

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 10395 of 2015-DB**

[Arising out of Order-in-Original/Appeal No RJT-EXCUS-000-APP-241-14-15 dated 19.12.2014 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

**Roopsinh Jodhsinh Chauhan**

Properitor C/o Rajhans Metals Pvt Ltd Plot No 21/3, G  
I D C, Shankertekri, Udhyognagar, JAMNAGAR-  
GUJARAT

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Rajkot**

Central Excise Bhavan, Race Course Ring Road,  
Income Tax Office, Rajkot, Gujarat-360001

**.... Respondent**

**AND**

**SERVICE TAX Appeal No. 10499 of 2015-DB**

[Arising out of Order-in-Original/Appeal No RJT-EXCUS-000-APP-240-14-15 dated 19.12.2014 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

**Navalsinh Jadeja**

Himalaya Society -2, Purabia Vadi,  
JAMNAGAR, GUJARAT-361004

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Rajkot**

Central Excise Bhavan, Race Course Ring Road,  
Income Tax Office, Rajkot, Gujarat-360001

**.... Respondent**

**APPEARANCE :**

Shri Jigar Shah & Shri Amber Kumrawat, Advocates for the Appellant  
Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 11.10.2023

DATE OF DECISION: 31.10.2023

**FINAL ORDER NO. 12381-12382/2023**

**C.L. MAHAR :**

Since both the appeals are having similar facts therefore both the appeals are taken together for decision.

2. The above mentioned appellants are engaged by M/s. Rajhans Metals Pvt. Limited for undertaking activities of loading and unloading of scrap,

sorting, breaking, cutting and casting of brass scrap into foundry and processing and packing of brass rods/ section post manufacturing activity.

3. As per the terms of contract/ agreement the appellants were engaged as job-workers of M/s. Rajhans Metal Pvt. Limited for carrying out processing of goods on behalf of their principal service recipient namely M/s. Rajhans Metal Pvt. Limited. The activity undertaken by the appellant was primarily for helping in manufacturing of various types of brass articles which were further cleared on payment of Central Excise duty by M/s. Rajhans Metal Pvt. Limited. The appellants raised periodic invoices to M/s. Rajhans Metal Pvt. Limited for collecting labour charges on the basis of total quantity of work performed by them for M/s. Rajhans Metal Pvt. Limited. For execution of work by appellant, they employed skilled and unskilled labourer and deployed appropriate number of personnel at the factory premises of M/s. Rajhans Metal Pvt. Limited.

4. The department was of the view that appellants have provided Manpower Recruitment or Supply Agency service and therefore they should have discharged service tax liability on the same. The show cause notices and impugned orders issued are as follows:-

Appellant	Show Cause Notice	Period Involved	Order under challenge	Demand	Interest & Penalty
Shri Roopsingh Jodhsinh. ST/10395/2015	SCN bearing F. NO. IV/15-109/ST/ADJ/2012 DATED 04.04.2013	November 2011 to June 2012	OIA NO. RJT-EXCUS-000-APP-241-2014-15 DATED 23.12.2014	Rs. 1,68,255/-	Penalty under Sections 77 & 78 of the Act.
Shri Navalsinh Jadeja. ST/10499/2015	SCN bearing F. NO. IV/15-106/ST/ADJ/2012 ST/10499/2015 DATED 19.08.2013	November 2011 to March 2013	OIA NO. RJT-EXCUS-000-APP-240-14-15 DATED 27.12.2014	Rs. 2,15,545/-	Interest as applicable under Section 75 of the Act.

5. The learned advocate appearing on behalf of the appellants has argued that the skilled and unskilled labourer deployed by the appellants in the factory premises of their clients for execution of specific work, the payment of the same has been made on the basis of per kg. of metal handled by them. It has also been argued that the personnel employed by them for

execution for contracted work have continued to remain their employee and were paid as per the pay rules of the appellants. It has further been submitted that appellants have maintained record of their employees and had complied with all the statutory requirements and provisions of labour law, ESI Act and PF Act etc. The learned advocate has drawn our attention to the Conditions of the Contract which are reproduced herein below:-

Conditions for the Contractor

"1 All the raw material and other all machineries, equipment for usage for the stores are to be provided by the company.

2 The raw materials and articles are given then as per their say the same would be got melted in the furnace and the mould be prepared and the billets are to be produced as per instructions given by the company.

3 The labour charges would be considered as per the net billets produced by the billets and for 1 Kilo the payment of Rs.12.5 paise is to be paid.

4 All the workmen who are engaged in this work would be treated as my workmen and the recruitment of men required for my contract work that is to be appointed in services for which I myself has to give them appointment and in this regard there would no responsibility of the company and I as the employer can engage whenever I think so or grant them leave and its entire responsibility would be upon me. There would be no responsibility in that regard upon the company. This is because these workmen would be treated as my own men and for engaging them in services or to retrench them for which if any industrial dispute arises then as their employer it would be my responsibility and for the required persons and to keep them in that respect all legal statements, registration, license, salary statement and the questions related to it all its responsibility would be upon me and in this regard there would be no responsibility on the company.

5. For this work the below stated compensation of the contractor if any losses of amount or any debt towards Government is outstanding and if any such demand is there then the same is to be adjusted by the contractor to the company and that amount is to be deducted by the company from the labour charges and the company would pay such labour charges to the contractor. Further from the labour work

the amount for this work which is to be legally deducted towards Income Tax, Provident Fund, ESI, Professional Tax, etc. then that amount is to be deducted as per the norms and standards of the company and for that an amount of Rs.3.50 paise would be kept reserved and the remaining labour charges would be required to be paid and from that reserved amount the company would make the legal payment and at that time the earned leave, bonus which are to be paid then to pay the same I can withdraw the same.

As per the above details whatever labour work is made then its bill would be prepared and it would be given and the payment of the same would be made in the first week of every second month.

Sd/- Roopasinh Jodhsinh Chauhan"

6. Learned AR on the other hand reiterates the findings given in the impugned orders-in-appeal.

7. Having heard both the sides and looking at the facts and the contract which has been entered into by the appellants, we find that appellant have not supplied any manpower to the client as per the contract the same are basically for execution of a particular work as per the work contract at a per Kg/ MT rate fixed for the work. We find that the matter under consideration is no more *res-integra* as it has already been decided by this Tribunal in the case of *Abbas Mussa Properitor vs. CCE & ST, Rajkot – 2023 (8) TMI 249 – CESTAT AHMEDABAD*. The relevant extract of the above order is reproduced herein below:-

**"4.4** In the similar case of Sureel Enterprises Pvt. Limited (Supra) the Tribunal has passed the following order:

*"5. We find that very identical issue in the appellant's own case for the previous period i.e. June 2005 to June 2010 was considered by this Tribunal in Service Tax Appeal Nos. 2327 of 2011, 768 of 2011 and 10391 of 2013. In these appeals this Tribunal has passed a Final Order No. A/11947-11949/2019 dated 18.10.2019 whereby it was held that the appellant's activities amount to manufacture and does not amount to service of Manpower Recruitment Agency Service. Accordingly, the appeals were allowed. This Tribunal following various judgment namely, Ramesh C. Patel 2012 (25) STR 471 (Tri. Amd.), Jubilant Industries Limited 2013 (31) STR 181 (Tri. Del.) and Shiv Narayan Bansal 2013 (31) STR 747 held that contract between the appellant and M/s Nirma Limited is of contract manufacturing hence demand under manpower supply cannot be made. Concluding and operating portion of the order is reproduced below:*

*From the above judgments the issue in hand is settled that when the contract between the service provider and service recipient is admittedly of contract manufacturing in such case demand under man power supply cannot be made. The appellant have vehemently argued on Revenue neutral situation on the ground that if at all the appellant is liable to pay service tax the same is available as Cenvat credit to the service recipient i.e. M/s. Nirma Ltd. In this regard, he also submitted the details of payment of excise duty of M/s. Nirma Ltd from PLA/cash. This prima facie show that it is a case of Revenue neutral and by not paying the service tax by the appellant the Government Exchequer is not at any loss, however, since, we have already decided the issue on merit, we are not giving our concluding opinion on Revenue Neutral position. The issue of jurisdiction raised by the appellant is also kept open.*

*As per our above discussion the impugned order is not sustainable. Hence, the same is set aside. The appeals are allowed with consequential relief, if any, in accordance with law.*

6. *In view of above decision of the Tribunal in the appellant's own case on the same issue, the issue in the present case is no longer res integra. The only difference in the present case and the case decided supra is the difference of period. However, there is no change in the facts and the law point, therefore, the Tribunal's decision given by Order dated 18.10.2019 is squarely applicable in the present case. Accordingly, the impugned orders are set aside. The appeals are allowed."*

**4.5** Same view was expressed by this Tribunal in another case of Nishkarsh Industrial Services, wherein this Tribunal has passed the following order:

*"4. We have carefully considered the submissions made by both the sides and perused the record. We find that in the present dispute whether the service is of Manpower Recruitment or Supply Agency Service or job work can be decided only on the basis of the agreement entered between service provider and service recipient. As per the agreement in the present case, the service recipient is having their factory and carried out various manufacturing activities. The present appellant was assigned job work related to manufacturing on the basis of charges which is per piece basis and the item being manufactured by the appellant. As per terms and conditions of the agreement, the service recipient will provide all the facilities such as machines, tools, place etc. The appellant has only to undertake work done their skilled, semi- skilled, non-skilled workers as per drawing by appointing workers/contractor. It is also one of the conditions that the appellant is under obligation to pay minimum wages to its workers even though there is no work. However, whenever there is work, the charges will be paid by the service recipient to the appellant as per the rates decided i.e. per piece basis.*

5. *As regards the responsibility and control, it is the appellant who has to bear all the responsibility of appointed workers according to the labour laws. With the aforesaid terms and conditions, it is clear that the appellant is carrying out the job work relating to manufacturing as per agreement entered with the facilities provided by the service recipient and the charges is also per piece basis. The entire control of workers deputed by the appellant for the job work is with the appellant only and the service recipient has no obligation as regards the number of workers, man-hour etc. for the job assigned to the appellant. In these terms of contract, we are of the clear view that contract is for job work carried out by the appellant for the service recipient. Therefore, there is no activity of providing the service of Manpower Recruitment or Supply Agency Service. The judgment relied*

*upon by the appellant are directly on the issue. In the case of Sureel Enterprise Pvt. Limited vs. CCE & ST., Ahmedabad 2019 (10) TMI 1245-CESTAT Ahmedabad wherein the similar facts are prevailing inasmuch as the service provider provided the”*

**4.6** In view of the above decisions on the identical issue in hand and our observation made herein above, we are of the clear view that the appellant have not provided the ‘Manpower Recruitment or Supply Agency Services’. Therefore, the demand made under the said category is not sustainable.”

Similarly this Tribunal in the case of *Sureel Enterprise Pvt. Limited vs. CCE&ST, Bhavnagar reported at 2021 (5) TMI 802 – CESTAT Ahmedabad* has held as follows:-

**“4.** We have carefully considered the submissions made by both the sides and perused the records. we find that the issue involved in the present case is that whether the activity of appellant i.e. conversion of raw material to soap and detergent on behalf of M/s Nirma Limited in the factory of M/s Nirma Limited is amount to provision of service classifiable under Manpower Recruitment Agency Service or otherwise.

**5.** We find that very identical issue in the appellant's own case for the previous period i.e. June 2005 to June 2010 was considered by this Tribunal in Service Tax Appeal Nos. 2327 of 2011, 768 of 2011 and 10391 of 2013. In these appeals this Tribunal has passed a Final Order No. A/11947-11949/2019 dated 18.10.2019 whereby it was held that the appellant's activities amount to manufacture and does not amount to service of Manpower Recruitment Agency Service. Accordingly, the appeals were allowed. This Tribunal following various judgment namely, Ramesh C. Patel 2012 (25) STR 471 (Tri. Amd.), Jubilant Industries Limited 2013 (31) STR 181 (Tri. Del.) and Shiv Narayan Bansal 2013 (31) STR 747 held that contract between the appellant and M/s Nirma Limited is of contract manufacturing hence demand under manpower supply cannot be made. Concluding and operating portion of the order is reproduced below:

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*As per our above discussion the impugned order is not sustainable. Hence, the same is set aside. The appeals are allowed with consequential relief, if any, in accordance with law.*

**6.** In view of above decision of the Tribunal in the appellant's own case on the same issue, the issue in the present case is no longer *res integra*. The only difference in the present case and the case decided supra is the difference of period. However, there is no change in the facts and the law point, therefore, the Tribunal's decision given by

Order dated 18.10.2019 is squarely applicable in the present case. Accordingly, the impugned orders are set aside. The appeals are allowed.”

8. Following the above decisions of this Tribunal, we hold that work undertaken by the appellant do not fall under the service category of Manpower Recruitment or Supply Agency Service and therefore, the impugned orders are without any merit. Accordingly, we set-aside the same.

9. In view of above, the appeals are allowed.

*(Pronounced in the open court on 31.10.2023)*

**(Somesh Arora)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**