



::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  
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रजिस्टर्ड डाक ए.डी.द्वारा:-DIN-20211064SX000000CAB1

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/2 /RAJ/2021	05/AC/MUNDRA/2020-21	17-09-2020

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

**KCH-EXCUS-000-APP-255-2021**

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:
29.10.2021	03.11.2021

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Akhilesh Kumar, 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. Momay Labour Contractor, Proprietor: Bharatsinh Jadeja, C/o Bhatiyani Enterprise, N.No.209,  
Navapura Near Darbargadh, Mandvi Dist: Kutchh- 370465**

इस आदेश (अपील) से अप्पिच 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 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) नियमबली, 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 रजिस्ट्रार 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। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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 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 नियमबली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 रजिस्ट्रार 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। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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 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) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की 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 (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विन्तीय 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 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 इस करोड़ रुपए में अधिक न हो।

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

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

- बशर्ते यह कि इन धारा के प्रावधान विन्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे। /

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 कोपुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, विन 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 मान 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 छूट (रिवेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OI/O 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 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.
- (D) यदि इन 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 निचा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act,1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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.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 ::**

The present appeal has been filed by M/s. Momai Labour Contractor, Proprietor: Shri Bharatsinh Jadeja, Village: Merau, Taluka: Mandvi, District - Kutch (hereinafter referred to as "appellant") against Order-In-Original No. 05/AC/MUNDRA/20-21 dated 17.09.2020 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central Goods and Service Tax, Mundra Division, Gandhidham-Kutch (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that during the course of audit of records of M/s. Ashapura International Ltd., Madhapar, Bhuj (Kutch), it was found that the Appellant had rendered taxable services under the category of manpower recruitment and supply service from F.Y. 2008-09 to F.Y. 2013-14 to M/s. Ashapura International Ltd., Madhapar, Bhuj (Kutch) without getting Service Tax registration and had not discharged Service Tax. The audit officers found that the appellant had received a consideration of Rs. 3,48,88.853/- during the period in question from M/s Ashapura as per Form 26AS of the appellant and service tax liability was determined on the basis of Best Judgement Assessment under Section 72 of the Finance Act, 1994 at Rs. 33,21,697/-.

2.1. Subsequently, Show Cause Notice No. V.ST/AR-IV/GDM/ADC/28/2014-15 dated 21.04.2014 was issued to the Appellant proposing demand and recovery of Service Tax amount of Rs. 33,21,697/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "Act") along with interest under Section 75 *ibid* and proposing imposition of penalties under Sections 76,77 and 78 of the Act and recovery of late fee for non filing of ST-3 returns under Section 70 of the Act.

2.2. The above Show Cause Notice was adjudicated vide the impugned order dated 17.09.2020, which confirmed Service Tax demand of Rs. 33,21,697/- under Section 73(1) of the Act along with interest under Section 75 *ibid* and penalty of Rs. 10,000/- was imposed under Section 77, penalty of Rs. 33,21,697/- under Section 78 and late fee as prescribed under Section 70 of the Act was also imposed.

3.1 Being aggrieved with the impugned order, the Appellant has preferred present appeal on the following grounds:-



- 1) The appellant had done job work of processing of goods on behalf of their clients in their factory premises;
- 2) The activities carried out by them were in relation to manufacturing process of Processed Blended Bentonite;
- 3) They made contract with M/s. Ashapura Minechem Ltd., Kutch on 01.04.2008 and the same was composite work order for conversion of crude Bentonite to blended Bentonite;
- 4) The production/processing of goods on behalf of the client is under 'Business Auxiliary Services' but the said service excluded the activities related to amounts to manufacture;
- 5) As per Notification No. 08/2005-Service Tax, such processed goods cleared on payment of Central Excise Duty then there is no question for payment of Service Tax on such activities provided by them;
- 6) They had carried out job work at premises of their clients and for that they received job work charges on MT basis i.e. on the basis of the quantity of Bentonite manufactured by them, as per contract;
- 7) The allegation regarding suppression of facts by the Lower Adjudicating Authority is not acceptable as their activities are not suppressed as their client registered with Central Excise Department and regularly filed returns and paid the duty time to time;
- 8) The Show Cause Notice is time barred as audit officer had conducted on 13/14.11.2009 and present Show Cause Notice was issued on 21.04.2014;
- 9) The entire Show Cause Notice is illegal as already one Show Cause Notice no. V.ST/AR-IV/GDM/ADC/172/2013 dated 12.09.2013 already issued covering period 2008-09 to 2012-13 to the appellant;
- 10) The activities carried out by them at the premises of their client was job work i.e. services for manufacture of the blended Bentonite and not merely supply of manpower ;
- 11) There was no 'employer employee relationship' existed between the appellant and the individual labour engaged by them;
- 12) Their service provided to their clients was not falls under the purview of 'Manpower recruitment or supply agency services';
- 13) They had their own labour and they all work together to undertake a job work of manufacture of blended Bentonite;
- 14) They relied upon the decisions given by the various appellate authorities PSL Corrosion Control Semces Ltd. — 2008 (12) STR 504 (Tri-Ahmd.) and Fire Controls - 2010 (19) STR 99 (Tri.-Bang );



*des*

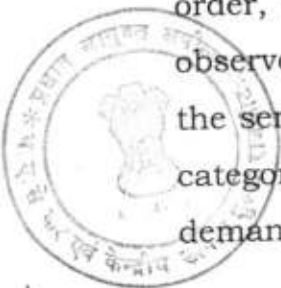
- 15) They also relied upon the decision issued by the Commissioner(A), Central Excise, Rajkot in the case of Shri Jadeja Vesaljee Velubha of Mudra Taluka vide OIA No.RJT-EXCUS-000-APP-09-14-15 dated 11.04.2014 wherein all the demand of Service Tax dropped. The present case have contained similar issue as contained in the case cited;
- 16) They also stated that they had not followed the provisions under Section 67,68,69 and 70 of the Finance Act,1994 and Rule 4A and 5 of the Service Tax Rules,1994 as they had not providing any taxable services as manufacture services are exempted;
- 17) They stated that the Lower Adjudicating Authority has not given any opportunity to be heard in person viz. new adjudicating authority;
- 18) They also stated that if they had supplied 'Manpower recruitment or supply agency services' to their clients then there was no liability for payment of Service Tax on them as from 01.07.2012 to 31.03.2013 the same service attracted under Reverse Charge Mechanism and their client was liable for payment of Service Tax on such services;

3.2 The appellant has also filed a Miscellaneous Application for condonation of delay in filing of present appeal for 2 days for the reason that due to pandemic Covid-19 situation he could not file appeal in time for restriction in travelling and tracing 7 years old records.

4. Personal Hearing in the matter was held on 18.08.2021 in virtual mode. Shri R. Subramanya, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He relied upon the decision given by the Commissioner (Appeal), Rajkot in the case of Shri Jadeja Vesaljee Velubha of Mudra Taluka.

**Findings:-**

5. I have carefully gone through the facts of the case, the impugned order, written as well as oral submissions made by the Appellant. It is observed that the issues to be decided in the present appeal are whether the services rendered by the Appellant are liable to Service Tax under the category of "Manpower Recruitment or Supply Agency Service" or not. The demand pertains to period F.Y. 2008-09 to F.Y. 2013-14.



6. First of all, I take up the application for condonation of delay in filing the appeal by 2 days. I find that the applicant has submitted that the appeal was filed late due to pandemic situation in Covid 19, which appears to be genuine. Hence, the delay in filing appeal is condoned.

7. It is further observed that the appellant had provided services to M/s. Ashapura International Ltd., Madhapar, Bhuj (Kutch), M/s Livosa Trimex Industries Pvt. Ltd. and M/s Ashapura Minechem Ltd. during the period in question i.e. October-2008 to March-14. The demand in this case has been made on the basis of figures appearing in Form 26 AS of the appellant on the basis of best judgement assessment under Section 72 of the Act after deducting the taxable value of service provided to M/s Ashapura Minechem Ltd. during F.Y. 2008-09 to F.Y. 2012-13.

8. It is further observed that the appellant has contended the demand both on merits as well as limitation. They have also contended that they were not accorded any opportunity for personal hearing by the current adjudicating authority and the matter was decided ex-parte.

9. It is observed in this regard that the appellant had not produced any Work Order or Contract made with M/s. Ashapura International Ltd. Madhapar, Bhuj (Kutch) or M/s Livosa Trimex Industries Pvt. Ltd before the adjudicating authority. Only sample invoices issued to M/s. Ashapura International Ltd., Madhapar, Bhuj (Kutch) were presented before him as well as the appellate authority. In absence of any work order/contract, the type of work carried out by the appellant cannot be decided. Further, the Adjudicating Authority has decided the category of services, from invoices produced by the appellant, is not proper and does not lead to any conclusion regarding type or category of service provided. The findings given in respect of service "Manpower Recruitment or Supply Agency Service" provided by the appellant, by the Adjudicating Authority is not irrefutable. Further, the current adjudicating authority has not granted any opportunity for personal hearing to the appellant which is apparent from the impugned order. Therefore, it would be appropriate to grant an opportunity to the appellant to produce sufficient documents such as contracts or work order made with M/s. Ashapura International Ltd., Madhapar, Bhuj (Kutch) and M/s Livosa Trimex Industries Pvt. Ltd., before the Lower Adjudicating Authority for classification of service provided by them as well as for quantification of demand as the demand



*[Handwritten signature]*

has been made under Best Judgement Assessment. On receipt of such documents from the appellant, the Adjudicating Authority should take an informed decision on the SCN in question.

10. In view of the above, I set aside the impugned order and remand it to the Adjudicating Authority for deciding the case afresh on the basis of documents i.e. Work Order/Contract made with M/s. Ashapura International Ltd., Madhapar, Bhuj (Kutch), M/s Livosa Trimex Industries Pvt. Ltd. along with the invoices to be made available by the appellant.

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

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

File No. V2/2/GDM/2021  
Date: 29.10.2021

*Aruna*  
29<sup>th</sup> October, 2021  
(अखिलेश कुमार)  
आयुक्त(अपील्स)

By R.P.A.D.

To,  
M/s. Momai Labour Contractor,  
Proprietor: Shri Bharatsinh Jadeja,  
Village: Merau, Taluka: Mandvi, District: Kutch

*श्री. नारायण  
गजरीया*  
*N. C. Gajariya*  
अ.न. सी. गजरीया 29.10.21  
N. C. GAJARIYA  
SUPERINTENDENT

**Copy to:-**

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for kind information please.
2. The Commissioner, GST & Central Excise, Gandhidham Commissionerate, Gandhidham for information and necessary action.
3. Assistant Commissioner, Central Goods and Service Tax, Mundra Division, Mundra Kutch for necessary action.
4. Guard File.

