and 78 of the Act.

2.2 The above Show Cause Notice was adjudicated vide the impugned order, which confirmed demand of Service Tax of Rs. 52,35,362/- under proviso to Section 73(1) and ordered for its recovery along with interest under Section 75 of the Act and also imposed penalty of Rs. 52,35,362/- under Section 78 of the Act and Rs. 10,000/- under Section 77 of the Act.

3. Aggrieved, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-



(i) The impugned order is liable to be quashed as the same is issued without verifying facts available on records as well as provisions of the Finance Act, 1994.

(ii) That findings in the impugned order that it has provided services of "Manpower Supply Services" is contrary to the documentary evidences; that in invoices, it has shown the amount as payment for salary and description is "Being amount debited towards payment to your Dumper staff for salary for the month of ....."; that when the amount debited in the name of group of companies for making payment of salary to their staff, there is no question of supplying man power; they had issued debit notes in favour of group companies in respect of payment of salary to their staff paid on their behalf.

(iii) That their Chartered Accountant had erroneously under his bona fide belief prepared one invoice each for month on each of the group of companies/firms for 5% of monthly salary amount considering such payments of salary on behalf of the respective companies/firms as manpower supply and also paid Service Tax on such amount; that since they had paid salary of staff of other group of companies/firms viz. M/s. Shreeji Shipping, Jamnagar, M / s. Krishnaraj Shipping Company Ltd., M / s. Siddhi Marine Services LLP etc, they had raised monthly Debit Notes on each of said companies/firms for payment of salary to their staffs on behalf of them; that the said companies/firms had reimbursed/repaid the actual amounts of salary paid on behalf of them to their staff to them. However, the adjudicating authority did not consider these vital facts; that issuance of invoices charging fees considering the manpower supply by one of the staffs viz. Chartered Accountant working in the company and handling accounts of the company cannot change the facts available on records of all the companies/firm including appellant that it had never supplied any manpower to any group of companies /firms but only made payment of salary to the staff of other group of companies/firm; that the Appellant was not required to raise such invoices and pay service tax on the amount charged (fees) for making payment of salary.

(iv) That they had shown the payment of salary of respective companies/firms' staff and amount received from respective companies/firms in its ledger account "Reimbursement of Salary"; that they had never shown such amount paid as salary to the staff of respective companies/firms as expenses in its profit and loss amount. The amount debited as "Salary" in profit and loss

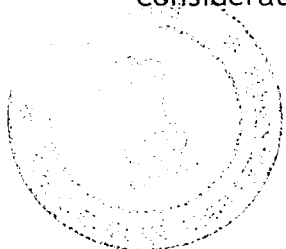


account is only for the salary paid to its own staff and such amount is very much less than the total amount paid to the staff of other companies/firms; that there was no expense under the head of salary for huge amount equal to reimburse amount from group of companies/firms; that if they had provided any service to the said group of companies and paid salary to the said staff it would have debited such amount in their profit and loss account and at the same time the amount paid by respective companies/firm as income in their profit and loss account. However, it is evident from the ledger account that such amounts were nothing but reimbursement of amount paid on behalf of respective companies/firms only and never posted in the profit and loss account. This is evident from the income shown in the Income Tax return for the year 2016-17. In fact, the respective companies/firms had debited those amounts as expenses of salary of staff of respective barge/hitachi etc. in their books of accounts.

(v) That most of the staff to whom salary were paid after December, 2016 were on the pay roll of respective group of companies/firms even prior to December, 2016 which is evident by comparing specimen Salary Sheets for the three months prior to December, 2016 with that salary sheets after December, 2016 and amount shown in the ledger account of salary of respective companies/firms; that it is also a fact that most of the staff remains same during the entire period after December, 2016.

(vi) That the respective ports where the said staff of group companies were working had issued 'port entry pass' showing name of respective company/firm as employer; that none of the entry pass showed their name as employer; that they also brought to the notice of the adjudicating authority but he discarded on the grounds that the entry passes were valid only upto 31.12.2016, ignoring extension of validity upto 31.12.2017.

(vii) That after 01.07.2012 in negative list regime, there is no classification of service per se except for certain category of services for the purpose of declared service, exemption, abatement etc. However, term 'service' is defined under Section 65B(44) of the Act to mean 'any activity carried out by a person for another for consideration, and includes as declared service; that in the instant case, there was no activity carried out by it for other companies/firms except for making payment of salary etc. on behalf of them, that by any means cannot be considered as any activity that too for a consideration; that the said transaction was nothing but a transaction akin to



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amount given as temporary loan to the other companies/firms and received back within normal period; that it is common phenomena in business that temporary arrangement of funds on loan basis from others or payments on behalf of others, which by any means cannot be considered as service. If it would have given loan equal to the total amount paid as salary to their staff directly to the group of companies/firms and they could have paid salary to their staff from such amount received from it. Just because of salary was paid to the staff of other companies/firms on behalf of them it cannot be considered as provision of service, but have to be considered as temporary loan of that amount only.

(viii) Since, there was no provision of service, they are not liable to pay service tax on such amount paid on behalf of others. As service tax is not payable, there is no question of payment of interest under Section 75 of the Act.

(ix) That the alleged short recovering was detected during the audit of the records of the Appellant and it is not a case of the Department that they had collected details from other sources or on the basis of intelligence. Thus, it is not lawful to allege suppression of facts with intent to evade of payment of service tax and no penalty can be imposed upon them under Section 78 of the Act; That it is a settled law that deliberate evasion of service tax is a serious offence and it cannot be made only on presumption basis without any supporting evidences and relied upon case law of Simplex Infrastructure Ltd reported as 2016-TIOL-779-HC-KOL-ST.

4. In hearing, Shri P.D. Rachchh, Advocate appeared on behalf of the Appellant and reiterated the submission of appeal memorandum for consideration and filed sample copies of invoices, debit notes, Valuation Rules etc. and requested to allow the appeal.

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order holding that the Appellant is liable to pay Service Tax under 'Manpower Recruitment or Supply Agency Service' along with interest and penalty is correct, legal and proper or not.

6. On going through the records, I find that the adjudicating authority has confirmed service tax demand of Rs. 52,35,362/- on the ground that the Appellant was liable to pay service tax on the 'Manpower Recruitment or Supply



Agency Service' rendered during the period from January, 2017 to March, 2017; that the Appellant had issued two types of invoices during the said period; that in one set of invoices, the amount was shown as collected towards Fees for manpower supply on which service tax was paid; that in second set of invoices, amount was being collected as payment of salary on which no service tax was paid but deduction was claimed as 'amount charged as Pure Agent' from gross income received under the category of Manpower Recruitment or Supply Agency Service in the ST-3 Return.

7. I find that the entire issue revolves around invoices issued by the Appellant to their group companies on which demand of service tax has been confirmed in the impugned order on the ground that the Appellant had issued such invoices to hide major part of the consideration received for manpower supply service. Before examining the issue, I find it is pertinent to examine the definition of term 'service' given under Section 65B(44) of the Act, which is reproduced as under:

"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—  
... .."

8. In backdrop of the above definition, I now examine said invoices issued by the Appellant. I find that the Appellant had issued invoice No. DN-14-A dated 5.1.2017 to M/s Shreeji Shipping having description as under:

*'Being amount debited towards payment to your Hitachi staff for salary for the month of December,2016'*

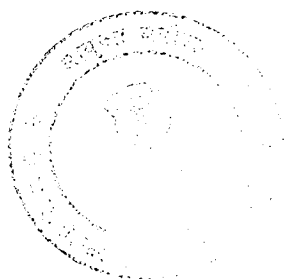
8.1 On going through the above invoice, it appears that it was issued for payment of salary to Hitachi staff of M/s Shreeji Shipping, one of the group companies of the Appellant. On looking at the said invoice, it is not forthcoming that it was issued for providing manpower service to M/s Shreeji Shipping or for that matter for providing any service. The said invoices were apparently issued towards payment of salary to the staff of their group companies, as per the description contained in the said invoices. The Appellant has pleaded before me that they had issued debit notes in favour of group companies in respect of payment of salary to their staff paid on their behalf, which was subsequently reimbursed by their group companies; that they had shown such salary payment and reimbursement amount in their ledger account "Reimbursement of Salary" and had not shown such amount as expense in their profit and loss amount. I find



force in the argument of the Appellant. If the said invoices were indeed issued by the Appellant for providing manpower supply service, as held by the adjudicating authority, then aggregate invoice amount and expenditure incurred by the Appellant for providing said service would form part of the Profit and Loss account of the Appellant. I have gone through Profit and Loss Account of the Appellant for the year 2016-17, however, I do not find any entry on the income side relating to income earned from providing manpower supply service that matches with the amount involved in the present case. For any activity to be covered under 'service' in terms of Section 65B(44) of the Act reproduced *supra*, it is important to bring on record that such activity was performed for a consideration. In the present case, as discussed above, the Appellant had made salary payment to staff of their group companies which were subsequently reimbursed by their group companies. Such reimbursement cannot be called consideration in lieu of provision of service, by any stretch of imagination. I rely on the Order passed by the Hon'ble CESTAT, Mumbai in the case of Cricket Club Of India Ltd. reported as 2015 (40) S.T.R. 973 (Tri. - Mumbai), wherein it has been held that,

“10. Chapter V of Finance Act, 1994 is intended to tax services. The relevant charging section, therefore, cannot and should not be read beyond the transaction that is intended to be taxed. Plainly expressed, only services can be taxed. Habituated to tax on tangible goods, the concept of tax on services may not be easily appreciated for the very reason of its intangibility. The form of the transaction not being apparent until its benefit is perceived in the hands of the recipient and signified by readiness to recompense the provider, the tendency to seize upon the tangibility of the flow of compensation to presume the existence of a service becomes irresistible. And that is when the tax determination exceeds legislative intent.

11. Owing to its inherent intangibility, a service transaction becomes recognizable only if a benefit accrues to a recipient and that explains the use of the phrase “provided or agreed to be provided” to determine taxability. It is taxable only if and when any, or a particular, service is rendered to a recipient. Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. Without an identified recipient who compensates the identified provider with appropriate consideration, a service cannot be held to have been provided. In a taxation scheme that specifies the particular targets of taxation, tax liability will arise when a provider conforming to the relevant description in the charging section performs an activity that conforms to the relevant description in the charging section on the request, and for the benefit, of a recipient conforming to the relevant description in the charging section. Service, its taxability and the provision of the taxable service to a recipient, in that order, are necessary pre-requisites to ascertaining the quantum of consideration on which *ad valorem* tax will be levied. This fundamental will not alter in the scheme of the negative list too; a service that is clearly identifiable has to be provided or agreed to be provided before it can be taxed. The factual matrix of the existence of a monetary flow





combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.

12. For that very reason, mere capacity to deliver a service cannot be equated with providing or agreeing to provide a service; such service has to reach the recipient in exchange for the consideration or the consideration is made over in exchange for a schedule of delivery of the service. In a combined human activity, contribution of, or agreement to contribute, funds cannot, therefore, be construed as consideration to be taxed under Finance Act, 1994 unless attributable to an activity or performance or promise thereof on the part of an identified provider to an identified recipient. Unless the existence of provision of a service can be established, the question of taxing an attendant monetary transaction will not arise. Contributions for the discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectives will not meet the criteria of taxation under Finance Act, 1994 in the absence of identifiable service that benefits an identified individual or individuals who make the contribution in return for the benefit so derived.”

(Emphasis supplied)

9. The Appellant has pleaded that most of the staff to whom salary was paid by them on behalf of their group companies after December, 2016 were on the pay roll of respective group of companies during the period from December, 2016 to March, 2017 and even prior to December, 2016 evident from the salary sheets of the respective group company for the above period. I have also gone through salary sheets of Barge Staff of M/s Shreeji Shipping, one of the group companies of the Appellant for the period prior to and after December, 2016 and found that most of the staff are same. Thus, inference can be drawn that staff to whom salary payment was made by the Appellant during January, 2017 to March, 2017 on behalf of their group companies were already on payroll of respective group companies prior to December, 2016 and the Appellant had not provided any service relating to manpower supply.

10. I find that the Appellant has also relied upon Port Entry pass issued by port authorities where said staff of respective group companies were working, which mentioned name of Appellant's group company as their employer. I find that the Appellant had relied during adjudication proceedings but the same was discarded by the adjudicating authority on the grounds that the entry passes were valid only upto 31.12.2016 and period involved in the matter was January, 2017 to March, 2017. I have gone through the said 'Port Entry Pass' available on record. I find that validity of pass was extended upto 31.12.2017. The adjudicating authority failed to observe this and erroneously discarded it.



11. After analyzing the documents available on records as well as evidence relied upon in the impugned order, I am of the opinion that the entire proceedings were ill-conceived inasmuch as demand was raised on the basis of invoices which were issued by the Appellant on their group companies for recovery of salary payment made to staff of group companies on reimbursement basis. Apart from these invoices, the adjudicating authority has failed to adduce any other documentary evidence to prove that the Appellant had rendered manpower supply service so as to make them liable to pay service tax. However, there are evidences available on record which suggest that the Appellant had not rendered any service viz. the said invoice amounts were not booked under Profit and Loss Account but appearing in ledger 'Reimbursement of Salary' of the Appellant, salary sheets of the employees indicating that they were on payroll of their group companies, Gate pass issued by Port authorities wherein it is shown that Appellant's group company were employer of the staff in question. All these evidences suggest that the Appellant had not provided any service relating to supply of manpower to their group company and invoices under dispute were issued for accounting purpose for subsequent reimbursement.

12. In view of above discussion, I hold that the confirmation of service tax demand of Rs. 52,35,362/- is not sustainable and required to be set aside and I do so. Since, demand is set aside, recovery of interest under Section 75 and imposition of penalty under Sections 77 and 78 are also set aside.

13. I set aside the impugned order and allow the appeal.

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

14. The appeal filed by the Appellant is disposed off as above.

*Shah*  
(GOPI NATH) 28/8/2020  
Commissioner(Appeals)

Attested

*V.T. Shah*

(V.T.SHAH)

Superintendent(Appeals)



By R.P.A.D.

To, M/s Shreeji Shipping Services (India) Ltd, Grain Market, Khand Bazar, Jamnagar.	सेवा में, मे. श्रीजी शिपिंग सर्विसेस (इंडिया) लिमिटेड, ग्राइन मार्केट, खंड बाजार, जामनगर ।
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प्रतिलिपि:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

