

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

**SERVICE TAX APPEAL NO. 10780 of 2022-DB**

(Arising out of OIO-AHM-EXCUS-002-COMMR-9-2022-23 Dated 04/07/2022 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II)

**UTILITY LABOUR SUPPLIERS**

3 GOPIKUNJ SOCIETY MEMNAGAR SUN N STEP CLUB  
AHMEDABAD, GUJARAT

**.....Appellant**

*VERSUS*

**Commissioner of C.E.-AHMEDABAD-II**

CUSTOM HOUSE... FIRST FLOOR,  
OLD HIGH COURT ROAD, NAVRANGPURA,  
AHMEDABAD, GUJARAT-380009

**.....Respondent**

**APPEARANCE:**

Shri Vipul Khandhar, Chartered Accountant appeared for the Appellant  
Shri Rajesh Nathan, Assistant Commissioner (AR) appeared for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 12834/2024**

DATE OF HEARING: 19.11.2024  
DATE OF DECISION: 26.11.2024

**RAMESH NAIR**

The present appeal has been filed by the Appellant being aggrieved with the Order-in-Original No. AHM-EXCUS-002-COMMR-9/2022-23 dtd. 04.07.2022 passed by the Learned Commissioner, Ahmedabad.

1.1 Briefly stated, the facts of the case are that as per the records available with the Division office and on going through the Third party data provided by CBDT of the Appellant for the F.Y. 2015-16 and 2016-17, the total sales of services (value for ITR /Form 26A) were found to be not tallying with gross value of service provided, as declared in ST-3 returns. Therefore, it appeared that the Appellant had declared less/not declared any taxable value in their ST-3 return for F.Y. 2015-16 and 2016-17 as compared to the value declared in their form 26AS and it appeared that the Appellant had short paid service tax to the extent of Rs. 2,08,98,239/- on the differential value of Rs. 14,16,60,121/-. On the basis of the said enquiry, a Show Cause Notice dated 23.04.2021 was issued proposing the Service tax demand along with interest and penalty. The Ld. Commissioner, *vide* impugned order confirmed the demand of service tax along with interest and penalty. Aggrieved by the impugned order-in-original present Appeal has been filed.

2. Shri Vipul Khandhar, Learned CA appearing on behalf of the appellant submits that appellant have provided Manpower Recruitment Service to various companies. As per the Notification No. 30/2012-ST as amended Appellant are not liable to pay Service tax. On the services of the Appellant recipient is liable to pay service tax. He also submits that during the disputed period the recipients of services have paid the service tax on appellant's services. He produced the copy of certificates issued by the service recipients. Since the demand of service tax was already paid by the Service recipient under reverse charge mechanism on supply on manpower supply service, demand of service tax on same value would amounts to double taxation.

2.1 He further submits that Ld. Commissioner in impugned order wrongly interpreted the agreements with M/s Intas Pharmaceuticals Ltd., M/s Troika Pharmaceuticals Ltd. and Lincoln Pharmaceuticals Ltd. and held that Appellant has provided Labour for specific work that is for loading, unloading, packaging, housekeeping etc. jobs to be carried out at the premises of the recipient of service and said work was to be supervised, monitored by the appellant or its representatives. The Appellant was having full control/ superintendence over the labours deployed. Therefore, the services provided by the Appellant do not qualify to be Manpower Supply Services. The Ld. Commissioner failed to appreciate that when contractor supplies labour for work, it will be considered as manpower supply service. The basic requirement of labour as needed by the service recipients in the agreement such a basic schooling, basic conduct and manner needed for smooth functioning of work is expected from the labours provided by the appellant. The activity of appellant clearly falls under the manpower supply services.

2.2 Without prejudice he also submits that if at all the service tax is levied on Appellant activity in the present case the same would have been available as cenvat credit to the Service recipients being input service used for the manufacture of their final product. In such a situation the whole exercise of payment of service tax by the Appellant and availment of cenvat credit by their client would neutralize the revenue aspect. It is a settled legal position that even if there is a legal demand but if there is a case of revenue neutrality, demand can not be made keeping merit aside.

2.3 He also argued that the entire demand in the present matter is time bar. The confirmation of demand by invoking extended period of limitation is

absolutely illegal as there were no reasons and grounds to invoke extended period of limitation. The Appellant has bonafidely disclosed each and every fact related to their activity to the government department as evident from the data provided by the CBDT. Further the disputed demand is also based on the details disclosed by the appellant to Income tax department, so there is no intention of suppression of fact to evade of tax.

3. On other hand Shri Rajesh Nathan , Learned Assistant Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have gone through the submissions made by both sides and perused the case records. We find that in the present matter the demand of service tax was worked out after comparing the income declared in Form 26AS/ITR vis-à-vis- taxable value disclosed in ST-3 return. We have carefully perused the agreement entered into by the appellant with M/s. Intas Pharmaceuticals Ltd., M/s. Troikaa Pharmaceuticals Ltd., M/s. Lincoln Pharmaceuticals Ltd. as available on records. We observed that all the contract heading is "Contract agreement for Labour Supply" Some of the relevant conditions from the agreement between the appellant and service receipt i.e M/s Intas Pharmaceuticals Ltd are extracted as under :-

*"2. The Contract shall supply the required number of contract labours of unskilled nature mainly for housekeeping, material movement/distribution, packing and any incidental/ mis. Works related thereof.*

*3. The contractor shall supply only those labours who are minimum SSC exam passed and shall be able to read and understand English.*

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*5. The contractor shall provide and supply adequate number of contract labours depending upon the requirement of the company according to instruction of the HR department.*

*6 The contractor shall provide and supply adequate number of contract labours, depending upon the requirement of the company according to instruction of the HR department.*

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*8. The contractor shall not supply any workers below 18 years of age. The women workers will be permitted to work as per the provision of factories act 1948.*

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9. *The contractors shall pay the minimum basic wages as applicable to his workers.*

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15. *The contractor shall possess a valid license under the contract labour (Regulation and Abolition) Act 1970. A certificate copy of such license shall be submitted to the company."*

4.1 Similarly some of the relevant conditions from the agreement between the appellant and service receipt i.e M/s M/s Troikaa Pharmaceuticals Ltd. are extracted as under :-

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- 2. *The contractor shall supply the required number of contract labours for skilled/ unskilled nature of activities like packing and any incidental/ miscellaneous work related thereof.*
- 3. *The contractor shall supply only those labours who are minimum SSC exam passed and are able to read English.*
- 4. *The labour should only be supplied when the requirement is raised by concerned department Head in writing through the personnel department.*

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- 8. *The contractor shall not supply any workers below 18 years of age. The women workers will be permitted to work as per the provision of factories act 1948.*
- 11. *The contractor shall pay the minimum wages as applicable to his workers and revise the same from time to time as per the government notification regarding the revision in minimum wages.*

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- 14. *The contractor shall also comply with all other labour and industrial laws and such other Acts and status as may be applicable to the contractor from time to time and maintain the necessary documents/ records and submit to concern authorities.*
- 15. *The contractor shall possess a valid licenses under the contractor labour (regulation and Abolition) Act 1970. A certificate copy of such license shall be submitted to the company."*

4.2 From the above it is clear that the Appellant basically provided the Labours to the pharmaceutical companies as may be required to provide for packing, loading/unloading, cleaning and maintenance etc. works at factory.

The Appellant is responsible for deducting and remitting provident fund and ESIC contributions and also for payment of wages to labours and other dues, and also shall require to maintain records and registers, obtain any license or registration required by law for supply of workmen/labour. Further conditions of agreements clearly indicate that the Appellant is supplying Labour/manpower to the pharmaceutical companies. At this juncture, we find it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of *Super Poly Fabriks Ltd. v. CCE, Punjab* - 2008 (10) S.T.R. 545 (S.C.), which laid down the ratio as under :-

*"There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from 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."*

4.3 We find that the tenor of the agreements clearly indicate that the Agreement entered into by the appellant with M/s. Intas Pharmaceuticals Ltd., M/s Troikaa Pharmaceuticals Ltd. and M/s Amneal Life Sciences Pvt. Ltd. is a "Labour Supply Contract" and so the services rendered would fall under "Manpower Recruitment or Supply Agency" service.

4.4 We also find that the Notification No. 30/2012-ST dtd. 20.06.2012 amended vide Notification No. 7/2015 -ST dtd. 01.03.2015 provides, in case of Manpower Supply Service 100% service tax is payable by the Service recipient w.e.f. 01.03.2015. Before this amendment Service provider was required to pay 25% service tax and 75% service tax was required to be paid by the Service recipient. In the present matter Appellant provided the manpower supply service to above pharma companies on which as per the above provisions service recipient is required to pay 100% Service tax. We also noticed that in the present matter on the Appellant's service aforesaid pharma companies have paid the service tax. The Appellant also produced before us the copies of Challans and certificate issued by said pharma companies regarding the payment of service tax on the appellant's activity. In the present disputed matter service recipient itself considered the nature of service of Appellant as Labour Supply/ Manpower Supply and discharged the service tax liability on said activity. Therefore, it is clear that the Ld. Commissioner have committed an apparent error in confirming service tax demand in the present matter.

4.5 Without prejudice, we also find that once the service tax on entire value has been discharged there cannot be double taxation. In the present matter undisputedly the service tax has been paid by the Pharma companies on Appellant's activity. The demand of service tax from the Appellant would be double taxation on same amount which itself is erroneous. Hence the demand is not sustainable for this reason as held in case of *Dinesh M. Kotian* - 2016 (91) TMI 973 - CESTAT-MUMBAI = 2016 (42) S.T.R. 772 (Tribunal), *India Gateway Terminal (P) Ltd.* - 2010 (20) S.T.R. 338 (TRI.), *Lone star Engineers* - 2017 (47) S.T.R. 133 (TRI.) and *CCE, Meerut-II v. Geeta Industries P. Ltd.* - 2011 (22) S.T.R. 293 (TRI.),

4.6 We find that tribunal in the case of *Navyug Alloys Pvt. Ltd. v. CCE & C, Vadodara* 2009 (13) S.T.R. 421 (Tribunal) supra has held that "once tax already paid on the services, it was not open to the Department to confirm the same against the appellant, in respect of the same services".

5. In view of the above findings, in the peculiar facts and circumstances of this case, we set aside the impugned order and allow the appeal of appellant with consequential relief, if any as per law.

*(Pronounced in the open court on 26.11.2024)*

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**