



::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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/8/EA2/RAJ/2017	मूल आदेश सं / O.I.O. No. 122/ADC/FV/2016-17	दिनांक / Date 06/02/2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-110-2018-19**

आदेश का दिनांक / Date of Order:	<b>31.05.2018</b>	जारी करने की तारीख / Date of issue:	<b>06.06.2018</b>
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Passed by **Shri Chandrakant Valvi, Commissioner**, Central GST & Excise, Bhavnagar

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री चन्द्रकान्त वलवी, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, भावनगर 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 Chandrakant Valvi, Commissioner, Central GST & Excise, Bhavnagar 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. Senor Metals P. Ltd. Plot No. 353, GIDC-II Dared, Jamnagar.**

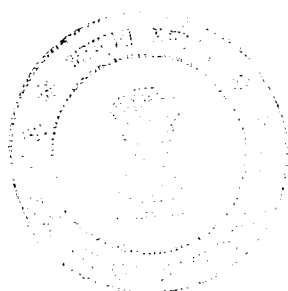
इस आदेश(अपील) से व्याथेत कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(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 असारवा अहमदाबाद- 380016 को की जानी चाहिए।/  
In all matters other than those mentioned in para- 1(a) above, appeals shall be filed to the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa 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) 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 नियमावली, 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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 नियमावली, 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 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 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.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) 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 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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली 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

- 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 (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन 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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 इयूटी 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 समायाविधि 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 हैं, 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। /

जहां 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, उपरोक्त 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 केंद्रीय 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-I 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.

(F) 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.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbcc.gov.in](http://www.cbcc.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.cbcc.gov.in](http://www.cbcc.gov.in)



**:: ORDER IN APPEAL ::**

The Principal Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as "the Appellant-Department") has filed the present appeal against Order-in-Original No. 122/ADC/PV/2016-17 dated 06-02-2017 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise & Service Tax, Headquarters, Rajkot (hereinafter referred to as "the lower adjudicating authority") in the case of M/s. Senor Metals Pvt. Ltd., Plot No. 353, GIDC-II, Dared, Jamnagar (hereinafter referred to as "the Respondent").

2. Briefly stated facts of the case are that the respondent was engaged in manufacturing of excisable goods viz. Brass Rods, Billets, Electric Parts, Electric Meter Parts under Chapter No.74,84, 85 & 90 falling under First Schedule to the Central Excise Tariff Act 1985. During the course of audit, of the records of the Respondent, for the period 2013-14 to 2014-15, it was observed that the respondent had made certain payments to Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari and not paid service tax thereon. The said observation culminated into the SCN No. V.CE/15-46/Audit-III/ADC-32/2015-2016 dated 04.02.2016 by the Additional Commissioner, Central Excise, Audit-III, Rajkot to the Respondent, wherein Service Tax amounting to Rs. 22,63,747/- alongwith interest and penalty proposed to be confirmed. The said SCN No. V.CE/15-46/Audit-III/ADC-32/2015-2016 dated 04.02.2016 adjudicated vide the impugned order by the lower adjudicating authority, wherein the lower adjudicating authority had set aside the proceedings initiated vide the SCN No. V.CE/15-46/Audit-III/ADC-32/2015-2016 dated 04.02.2016.

3. Being aggrieved with the impugned order, the department preferred the present appeal, inter-alia, on the grounds that Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari were engaged in providing the manpower for carrying out specific task in the factory premises of the Respondent; that the Respondent had received labour / job-work bills for the respective contracts, on monthly basis; that with effect from 01-07-2012, all services, except those specified in negative list under section 66D of the Finance Act, 1994 or exempted otherwise is taxable under Section 66B of the Finance Act, 1994; that in view of the Notification No. 30/2012-ST dated 20-06-2012 and Section 65(68) of the Finance Act, 1994, the services provided by Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari to the Respondents falls within the definition of "Manpower Recruitment or Supply Agency Services" and accordingly the Respondent was required to pay 75 % of the Service Tax under the category of "Manpower Recruitment or Supply

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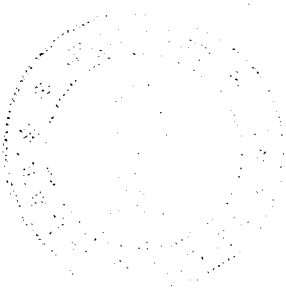
Agency Services”; that the lower adjudicating authority has not observed the instruction No. B1/6/2005-TRU dated 27-07-2005 and Circular No. 96/7/2007-ST dated 23-08-2007; that the lower adjudicating authority has not undergone with the contracts entered into with the Respondent; that the lower adjudicating authority has erred in holding that “...as far as period from July, 2012 is concerned, Section 66D(f) of the Finance Act, 1994 specifically excludes the services provided by way of carrying out any process amounting to manufacture or production of goods; that in the instant case, the service provided is in the nature of production of billets and hence it is outside the purview of the service tax; that thus, there exists no legal ground to uphold the demand of Service Tax for the period from July-2012 onwards...”; that in the instant case, the activity undertaken by the Respondent did not affects its excisability, as the basic characteristics of the goods remain same and therefore the same could not be regarded as intermediate production process and exemption as granted is not available to the Respondent; that they rely on the case laws viz. (i) Renu Singh & Co. v/s. CCE, Hyderabad reported at 2007(7) STR 397 (Tri. Bang) (ii) K. K. Appachan v/s. CCE, Palakkad reported at 2007(7) STR 230 (Tri. Bang) (iii) J & J Enterprise v/s. CCE, Raipur reported at 2006(3) STR 655 (Tri.-Del.) (iv) Janardhan Tukaram Thorat reported at 2010 (19) STR 148 (Commr. Appeal, Pune-II); that the service provider of the Respondent i.e. Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari were also served Show Cause Notices by the Department, which was decided vide OIO No. DC/JAM/ST/18/15-16 dated 29-01-2016 and DC/JAM/ST/23/2015-16 dated 29-01-2016, wherein the demands of Service Tax were also confirmed; that the Commissioner (Appeals-III), Central Excise Rajkot vide OIA No. RAJ-EXCUS-000-117 to 126-16-17 dated 23-12-2016 in case of the identical appeals also held that the appellants were liable to pay the Service Tax under the category of “Supply of Manpower Recruitment or Supply Agency Services”; that thus, the service provider of the Respondent i.e. Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari are required to pay 25 % of the Service Tax payable and the Respondent is required to pay 75 % of the Service Tax payable on the services of “Supply of Manpower Recruitment or Supply Agency Services”.

4. The Respondent has filed Memorandum of Cross Objections on 21-02-2018 and contended their case on the following grounds: -

- (i) that as per the agreements dated 31.01.2002 and 02.07.2004 with Shri Rajendra Tiwari and Shri Dayanand Mishra, respectively, (viz. job-workers’), were providing services of manufacturing of brass billets / rods / wires / tubes to the respondent, wherein, brass scrap / semi-finished goods were provided by the respondent and the job-workers used to manufacture brass billets / rods / wires / tubes by way of casting / machining;

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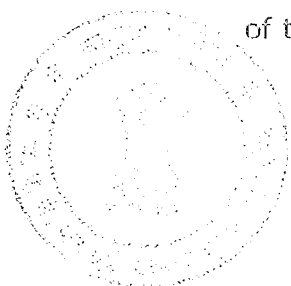
- (ii) that the respondent was obliged to pay the job-workers, their consideration, based on 'quantum of work' performed by them i.e. the 'job-workers' and provide copies of sample invoices issued by the job-workers.
- (iii) that the copies of relevant agreements with the job-workers as well as copies of invoices of the job-workers were also provided to the lower adjudicating authority during filing of the defence reply.
- (iv) that as per the terms of the agreements, the job-workers carried out the work employing their own manpower and the said 'manpower' was working under the superintendence and control of the job-workers only.
- (v) that they refer to the definition of 'supply of manpower', as provided u/r 2(1)(g) of Service Tax Rules, 1994 according to which, "supply of manpower' means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control".
- (vi) that since the manpower were working under the superintendence or control of the job-workers, the same didn't fall under the definition of 'supply of manpower' and therefore, the provisions of section 68 of the Act read with rule 2(1)(d)(i)(F) of Service Tax Rules, 1994 and notification no. 30/2012-ST dated 20.06.2012 were not at all attracted in the present case
- (vii) that the services received by the respondent were in the nature of 'process amounting to manufacture or production of goods' and covered in the 'negative list', the proposed demand was without authority of law.
- (viii) that in following similarly placed judicial pronouncements, it has been held that the services provided by the job-worker to the respondent cannot be called 'supply of manpower' and therefore not liable to service tax;
- Rameshchandra C. Patel V/s. CST, Ahmedabad reported at 2012 (25) S.T.R. 471 (Tri. - Ahmd.)
  - K. Damodarareddy Vs. CCE, Tirupathi reported at 2010 (19) S.T.R. 593 (Tri. - Bang.)
  - Ritesh Enterprise V/s. CCE, Bangalore reported at 2010 (18) S.T.R. 17 (Tri. - Bang.)
  - Divya Enterprises V/s. CCE, Mangalore reported at 2010 (19) S.T.R. 370 (Tri. - Bang.)



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- (ix) that the board's circular dated 15.12.2015 have categorically clarified that in a situation like the present one, the levy of service tax under the category of 'supply of manpower' will not be attracted;
- (x) that the show cause notice has been issued based on taxable value of Rs. 2,44,20,140/-, whereas, the respondent had availed services of Rs. 2,21,13,879/- only;
- (xi) that based on the above relevant legal provisions, judicial pronouncements and board's circular, the learned adjudicating authority had dropped the demand vide the impugned order.
- (xii) that the present appeal filed by the department on the ground that the adjudicating authority has not undertaken the careful scrutiny of the subject agreement; that the adjudicating authority have not followed the board's instructions given vide circular no. B1/6/2005-TRU dated 27.07.2005 and circular no. 96/7/2007-ST dated 23.08.2007; that corresponding notices issued to the job-workers for recovery of service tax on 25% value of taxable services were confirmed vide OIO no. DC/JAM/ST/18/15-16 dated 29.01.2016 and OIO no. DC/JAM/ST/23/15-16 dated 29.01.2016 by the Deputy Commissioner, Central Excise & Service Tax Division, Jamnagar; that in an identical case the erstwhile Commissioner (A) have upheld the demand; that in number of identical cases, the tribunals while deciding the taxability of services under the category of 'cargo handling services' have held that such services would fall under the category of 'manpower recruitment or supply agency services'.
- (xiii) that as far as first departmental ground, that the adjudicating authority have not properly scrutinised the subject agreement, is concerned, the respondent submits that the learned adjudicating authority, after scrutinising the subject agreement and copies of invoices, at para 15.2 to 15.6, have categorically held that the job-workers have undertaken the job-work of manufacturing the final products for the respondent and such services are in the nature of 'business auxiliary services' and not in the nature of 'manpower recruitment or supply agency services'.
- (xiv) That the adjudicating authority, at para 15.7, have also categorically held that the manpower employed by the job-workers were working under their control and direction and the respondent were in no-way concerned with them therefore, the job-workers have not provided services of 'supply of manpower' to the respondent. Thus, in view of above categorical findings of the adjudicating authority, the respondent submits that the said ground





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of the present departmental appeal is devoid of any merits and therefore required to be dismissed.

- (xv) that with regard to the second ground of the departmental appeal about not following circular dated 27.07.2005 and 23.08.2007 by the adjudicating authority, the respondent submits that the same have been discussed by the adjudicating authority at para 15.5 of the impugned order and it has been held by him that in the present case there is no relevance of the said circular since there is no 'supply of manpower'; that the above board's circulars have also been considered by the Hon'ble Tribunals in above referred judicial pronouncements wherein, the tribunals have categorically held that in a situation like the present one where the contract is for 'execution of certain job / work', the above referred circulars have no applicability. Thus, the said ground of the present departmental appeal is devoid of any merits and therefore required to be dismissed.
- (xvi) that with regard to the third ground of the departmental appeal, about notices issued to job-workers for demanding service tax on balance 25% value of taxable services and their confirmation vide OIO no. DC/JAM/ST/18/15-16 dated 29.01.2016 and OIO no. DC/JAM/ST/23/15-16 dated 29.01.2016 by the Deputy Commissioner, Central Excise & Service Tax Division, Jamnagar, the respondent submits that the same is completely untrue and therefore untenable in law in as much as no show cause notices were ever issued to the said two job-workers for recovery of service tax on 25% value of taxable services for the period April, 2013 to March, 2015; that the so called OIO No. DC/JAM/ST/18/15-16 dated 29.01.2016 pertains to services provided by Shri Dayanand Mishra during the period July, 2012 to March, 2013 and OIO no. DC/JAM/ST/23/15-16 dated 29.01.2016 pertains to services provided by Shri Rajendra Tiwari during the period November, 2010 to September, 2011. Thus, the said ground of the present departmental appeal is devoid of any merits and therefore required to be dismissed.
- (xvii) that with regard to the fourth ground of the departmental appeal about order of erstwhile Commissioner (A) in an identical case, the respondent submits that the honourable erstwhile Commissioner (A), while deciding the case, didn't consider board's circular no. 190/9/2015-ST dated 15.12.2015 in the matter and therefore the said order has no judicial value / applicability in the present case.

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- (xviii) that with regard to the fifth ground of the departmental appeal, wherein, certain judgments of the honourable tribunals have been relied upon by the department, the respondent submits that the same are not at all applicable in the present case since all these judgments are on different facts and talks about levy of service tax under the taxable category of 'cargo handling services' and not 'manpower recruitment or supply agency services'.
- (xix) that the learned adjudicating authority passed the impugned order relying upon board's circular no. 190/9/2015-ST dated 15.12.2015 (refer Exhibit - 'G' supra) (refer para 15.9 to 15.11 of the impugned order), however, the present departmental appeal have not at all challenged the said findings and therefore, the present departmental appeal is required to be dismissed on this count itself.
- (xx) that the board's circular dated 15.12.2015 is squarely applicable in the present case and therefore the present departmental appeal is untenable in law.

5. Personal hearing in the matter was fixed on 21-02-2018, which was attended by Shri Dinesh Kumar Jain, Chartered Accountant on behalf of the Respondent, who submitted Memorandum of Cross Objections and reiterated the grounds raised in the cross objections, and further requested to dismiss the appeal filed by the Appellant-Department.

FINDINGS:

6. I have carefully gone through the facts of the case, impugned order, grounds of appeal filed by the Department, Memorandum of Cross objections filed by the respondent and submissions made by the respondent during personal hearing as well as comments on Memorandum of Cross objections submitted by the department. The issue to be decided in the present appeal is that whether the impugned order passed by the lower adjudicating authority is legal and correct or otherwise in the backdrop of the circumstances as to whether the services received by the Respondent are covered under the category of "Manpower Recruitment or Supply Agency Services" or otherwise.

7. To appreciate the issue better I have gone through the definition of "Manpower Recruitment or Supply Agency Service" as provided under Section 65(68) of the Finance Act, 1994, which reads as under :-

Section 65 (68) of the Finance Act, 1994 defines "Manpower Recruitment or Supply Agency Service" as:

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"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".

7.1 Alongwith the above mentioned definition, I have also gone through the agreements entered into by the Respondents with Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari. The relevant excerpts of the agreement entered with Shri Dayanand Jagdishnarayan Mishra by the Respondent is as under:

*I, Dayanand Jagdishnarayan Mishra, Jamnagar do hereby execute this agreement in favour of M/s. Senor Metals Private Limited, Jamnagar and bind myself that, this agreement of contract in writing to do process work of the company .....*

*Conditions of Contract*

- (1) ....
- (2) *All the labour engaged in this will be treated as my (i.e. contractor Dayanand Jagdishnarayan) labour and recruitment of person as per requirement of contract i.e. to appoint in service to be done by me and there will be no responsibility of the company for the same and as master I can keep them or relieved them as I wish and at any time and entire responsibility will be of me and there will be no liability of the company because this worker will be treated as my person and any industrial dispute will be arise regarding keeping service ad to relieved them, then as owner / master all responsibility will be mine*
- (3) ...
- (4) *It will be my responsibility of executor contractor for the instruments required to be for process, to be taken out from the store and after work is over said instruments to be credited in to the store and it will be also mine responsibility (of contractor) to clean the process department as per necessity and to clean the workshed completely once in a week*
- (4) *The executor contractor to prepare the ready materials and for said ready materials after deduction of rejected, whatever will be net weight seize and grade will be, as per rate kept along with the annexure, executor contract to prepared the bill (in duplicate) and to be submitted to the company (management) before third date of each month,*

7.2 The relevant excerpts of the contract entered with Shri Rajendra Prasad Tiwari with the Respondent and its relevant excerpts are as under:

*I, Executor Contractor, Rajendraprasad Tiwari, ..... execute this contract agreement in favour of M/s. Senor Metals Private Limited.....for doing work of casting of company on following conditions on labour basis.....*

*Conditions of Agreement*

- (1) ....
- (2) *The raw-materials which will be provided should be melted in the furnace as said and Rod to be prepared as per instructions of the company*
- (3) *Labor rates will be Rs. 0.80 per Kilogram nett.*
- (4) *All the labour engaged in this will be treated as my labour and recruitment of person as per requirement of contract i.e. to appoint in service to be done by me and there will be no liability of company due to any industrial dispute will be arise regarding keeping in service and to relieved them, then as owner / master all responsibility will be myself...*

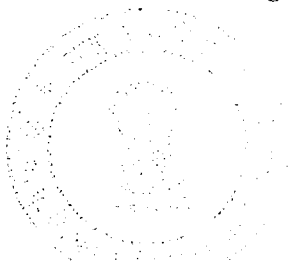
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7.3 On going through the conditions of the contract entered into with Shri Dayanand Jagdishnarayan Mishra, it is forthcoming that it is for job work to be done by the contractor at the premises of the Respondent and the rates are to be charged as per the quantity of the goods manufactured. It is also noticed that in the entire contract there is no mention about the supply of Labour. It is also noticed that at Clause 2 of the contract clearly stipulates that all labour needed for carrying out the agreed job will be hired by Shri Dayanand Jagdishnarayan Mishra and the Respondent is indemnified by him from all labour related issues that may arise. Further, on going through the invoices raised by Shri Dayanand Jagdishnarayan Mishra, it is evident that the invoices were raised for Job work bill for per Kilogram basis and not per person basis.

7.4 On going through the conditions of the contract/agreement entered into with Shri Rajendra Prasad Tiwari, it is forthcoming that it is also for job work for casting to be done by the contractor at the premises of the Respondent and the rates are to be charged as per the quantity of the goods manufactured. On going through the Clause 4 of the contract, it clearly stipulated that all labour needed for carrying out the agreed job will be hired by Shri Rajendra Prasad Tiwari and the Respondent is indemnified by him from all labour related issues that may arise. Thus, it is held that if there was a supply of labour then, there was not need for Shri Rajendra Prasad Tiwari to indemnify the Respondent, as the labour were employed by the Respondent and therefore all responsibility relating to them will be naturally of the Respondent only. However, in the instant case all responsibility were casted upon Shri Rajendra Prasad Tiwari. Further, on going through the invoices raised by Shri Rajendra Prasad Tiwari, it is evident that the invoices were raised for Job work bill for per Kilogram basis and not per person basis.

7.5 In view of above, it is evident that the Respondent has got executed a particular job for which specific rate has been fixed for labour charge. The Respondent has also produced sample copy of invoices with the Cross Objection filed by them and on scrutiny of the same, it revealed that it has Title reading 'Job Work Bill' and in the description part various details of job work material described and rate is given per Kilogram at the rate ranging from 1.15 to 5.00 for different job work items. It is evident that the invoice raised on per Kg basis and payment also reimbursed on per KG basis.

7.6 It is also noticed that the essence of the agreements entered into by the Respondent was execution of work as per contract on per Kilo basis, and invoices and the agreement was not for utilization of services of an individual. Hon'ble



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tribunal in catena of judgments has allowed the appeals on the ground that the execution of lump-sum work or job not covered under 'Manpower recruitment or supply agency service'.

- (i) *Ritesh Enterprises 2010 (18) STR 17 (Tri-Bang)*,
- (ii) *K Damodarareddy Vs Customs and Central Excise, Tirupathi 2010 (19) STR 593 (Tri-Bang)*
- (iii) *Divya Enterprises Vs Customs and Central Excise Mangalore, 2010(19) STR 370 (Tri-Bang)*.
- (iv) *SS Associates Vs CCE, Bangalore 2010(19) STR 438 (Tri-Bang)*

7.7 I also rely on the Hon'ble Apex Court's decision in case of Super Poly Fabrics Ltd Vs CCE Punjab 2008 (10) STR 545 (SC) in para 8 has laid down the ratio which is as under:

*"There can not 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 the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive."*

7.8 The ratio of the Hon'ble Apex Court's decision 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 of the parties. Applying the ratio to the present case, after careful consideration of the agreements and invoices, I hold that the entire tenor of the agreements entered into with the Respondent and the invoices received by the Respondent, clearly indicates the execution of a job work fixed rate per Kilo basis and accordingly, I hold that the same would not fall under the category of providing service of 'Manpower Recruitment or Supply Agency Service'.

8. The Respondent in their defence have relied upon the following decisions in support of their claim that the activities done by them would not fall under the category of 'Manpower Recruitment or Supply Agency Service':

- *Rameshchandra C. Patel V/s. CST, Ahmedabad reported at 2012 (25) S.T.R. 471 (Tri. - Ahmd.)*
- *K. Damodarareddy Vs. CCE, Tirupathi reported at 2010 (19) S.T.R. 593 (Tri. - Bang.)*
- *Ritesh Enterprise V/s. CCE, Bangalore reported at 2010 (18) S.T.R. 17 (Tri. - Bang.)*
- *Divya Enterprises V/s. CCE, Mangalore reported at 2010 (19) S.T.R. 370 (Tri. - Bang.)*

8.1 In the all the above cases, while allowing the appeal of the various parties, the Hon'ble Tribunal has held that the contract which has been given to the

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appellants is for the execution of the work of loading, unloading, bagging, stacking destacking etc. and there is no whisper of supply of manpower. The Tribunal has also held that as can be seen from the contracts and the invoices issued by the appellants that the entire essence of the contract was an execution of work as understood by the appellant and the recipient of the service and there is no agreement for utilization of services of an individual but a job/lump-sum work given to the appellants for execution. The Tribunal has also held that the clarification issued by the Board at clause 010.02 of Master Circular dated 23.08.2007 would be appropriate in the case where services of man power recruitment & supply agency, had been temporarily taken by the Business or the industrial association for supplying of manpower and may/may not be for execution of a specific work.

8.2 In view of supra, I held that all the above cited case laws are squarely applicable, as the facts of all these cases are akin to the present case. In the present case also, the Respondent had entered into an agreement for job work, as per the instruction of the Respondent. The Respondent has not received any manpower by charging for the labour provided on man-day basis or man-hour basis. The Respondent have only get carried out a specific task of job-work required for their final product on per Kilo basis and for that the Respondent had paid the job work charges @ per Kilogram, at various rates which also changed from time to time. Hence, on this count, I am of the considered opinion that this activity is not classifiable under services of 'Manpower Recruitment or Supply Agency Service'.

8.3 It is noticed that the Appellant-Department has filed the present appeal on the ground that the lower adjudicating authority has not undertaken the careful scrutiny of the subject agreement. In this regard, on going through the impugned order, it is noticed that the lower adjudicating authority has in depth scrutinized the agreements and copies of invoices and also discuss the same in length at para 15.2 to 15.6 of the impugned order and has categorically held that the job-workers have undertaken the job-work of manufacturing the final products for the respondent and such services are in the nature of 'business auxiliary services' and not in the nature of 'manpower recruitment or supply agency services'. It is also noticed that at para 15.7 of the impugned order, the lower adjudicating authority has categorically held that the manpower employed by the job-workers were working under their control and direction and the respondent were in no-way concerned with them therefore, the job-workers have not provided services of 'supply of manpower' to the respondent. Thus, in view of above categorical findings of the lower adjudicating authority, I hold that the lower adjudicating authority has correctly scrutinized the agreements and copies of invoices and also correctly held

that the services received by the Respondent are not classifiable under services of 'Manpower Recruitment or Supply Agency Service'.

8.4 The Appellant-Department has also contended that the lower adjudicating authority has not observed the instruction of Board's Circular No. B1/6/2005-TRU dated 27.07.2005 and Circular No. 96/7/2007-ST dated 23.08.2007. In this regard, on going through the impugned order, it is noticed that the lower adjudicating authority has discussed the applicability of same at para 15.5 of the impugned order and it has been held by the lower adjudicating authority that in the present case there is no relevance of the said circular since there is no 'supply of manpower'. Further, it is also noticed that the above board's circulars have also been considered by the Hon'ble Tribunals in above judicial pronouncements as mentioned at para 8 below, wherein, the Tribunals have also categorically held that in a situation like the present one where the contract is for 'execution of certain job / work', the above referred circulars have no applicability.

8.5 The Appellant-Department has also contended that the lower adjudicating authority has not observed that show cause notices were also issued to job-workers for demanding service tax on balance 25% value of taxable services, which were confirmed vide OIO No. DC/JAM/ST/18/15-16 dated 29.01.2016 and OIO No. DC/JAM/ST/23/15-16 dated 29.01.2016 by the Deputy Commissioner, Central Excise & Service Tax Division, Jamnagar. I find that the period covered under the present issue is April, 2013 to March, 2015. Whereas, the so called OIO No. DC/JAM/ST/18/15-16 dated 29.01.2016 pertains to services provided by Shri Dayanand Mishra during the period July, 2012 to March, 2013 and OIO No. DC/JAM/ST/23/15-16 dated 29.01.2016 pertains to services provided by Shri Rajendra Tiwari during the period November, 2010 to September, 2011. Thus, the impact of the order issued for very same job workers, for the different period, other than the covered under the present issue, could not be made applicable. Further, it is also noticed that while deciding the said cases, the respective adjudicating authorities have not considered the instructions issue vide the Board's Circular No. 190/9/2015-ST dated 15.12.2015.

8.6 It is noticed that the Appellant-Department has relied on the various judicial pronouncements, which are as under :-

- (i) Renu Singh & Co. v/s. CCE, Hyderabad reported at 2007(7) STR 397 (Tri. Bang)
- (ii) K. K. Appachan v/s. CCE, Palakkad reported at 2007(7) STR 230 (Tri. Bang)

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- (iii) J & J Enterprise v/s. CCE, Raipur reported at 2006(3) STR 655 (Tri.-Del.)
- (iv) Janardhan Tukaram Thorat reported at 2010 (19) STR 148 (Commr. Appeal, Pune-II)

8.7 On going through the above judicial pronouncements, it is noticed that the said case is pertaining to cargo handling, packing, loading unloading of the cargo and services provided through vehicles, trucks etc. Whereas, in the instant case, the work pertaining to job-work having nexus with the manufacturing activity of the Respondent carried out on per Kilo basis. All these judgments are on different facts and talks about levy of service tax under the taxable category of 'cargo handling services' and not 'Manpower Recruitment or Supply Agency Services'. Thus, all the judicial pronouncement relied by the Appellant-Department are not squarely applicable to the present case.

9. Further, it is also noticed that the lower adjudicating authority passed the impugned order relying upon Board's Circular no. 190/9/2015-ST dated 15.12.2015. The lower adjudicating authority at para number 15.9 to 15.11 has discussed the same in length. It is noticed that all the dispute has already been settled by the Board by issuance of Circular No: 190/9/2015-Service Tax dated 15-12-2015, which is reproduced below for ready reference:

Circular No. 190/9/2015-S.T., dated 15-12-2015  
F. No. 354/153/2014-TRU

Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi

*Subject : Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments - Regarding.*

*It has come to the notice of the Board that certain field formations are taking a view that service tax is payable on services received by the apparel exporters from third party for job work. Apparently field formations are taking a view that the services received by apparel exporters is of manpower supply, which neither falls under the negative list nor is specifically exempt. However, trade is of the view that the services received by them is of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [section 66D(f)] and hence would not attract service tax.*

*2. The matter has been examined. The nature of manpower supply service is quite distinct 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 value 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.***

*2.1 On the other hand, the essential characteristics of job*



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work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

3. Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided. A typical agreement that has been forwarded by the Apparel Export Promotion Council in respect of outsourced services contains following terms and condition,-

- a. The contractor (service provider) is engaged for undertaking specific jobs.
- b. The contractor is at liberty to decide the number of workers which are required for undertaking the jobs.
- c. The job worker may undertake job in his premises or in the premises of service receiver;
- d. Value of service is payable on per piece basis, depending upon item and style;
- e. Service provider is liable to compensate the service recipient if the work is not as per the standard norm;
- f. In case the work is executed by service provider at the site of service recipient, the service provider would indemnify the service receiver of any loss to inputs and infrastructure.
- g. The employee deployed for the assigned job would be under the control/supervision of the service provider.
- h. Payment would be at agreed piece rate basis.

Plain reading of this agreement makes it an agreement of job work applying the criterion outline in para 2 above.

4. However, every job work is not covered under the negative list. If the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, it would be covered under negative list in terms of Section 66D(f) read with section 65B(40) of the Finance Act, 1994.

9.1 It is noticed that though the clarification given by Board is pertaining to the garment industry, however, the basic facts of the dispute on hand stands clarified as in this case, there is contract to carry out specific job and the contractor is at liberty to decide the number of workers required to carry out the job. Further, the value of services is payable on per Kilogram basis and the employees deployed for job-work were under the control of service provider i.e. Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari of the Respondent. Further, the goods resulting out of job-work were not subject to Central Excise duty as the same have been manufactured in the premises of the Respondent and the Respondent were liable to pay Central Excise duty thereon. It is noticed that in respect of some past cases of very same service provider, the demands were confirmed, however I find that at that time the Circular No: 190/9/2015-Service Tax

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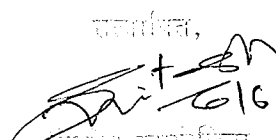
dated 15-12-2015 was not in existence which is now available. Further, it is noticed that the Appellant-Department has not discussed the Circular No: 190/9/2015-Service Tax dated 15-12-2015 in their grounds of appeal. Therefore, I hold that the services received by the Respondent from Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari is not classifiable under the category of "Manpower Recruitment or Supply Agency Services".

9.2 In light of the above facts, legality, discussion and findings hereinabove, I find that the services received by the Respondent from Shri Dayanand Jagdishnarayan Mishra and Shri Rajendra Prasad Tiwari is not classifiable under the category of "Manpower Recruitment or Supply Agency Services" and therefore I do not see any reason to interfere with the impugned order passed by the lower adjudicating authority.

10. In view of above facts and circumstances, I uphold the impugned order passed by the lower adjudicating authority and reject the appeal filed by the Appellant-Department.

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

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

उत्पादक,  
  
 अधिकारी, उत्पादक  
 अर्थशास्त्र (अहमदाबाद)

(11)  
 (93)  
 (चंद्रकान्त वलवी)  
 आयुक्त

By Regd. Post AD

To

The Principal Commissioner, Central GST ( Central Excise), "Central Excise Bhavan", Race Course Ring Road, Rajkot	प्रिंसिपल आयुक्त केंद्रीय वस्तु एवं सेवा कर ( केंद्रीय उत्पाद शुल्क), " सेंट्रल एक्साइज भवन " रेस कोर्स रिंग रोड, राजकोट
M/s. Senor Metals Pvt. Ltd., Plot No. 353, GIDC-II, Dared, Jamnagar	मेसर्स सेनोर मेटल्स प्राइवेट लिमिटेड, प्लॉट नं. ३५३, जी.आइ.डी.सी.-II, दरेड, जामनगर

Copy to: -

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
  2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
  3. The Additional Commissioner, GST & Central Excise, Rajkot .
  4. The Deputy Commissioner, GST & Central Excise Division, Jamnagar
- Guard File.