

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

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 10372 of 2013-DB**

[Arising out of Order-in-Original/Appeal No. 32-BVR-COMMISSIONER-2012 dated 17.12.2012 passed by Commissioner of Central Excise and Service Tax-BHAVNAGAR]

**Talala Taluka Sahakari Khand Udyog Mandali Limited .... Appellant**

Sasan Road, Talala Gir, JUNAGADH  
GUJARAT-362150

*VERSUS*

**Commissioner of Central Excise & ST, Bhavnagar .... Respondent**

Plot No.6776/B-1, Siddhi Sadan, Narayan Upadhyay  
Marg, Beside Gandhi Clinic, Near Parimial Chowk,  
Bhavnagar, Gujarat-364001

**WITH**

- (i) SERVICE TAX Appeal No. 10434 of 2013 (Bileshwar Khand Udhog)**
- (ii) SERVICE TAX Appeal No. 10435 of 2013 (Ranvirbhai B Mori)**
- (iii) SERVICE TAX Appeal No. 10436 of 2013 (Haribhai Oghadbhai Barad)**
- (iv) SERVICE TAX Appeal No. 10437 of 2013 (Arjanbhai Kanabhai Dahima)**

[Arising out of Order-in-Original/Appeal No 33TO36-BVR-COMMISSIONER-2012 dated 19.12.2012 passed by Commissioner of Central Excise and Service Tax-BHAVNAGAR]

**APPEARANCE :**

Shri K.J. Kinariwala, Consultant and Shri Amal Dave, Advocate for the Appellants  
Shri Vijay G Iyengar, Superintendent & Shri Shri Kalpesh P Shah, Superintendent  
(Authorised Representatives) for the Revenue.

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

DATE OF HEARING : 29.11.2022

DATE OF DECISION: 06.12.2022

**FINAL ORDER NO. A/11858-11862 / 2022**

**RAMESH NAIR :**

The common facts in brief in respect of all the appeals are that the appellant have arrangement with the farmers for harvesting and transportation of sugarcane to sugar mills. The appellants while paying the cost of sugarcane to the farmers they deduct the expenses of harvesting and transportation of sugarcane. The case of the department is that such

expenses charged to the farmers is liable to service tax under the category of 'Manpower Recruitment and Supply Agency Services', accordingly the service tax demand was confirmed. Being aggrieved, the appellant filed the present appeals.

2. Shri K.J. Kinariwala, learned Consultant appearing on behalf of the appellant M/s. Talala Taluka Sahakari Khand Udyog Mandali Limited, submits that there is no arrangement for supply of manpower for harvesting and transportation whereas the contract was for harvesting and transportation of sugarcane and the charges for such activities is per ton basis. The farmers are not concerned with number of manpower, man-days, or man-hours for making payment and the charges are made per-ton of sugarcane basis. Therefore, there is no supply of man power. He placed reliance of the following judgments:-

(a) 2014 (36) STR 123 (Tri. Mumbai) – Satara Sahakari Shetu Audyogik Oos Todani Vahtook Society vs. CCE, Kolhapur.

(b) 2016 (41) STR 806 (Bom) – CC, C.Ex & ST, Aurangabad vs. Shri Samarth Sevabhavi Trust.

(c) 2013 (31) STR 611 (Tri. Mumbai) – Seven Hills Construction vs. CST, Nagpur.

(d) 2010 (18) STR 17 (Tri. Bang.) - Ritesh Enterprises vs. CCE, Bangalore.

He further submits that in the appellant's own case, for the subsequent period, the learned Commissioner (Appeals) has dropped the proceedings vide order No. BHV-EXCUS-000-APP-011-15-16 dated 29.05.2015, therefore the issue is no longer under dispute.

3. In the matter of appeal of M/s. Bileshwar Khand Udhyog and others, Shri Amal Dave, learned Counsel appeared and submitted written submission. He also submits that there is no arrangement of manpower as charges for harvesting and transportation is on per ton of sugarcane basis. He placed reliance on the following judgments:-

- (a) 2016 (41) STR 806 (Bom.) - CCE&ST, Aurangabad vs. Samarth Sevabhavi Trust
- (b) 2014 (36) STR 83 (Tri.-Mumbai) - Samarth Sevabhavi Trust vs. CCE&ST, Aurangabad.
- (c) 2014 (34) STR 410 (Tri.-Mumbai) - Bhogavati Janseva Trust vs. CCE, Kolhapur
- (d) 2015 (39) STR 75 (Tri.-Mumbai) - CCE, Kolhapur vs. Shriram Sao TVS Limited.
- (e) 2016 (44) STR J210 (Bom.) - Commissioner vs. Rajarambapu Shetkari & Shetmajur Sahya Samiti

4. Shri Vijay G Iyengar, learned Superintendent (AR) appearing for the Revenue in the matter of Appeal No. ST/10372/2013-DB and Shri Kalpesh P Shah, learned Superintendent (AR) appearing for all the other appeals reiterated the findings of the impugned orders.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that the fact is not in dispute that the appellants have no arrangement for supply of manpower for harvesting and transportation of sugarcane for supply to sugar mills. It is also the fact that charges were calculated on per ton basis therefore, the number of manpower, man-days or man-hours is not relevant for carrying out the activities of harvesting, transportation etc. The arrangement is job specific

and not the manpower specific. In the identical issue, this Tribunal has taken consistent view in the following judgments:-

**(a) Satara Sahakari Shetu Audyogik Oos Todani Vahtook Society vs. CCE, Kolhapur**

**5.1** We have also perused the contracts entered into by the appellant-assesseees with the sugar factory. A typical contract reads as follows :-

“For the sugar season 2005-06 Karkhana and Sanstha has agreed that -

1. Sanstha will carry out the job of cutting and transportation of sugar-cane of the cane grower members as well as non-members of the Karkhana.
2. Karkhana will pay to the Sanstha the charges of cane cutting and transportation on fortnightly basis.
3. The rates for sugarcane cutting and transportation are decided by the State Govt. and the Karkhana will pay the charges (worked out on the basis of the said rates) to the Sanstha on fortnightly basis.
4. The commission/incentive payable to the contractors will be handed over by Karkhana to the Sanstha which further has to be paid by Sanstha.
5. Karkhana will not be responsible for the injury if any, caused to any cane cutting labourer while doing the cane cutting.
6. For arranging the cane cutting and transportation, the Karkhana will pay the consideration to the Sanstha as and when demanded by the Sanstha.
7. The Sanstha also will carry out the jobs of handling of sugar, feeding of sugarcane in the sugar mill, cleaning of parking yard of vehicles transporting sugarcane, loading/unloading/handling of pressmud, baling of bagasse, handling of loose bagasse, collecting/removing/disposal of boiler ash, supply of wood for burning into the boiler, handling/stacking of compost, disposal of spentwash by spraying on the pressmud, stitching of sugar bags. The rates for the said job will be decided by the Karkhana and Sanstha.
8. The karkhana will retain 15% amount of every bill raised for cane cutting transportation job as well as other jobs as security deposit and will handover to the Sanstha after satisfactory completion of the jobs by the Sanstha.
9. Since Co-operative societies are exempted from stamp duty, the agreement is not done on stamp paper.

Sd/-  
Manager, Sanstha

Sd/-  
Managing Director, Karkhana”

The rates fixed for Sugar Season 2005-06 are as follows:-

“1. Cutting and transportation of sugarcane-

1.	A	Bullock cart sugarcane cutting	Rs. 77.80 per MT
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B	Sugarcane cutting	Rs. 89.49 per MT (truck/tractor)
	Commission	16%
2.	Bullock Cart	Rs. 33.22 per MT for first K.M.
	For every K.M. after first K.M. per MT	Rs. 4.85
	Commission	16%
3.	Truck/Tractor transportation rates are	
1.	1 to 8 km per km per MT	Rs. 50.00
2.	9 to 15 km per km per MT	Rs. 2.75
3.	16 to 25 km per km per MT	Rs. 2.55
4.	26 km per km per MT	Rs. 1.65
	Commission	20%

## Other jobs

1.	Feeding of sugarcane into mills	Rs. 45 per 100 MT
2.	Cleaning of transportation vehicles Parking yard	Rs. 770 per day
3.	Bagasse baling and removal of loose Bagasse	Rs. 27 per MT
	Reloading	Rs. 10 per MT
	Loose bagasse handling	Rs. 450 per shift
4.	Pressmud handling	Rs. 3000 per day
5.	Boiler ash removal/handling	Rs. 500 per day
6.	Sugar handling (for 50 kg bags)	
1.	Sugar house	Rs. 85 /100 bags
2.	Intake/stacking	Rs. 45/100 bags
3.	Delivery (re-stacking/melting /cleaning)	Rs. 85/100 bags
7.	Stitching of sugar bags	Rs. 17/100 bags “

**5.2** The Hon’ble Apex Court in the case of *Super Poly Fabriks Ltd. v. Commissioner* [[2008 \(10\) S.T.R. 545](#) (S.C.)], in similar circumstances laid down the ratio of how to read an agreement or contract 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.”*

If we apply the ratio of the above decision to the facts of the case before us and to the contracts entered into by the appellant-assessees with the sugar factory, the tenor of the agreement is for the specific tasks of “harvesting of sugarcane and transportation of the same from the farmers’ fields to the sugar factory”. The agreement is not for supply of any manpower to the sugar factory. The consideration paid also has no nexus to the manpower employed.

**5.3** As per Section 65(68) of Finance Act, 1994 ‘ “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’ and the taxable service is defined under Section 65(105)(k) as “service rendered to any person by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner”. The appellants are not manpower recruitment agencies as they do not recruit any persons; they also do not supply manpower to the sugar factory. What they have undertaken is harvesting of sugarcane and transportation of the same to the sugar factory. To undertake this work, they have engaged labour/transport contractors who have undertaken the work of harvesting of sugarcane and transportation of the same. In any service activity, manpower is required. That does not make the service as supply of manpower. Otherwise all services would have to be classified as “manpower supply service”. Further in the instant case, the consideration is paid not on the basis of supply of manpower but on the quantity of sugarcane delivered on tonnage basis. If an efficient contractor engages less manpower, he will make more profits while an inefficient contractor engaging more manpower would make less profits. In other words, since the consideration is received on the quantity of sugarcane delivered, the essential nature of service is the harvesting and supply of sugarcane. How the service is rendered is not relevant for classification of the service. From the statutory definitions given above and the contracts entered into by the appellants, it is clear that there is no element of manpower supply or recruitment by the appellants to the sugar factory and therefore, the services rendered by the appellants cannot be classified under manpower recruitment or supply agency services, by any stretch of imagination. It is also worth noting that the appellants do not undertake this work for anybody else except for the sugar factory concerned. In other words, they do not supply manpower to any customer who approaches them. Therefore, the impugned demands by classifying the activity under “manpower supply service” are not sustainable in law.

**5.4** It is further seen that the activity undertaken by the appellant merits classification under BAS which is defined under Section 65(19) of the Finance Act, 1994, as follows :-

“business auxiliary service” means any service in relation to, -

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or
- (v) production or processing of goods for, or on behalf of, the client; or

- (vi) provision of service on behalf of the client; or
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision.

Sub-clause (iv) deals with procurement of goods or services, which are inputs for the client. Sugarcane is an input for the client, the sugar factory, and sugarcane is 'goods'. Though the appellants do not procure these goods, they are rendering a service incidental or ancillary to such procurement and therefore, the activity undertaken by the appellants in harvesting and transporting the goods comes under sub-clause (vii) of Section 65(19). Since the impugned demands have been raised under the category of manpower supply or recruitment agency services, such demands have no legal basis.

**5.5** In respect of the appeals filed by the Revenue, the lower appellate authority, after examining the contracts entered into by the respondents, came to the conclusion that the activity undertaken did not amount to "supply of manpower" but came under the category of "business auxiliary service". The Id. lower appellate authority noted that this Tribunal in the case of *Ritesh Enterprises v. Commissioner* (supra), in the context of contracts of execution of work for loading, unloading, bag stacking and destacking held as under :-

*"9. On a careful consideration of the above reproduced facts from the entire case papers, we find that the contract which has been given to the appellants is for the execution of the work of loading, unloading, bagging, stacking, destacking, etc. In the entire records, we find that there is no whisper of supply of manpower to the said M/s. Aspin Wall & Co. or to the CWC or any other recipient of the services in both these appeals. As can be seen from the reproduced contracts and the invoices issued by the appellants that the entire essence of the contract was an execution of work as understood by the appellants and the recipient of the services."*

Thus the reasoning adopted by the Id. Commissioner (Appeals) is unassailable and we do not find any infirmity in the said orders. Therefore, Revenue's appeals against the decision of the lower appellate authority is devoid of merits.

**6.** In view of the above and also following the decisions of this Tribunal in the cases of *Amrit Sanjivni Sugarcane Transport Co. Pvt. Ltd.*, *Samarth Sevabhavi Trust* and *Bhogavati Janseva Trust & Others* (supra), we hold that the services rendered by the appellant-assessee do not come under the purview of 'manpower recruitment or supply service' and hence the impugned service tax demands are not sustainable in law. Similarly in the case of other jobs undertaken such as handling of sugarcane or sugar or cleaning or removal of boiler ash, stitching of sugar bags, etc., undertaken by the appellants, these activities also do not come within the purview of "Manpower Recruitment or Supply Agency service" as held by this Tribunal in the cases of *Ritesh Enterprises*, *Divya Enterprises*, *S.S. Associates* and *K. Damodarareddy* (cited supra). Since the appeals are allowed on merits, we are not going into the time bar or other issues raised by the appellants.

**7.** In sum, the appeals filed by the Revenue are dismissed as devoid of merits and the appeals filed by the appellant-assessee are allowed, with consequential relief, if any, in accordance with law."

**(b) CCE&ST, Aurangabad vs. Samarth Sevabhavi Trust**

**“5.** The question between the parties is whether the services would fall within the definition of “Manpower Recruitment or Supply Agency Services”. The definition of this term is mentioned in clause (105)(k) r.w. Section 65(68) of the Finance Act, 1994, which read as under :-

*“(105)(k) “Taxable service” means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner”*

*“65(68) “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.”*

**6.** In view of provisions of Section 65(68) the “Manpower Recruitment or Supply Agency Services” means any person providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person, and Section 65(105)(k) defines the taxable services for providing such services. From the above definitions, it is rather clear that it envisages supply of labour which can be classified as “Manpower Recruitment or Supply Agency Services”. In the case in hand, there is no supply of labour to the sugar factory concerned. The respondents have undertaken the activities of harvesting of sugarcane and transporting the same to the sugar factory for which labour is employed.

**7.** Having regard to the nature of contract between the respondents and sugar factory and the scope of definitions mentioned above, it appears that the Appellate Tribunal has rightly come to the conclusion that the respondent’s work, though provided services to the sugar factory, did not come within the mischief of the term “Manpower Recruitment or Supply Agency”.

**8.** This interpretation of agreement between respondents and its principal is in tune with the judgment of Supreme Court in the case of *Super Poly Fab-riks Ltd. v. Commissioner of Central Excise, Punjab* reported in [2008 \(10\) S.T.R. 545](#) (S.C.). Paragraph No. 8 of the said judgment can be relied upon to drag the point at home, which reads as under :-

*“8. 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.”*

**9.** In view of the above, it is clear that no manpower has been supplied by the respondents to the sugar factory to constitute supply of manpower. This Court had an occasion to deal with the similar issue, as is involved in these appeals, in Central Excise Appeal No. 19 of 2014, and this Court by order dated 27-1-2015 [[2015 \(38\) S.T.R. 468](#) (Bom.)] has dismissed the said appeal.

**10.** In view of the above discussion, in our view, the appeals are devoid of any merits. The judgment and orders, which are impugned in these appeals, passed by the learned Member of the Appellate Tribunal calls for no interference. The appeals are hereby dismissed. No costs.”

**(c) Bhogavati Janseva Trust vs. CCE, Kolhapur**

**“5.1** As per Section 65(68) of Finance Act, 1994 “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” and the taxable service is defined under Section 65(105)(k) as “service rendered to any person by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner”. The appellants are not manpower recruitment agencies as they do not recruit any persons; they also do not supply manpower to the sugar factory. What they have undertaken is harvesting of sugarcane and transportation of the same to the sugar factory. To undertake that work, they have entered into an agreement with the contractors who have provided the manpower for harvesting of the sugarcane and transportation of the same. In any service activity, manpower is required. That does not make the service as supply of manpower. Otherwise, all services would have to be classified as “manpower supply service”. Further in the instant case, the consideration is paid not on the supply of manpower but on the sugarcane supplied on tonnage basis. If an efficient contractor engages less manpower, he will make more profits while an inefficient contractor engaging more manpower would make less profits. In other words, since the consideration is received on the quantity of sugarcane delivered, the essential nature of service is the harvesting and supply of sugarcane. How the service is rendered is not relevant for classification of the service. From the statutory definitions given above and the contracts entered into by the appellants, it is clear that there is no element of manpower supply or recruitment by the appellants to the sugar factory and therefore, the services rendered by the appellants cannot be classified under manpower recruitment or supply agency services, by any stretch of imagination. Therefore, the impugned demands by classifying the activity under manpower supply service have to be set aside.

**5.2** It is further seen that the activity undertaken by the appellant merits classification under BAS which is defined under Section 65(19) as follows :-

“business auxiliary service” means any service in relation to, -

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or
- (v) production or processing of goods for, or on behalf of, the client;
- (vi) provision of service on behalf of the client; or
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision.

Sub-clause (iv) deals with procurement of goods or services, which are inputs for the client. Sugarcane is an input for the client, the sugar factory and the sugarcane are goods. Though the appellants do not procure these goods, they are rendering a service

incidental or ancillary to such procurement and therefore, the activity undertaken by the appellants in harvesting and transporting the goods comes under sub-clause (vii) of Section 65(19). Since the impugned demands have been raised under the category of manpower supply or recruitment agency services, such demands cannot be sustained at all.

6. In view of the above and also in view of the decisions of this Tribunal in the case of *Amrit Sanjivni Sugarcane Transport Co. Pvt. Ltd.* and *Samarth Sevabhavi Trust* (cited supra), we hold that the impugned demands are not sustainable in law. Accordingly we set aside the demands and allow these appeals. Since the appeals are allowed on merits, we are not going into the other issues raised by the appellants. We are informed that in some cases, the appellants have made payments. If the appellants have made any payments towards these demands, refund of the same shall be considered by the department in accordance with the law.”

**(d) CCE, Kolhapur vs. Shriram SAO TVS Limited.**

“3. The issue involved in this case is regarding the service tax liability of the respondent under the category of “Manpower Recruitment and Supply Agency Service”. The lower authorities came to a conclusion that the respondent who is registered under co-operative society; service tax liability gets confirmed for undertaking the activities of cutting/harvesting and transporting of sugarcane to Sugar factory as the assessee is functioning on behalf of the farmers enters into a contract with labour contractors for arranging manpower for the purpose of harvesting/cutting and transporting of sugarcane to sugar factories. Coming to such a conclusion, show cause notices were issued to the respondent and the adjudicating authority confirmed the demands on the respondent. Aggrieved of the such order an appeal was preferred before the first appellate authority. The first appellate authority after following the due process of law came to a conclusion that the services rendered by the appellant would not fall under the category of manpower supply agency service and hence set aside the order-in-original.

4. We find that the issue is no more *res integra* inasmuch as this Bench has held in the case of *Bhogavati Janseva Trust v. CCE, Kolhapur* - [2014 \(34\) S.T.R. 410](#) (Tri-Mum) on an identical issue has held in favour of the assessee. The same view was expressed by the Bench in *Satara Sahakari Shetu Audyogik Oos Todani Vahtook Society v. CCE, Kolhapur* - [2014 \(36\) S.T.R. 123](#) (Tri-Mum). It was brought to our notice that identical view was expressed by the Bench in the case of *Godavari Khore Cane Transport Company Pvt. Ltd.* Central Excise Appeal No. 19 of 2014. The judgment of the *Godavari Khore Cane Transport Company Pvt. Ltd.* was taken in appeal by the Revenue before the Hon’ble High Court of Bombay at Aurangabad. Their Lordships has upheld the order of the Tribunal reported as in Appeal Nos. ST/256/2008, ST/68, 7/2009-Mum. [[2012 \(26\) S.T.R. 310](#) (Tri-Mum)]. The ratio of the judgment of the Hon’ble High Court at Para 6 & 7; we with utmost respect reproduce the same.

“6. We are not inclined to accept this submission because, as said above, the services provided by the respondent, though for harvesting, loading, unloading, etc., it was essentially a package deal through which the sugar factory would get their essential raw material supplied to their factory site. In what manner the work is done was known to the sugar factory but was not their concern really. The sugar factory was aware that this work is done with the help of number of labours, whose services are procured by the respondent either individually or through some other agencies but how was such work done was not the concern of the sugar factory. Harvesting sugarcane, atleast today, is a labour intensive activity. Very soon, this work would be done mechanically. So, the nature of

work undertaken by the respondent must be understood in the context in which it was understood by the respondent and its principal-sugar factory. This interpretation of the agreement between the respondent and its principal is in tune with the judgment of the Supreme Court in the case of *Super Poly Fabriks Ltd. v. Commissioner of C. Ex., Punjab*, reported in [2008 \(10\) S.T.R. 545](#) (S.C.). Paragraph No. 8 of the said judgment can be relied upon to drag the point home, which reads as under :-

“8. 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.”

*7. In any case, the agreement itself is eloquent enough to draw the above conclusion. In this background, we must look at the show cause notice dated 16-10-2008. On that date, whether the Revenue was in a position to levy tax on services provided by the respondent? The answer has to be in negative. Having regard to the history of service tax in our country, it becomes clear that when the State was in the process of including various types of services in service tax net, the State's policy was to include different services at different point of time. For the first time in 1997, the State included Recruitment Service as taxable service. Slowly, labour contract services were also made taxable in the year 2005. The package deal which is involved in this case was not subjected to service tax in the year 2005 and so, the Revenue was really not able to demand service tax to the respondent. The provisions of Finance Act did not give them sufficient leeway. So the notice and demand was uncalled for. After the notice was issued and the demand was made, it became a difficult endeavour for the Revenue to bring the service provided by the respondent within the definition of Manpower Recruitment and Supply Agency. In our view, it was not possible for them to do so then. Since then much water has flown and now sufficient amendments are made in the relevant provisions. We are told that now all services, except the services mentioned in the “negative list” are made taxable. Until this provision is made i.e. July, 2012, the situation was different for the Revenue and apparently, the services rendered by the respondent at the relevant time were found not taxable.”*

5. In view of the judicial pronouncements on the same issue we do not find any merits in the appeal filed by the Revenue. The appeal filed by the Revenue is rejected.

6. The cross objection filed by the appellant is also disposed of.”

We also take note of the submission made by Shri K.J. Kinariwala, learned Consultant that for the subsequent period learned Commissioner (Appeals) in the case of *M/s. Talala Taluka Sahakari Khand Udyog Mandali Limited* dropped the demand vide order No. BHV-EXCUS-000-APP-011-15-16 dated 29.05.2015. Considering the various decisions referred above including judgment of Hon'ble Bombay High Court, the issue is no more *res-integra* and the demand under Manpower Recruitment and Supply Agency Services

is not sustainable. Accordingly, the impugned orders are set-aside and appeals are allowed with consequential relief.

*(Pronounced in the open court on 06.12.2022)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(Raju)**  
**Member (Technical)**

KL