

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

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 10173 of 2016-DB**

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-292-2015-16 dated 06.10.2015 passed by Commissioner of Central Excise and Service Tax-VADODARA-I (Appeal)]

**Industrial Fire And Safety Services**

**.... Appellant**

2nd Floor, Yaksh Shree Complex,  
Chhani Octroi Naka, VADODARA, GUJARAT

*VERSUS*

**Commissioner of Central Excise & ST, Vadodara-i**

**.... Respondent**

1st Floor, Central Excise Building,  
Race Course Circle, Vadodara, Gujarat -390007

**APPEARANCE :**

Shri Mrugesh G. Pandya, Advocate for the Appellant  
Shri AR Kanani, Superintendent, (AR) for the Respondent

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

DATE OF HEARING: 05.06.2024

DATE OF DECISION: 10.09.2024

**FINAL ORDER NO. 11964/2024**

**C.L. MAHAR :**

The brief facts of the matter are that the appellant is engaged in assisting fire safety service to handle any emergency arising at the client's premises and to maintain fire and safety equipments in working condition. The department during the course of audit and scrutiny of the financial records of the appellant entertained a view that the appellant is providing Manpower Recruitment or Supply Agency Service and have not paid the service tax amounting to Rs. 34,03,091/- for the period October 2006 to March 2011. Accordingly a show cause notice dated 02.04.2012 came to be issued asking to pay service tax of Rs. 34,03,091/- under Section 73(1) of the Finance Act, 1994. Interest and penal provisions of the Finance Act, 1994 have also been invoked. The matter got adjudicated by the impugned order-in-original dated 06.07.2016 whereunder all the charges as invoked in the show cause notice have been confirmed against the appellant by Adjudicating Authority. The appellant have approached the Commissioner

(Appeals) for relief however, the appellant did not succeed at the appeal level also and vide order dated 06.10.2015 the appeal was dismissed by the Commissioner (Appeals).

2. The appellant are before us against the above mentioned impugned order-in-appeal and has submitted that the appellant has taken contract for assisting various industrial units in maintaining of fire fighting maintenance and detection service including the maintenance and upkeep of fire fighting equipments installed at the various factory premises. The appellant have submitted that payment which is being made to the appellant is on monthly lump-sum basis by individual industrial units. So far as statutory obligations under the law like Provident Fund and ECI etc. with regard to employees deployed by the appellant at various industrial units for the purpose of assisting their clients in maintenance of fire fighting system were discharged by the appellant. The appellant is also making compliance of all the statutory provisions and other regulations with regard to employees deployed by him at various factory premises.

3. Shri Mrugesh G. Pandya, learned advocate appearing on behalf of the appellant has taken us through the annual contract for assisting and fire fighting service entered with Chambal Fertilizers and Chemicals Limited at Gadepan site and has pointed out that annual contract is for assistance and fire safety service to handle any emergency in the plant of their clients and residential township of M/s. Chambal Fertilizers and Chemicals Limited for which they are paid a lump sum amount of Rs. 1,63,000/- per month.

3.1 The learned advocate also taken us through the fact that the personnel deployed by the appellant have always remained at their own pay-roll and worked under their personal control and supervision. The company, where the fire fighting personnel are deployed does not exercise any control over the persons engaged by the appellant and therefore, it is wrong on the part of the department to allege that the appellant have supplied manpower to various companies. It has been contended that they have taken a specific work of fire detection and for handling and to upkeep fire safety equipments on an annual contract basis, therefore, the same does not fall under the category of Manpower Recruitment or Supply Agency Service as provided under Section 65 (68) of the Finance Act, 1994. The learned advocate

argued that when specific job is undertaken on lump-sum payment on monthly/ annual basis, same cannot be classified as service under the category of Manpower Recruitment or Supply Agency Service. The learned Counsel has also relied upon various decisions in this regard:-

(a) Pranav Oxigen vs. CCE, Vadodara-II - CESTAT Final Order No. A/1127/2019 dated 19.11.2019.

(b) Sureel Enterprise Pvt. Limited vs. CCE & ST, Ahmedabad CESTAT Final Order No.A/11947-11949/2019 dated 18.10.2019.

(c) Seven Hills Construction vs. Commissioner of Service Tax. Nagpur-2013 (31) S.T.R. 611 (Tri-Mumbai)

(d) Commissioner vs. Seven Hills Construction 2017 (7) G.S.T.L. J122 (Bom.).

(e) C.C.C. EX. & ST., Aurangabad vs. Shri Smarth Sevabhavi Trust-2016 (41) STR 806 (Bom.) 2016 (41) S.T.R. 806 (Bom.).

(f) Super Poly Fabriks Limited vs. Commissioner of C. Ex. Punjab (10) S.T.R. N545 (S.C.).

(g) Naya Sarai SSS Limited vs. CCE, Ranchi - 2023 (13) CENTAX 292 (Tribunal Cal.).

4. We have also heard Shri AR Kanani, learned Superintendent (AR) who has reiterated the findings as given in the impugned order-in-appeal.

5. We have heard both the sides. It will be relevant to have a glance at various work orders received by the appellant by various manufacturing units. The sample copy of the work order dated 29.12.2005 issued by M/s. Chambal Fertilizers and Chemicals Limited is reproduced below:-

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**Chambal Fertilisers and Chemicals Ltd.**  
**WORK ORDER**

Regd. Office :  
P.O. GADEPAN-325208  
DISTT KOTA(RAJASTHAN)  
Tele. 07455-274121(7 lines)  
FAX : 07455-274129/274130  
E-Mail :  
Website : www.cfcl.co.in

ECC NO.1405033151  
Collectrate:Jaipur  
Div:Kota,Range:Rural-1  
TIN No. 08222951511  
(Under RST & CST Act)

Order No. : CFCL/PUR/ JKG/95332  
Date : 29/12/2005

Enq.No. : CFCL/PUR/JKG/12296

Qtn. Ref : MOM DATED OCT 13, 2005  
BRN No 17750

Indentor : 58 Fire Fighting & Safet Contractor :  
Indent Ref : 12296 15070021  
EA No :  
Amd. Dt.  
Amd. No.

To,  
**INDUSTRIAL FIRE & SAFETY SERVICES**  
FF/14 MARUTHY COMPLEX,  
NEW CHHANI ROAD,NIZAMPURA,  
BARODA - 390002  
Tele : 0265-2761278, 27C Fax : 0265-2776208

1. Please indicate the above Work Order contract No. on all invoices, delivery challans and correspondence.  
2. Mail all documents to the Dy. General Manager - Materials, Chambal Fertilisers and Chemical Ltd., Gadepan-325208, Kota.  
3. Please see reverse for general terms and conditions governing this Contract.  
4. Please return the duplicate copy duly accepted.

Please arrange to carry out the following job as per Job Description, Scope of Work, terms and conditions of this contract.

Subject :- ANNUAL CONTRACT FOR ASSISTANCE IN FIRE FIGHTING SERVICES AT GADEPAN SITE

SL	Job Description	Job Code	Unit	Quantity	Unit Rate	Amount(Rs)
	<b>FIRE FIGHTING &amp; SAFETY JOBS</b> Assistance in Fire Fighting Services - to handle any emergency arising in our Plants i.e. Ammonia, Urea, Bagging, Offsite & Utilities and other associated areas and township in Gadepan complex - and to maintain Fire & Safety equipments in healthy condition at all the time.	541105101101	MONTHS	12	163000.00	1956000.00

Amount in Words : Rs. Nineteen Lac Fifty Six Thousand Only 1956000.00

**GENERAL TERMS :-**

**BRIEF SCOPE OF WORK**  
**AA. FIRE SERVICES:**  
1. a) The contractor will be responsible for assisting CFCL in maintenance of Fire prevention and detection services including installed equipments in Complex.  
b) He will generate and submit following reports as required in approved formats -  
i. Daily,  
ii. Monthly,  
iii. Quarterly,  
iv. Half yearly &  
v. Yearly audit reports.  
c) He shall be responsible for carrying out such tasks as fixed and communicated to him from time to time which in the opinion of the management he has the means and the capability perform  
d) Monthly payment to the personnel will be done before 7th of each month. PF will be deposited and receipt forwarded by 15th of each month. He shall be responsible for Compliance of all Statutes and regulations as shall apply to him in the execution of this contract.  
2. The personnel engaged and deployed by the contractor should possess the knowledge and experience in fire prevention and rescue services.

**BB. COVENANTS - EMPLOYERS' SIDE**  
1. The Contractor shall be responsible for compliance of all Statutory and Regulative requirements which shall apply to him during the execution of this contract.  
2. Contractor will ensure that Staff deployed will stay in Barracks to meet the emergency situation.

**CC. OTHER TERMS AND CONDITIONS**  
1. The contractor should furnish antecedents and bio-data along with passport size photographs of the Personnel he proposes to deploy for the prior approval of the CFCL.  
2. The contractor shall be required to remove any of his undesired personnel as and when directed by the CFCL without showing any reason.  
3. Contractor shall provide 2 sets of Uniform to their staff as per the quality & colour approved by CFCL. Management. New recruits shall be provided two sets of Uniform immediately on joining and existing manpower shall be provided one set of Uniform immediately and second set after three months. In addition, Boiler suit (one no.), Shoes (one pair), Socks (two pairs), Belt (one no.), & Woollen jersey (one no.) per year shall be provided.

Contractor's copy / Contractor's Acceptance copy / Indentor / Finance / Purchase / Master Copy / P & A/Stores/Buyer

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Chambal Fertilisers and Chemicals Ltd.		WORK ORDER	
Office : GADAPAN-325208 BTT KOTA (RAJASTHAN) No. 07455-274121 (7 lines) X : 07455-274129/274130 Mail : Website : www.cfcl.co.in	ECO NO. 1405033151 Collectrate: Jaipur Div: Kota, Range: Rural-1 TIN No. 08222951511 (Under RBT & CBT Act)	Order No. : CFCL/PUR/ JKG/95332 Enq. No. : CFCL/PUR/JKG/12296 Qtn. Ref : MOM DATED OCT 13, 2005 Indentor : 58 Fire Fighting & Safet Indent Ref : 12296	Date : 29/12/2006 BRH No 17750 Contractor : 15070021 Amd. Dt. Amd. No.

requirement of any other equipment for discharging of duties, contractor shall provide the same. However, Gumboot & Raincoat as and when required shall be provided by CFCL free of cost.

- He will also look after the day to day functioning of the Mess, its requirements and other allied needs like Cook, Helper / Sweeper, Newspaper.
- Contractor shall organise 'BARAKHANA' for his personnel on 20 Jan and 16 Aug in the mess.
- Contractor shall adhere to all statutory requirements of the factories act/as well as Govt. of Rajasthan from time to time, pay all taxes and other costs from time to time by due date. Payment, WCP, PF etc.
- In case of any injury/accident on duty to the staff, contractor will ensure immediate payment of incidental expenses.
- Vendor will get the Medical Check-up of their employees done thoroughly before they are taken into service. Only persons found medically fit shall be allowed to join the duty.
- CFCL will hand over the requisite tools to the Administration Supervisor of contractor. In case of any loss, the cost will be deducted from contractor's monthly bill [Procurement cost].
- In case of manpower leaving the job replacement shall be provided within 20 days. In case same is not provided, necessary deductions shall be made from monthly bill. This shall be calculated on basis of monthly salary divided by 30 days to arrive at per day deduction. Deduction shall be applicable after 20 days only.
- Wearing of uniform is must & contractor shall ensure that all the personnel will come on duty in proper uniform and salary is inclusive of Uniform, Boiler Suit, Shoes, Socks, Belt, Woollen Jersey etc. However CFCL shall provide Gumboot & Raincoat free of cost.
- Contractor shall arrange two days on-site refresher training program every six months. One training shall be through external agency and one training through in-house experts from other similar sites.
- Contractor shall rotate 3-4 persons from this site in consultation with CFCL.

**DD. TERMINATION:**  
This contract shall be valid for a period of One year from January 01, 2006 to December 31, 2006 (end of C- Shift) unless either party gives a notice in writing for three clear months conveying to the other its decision to early terminate the Contract. In case of termination the Contractor shall be bound to clear all statutory and other obligations before his accounts are settled by CFCL. The site shall be vacated within one month from the date of termination & before release of Final payment.

**EE. MIN. QUALIFICATION & EXPERIENCE REQD. FOR DEPLOYMENT OF FIRE PERSONNEL**

- Admin Supervisor & Sr. Fire Supervisor - Minimum sub-officers course from NFSC, Nagpur or equivalent and minimum 5 years experience in large industrial establishment.
- Fire Supervisor - Minimum sub-officers course from NFSC, Nagpur or equivalent and minimum 2 years experience in large industrial establishment.
- Sr. Fire Engine Driver cum Operator - Minimum five years experience in a regular fire service as driver cum operator similar to CFCL F&S setup in addition to the qualifications of fire engine driver cum operator
- Fire Engine Driver cum Operator- Possessing heavy vehicle driving license and minimum five years driving experience in rural & urban areas, knowledge of repairing and maintenance of heavy vehicles is a must OR Possessing heavy vehicle driving license with six month firemen's course from a recognised fire fighting institute and minimum two years driving experience in rural & urban areas, knowledge of repairing and maintenance of heavy vehicles is a must.
- Leading Firemen - Minimum qualification as of Fire operator [Fireman], but experience shall be 5 years instead of 2 years.
- Fire operator [Firemen] - Matriculate with minimum 6 months fireman course from a recognized fire fighting institute or state fire service and 2 years practical experience in a large industrial establishment

Contractor's copy / Contractor's Acceptance copy / Indentor / Finance / Purchase / Master Copy/ P & A/Stores/Buyer

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Chambal Fertilisers and Chemicals Ltd.		WORK ORDER	
Regd. Office : P.O. GADEPAN-325208 DISTT KOTA(RAJASTHAN) Tele : 07455-274121(7 lines) FAX : 07455-274129/274130 E-Mail : Website : www.cfcl.co.in		ECC NO.1405033151 Collectrate:Jaipur Div:Kota.Range:Rural-1 TIN No. 08222951511 (Under RST & CST Act)	
		Order No. : CFCL/PUR/ JKG/95332	Date : 29/12/2005
		Enq.No. : CFCL/PUR/JKG/12296	
		Qtn. Ref : MOM DATED OCT 13, 2005	BRN No 17750
		Indentor : 58 Fire Fighting & Safet	Contractor : 15070021
		Indent Ref : 12296	Amd. Dt.
		EA No :	Amd. No.

g) All persons deployed shall have Heavy Vehicle driving License.

**TAXES & DUTIES:**  
 Rates are inclusive of all applicable taxes & duties except service tax which shall be reimbursed against documentary evidence if applicable. Contractor shall submit documentary evidence (Xerox Copy of Certificate) towards registration with concerned excise authorities under relevant category.

Rates quoted are based on payment of Minimum wages to the workers and all statutory levies payable such as PF, Workmen Compensation Policy, Leave Wages, Wages for national holidays and Bonus / Double OT etc..

**PAYMENT TERMS:**

a) In consideration of successful execution of job, you will be paid per month amount indicated above. Service tax if applicable shall be reimbursed on submission of challan.

b) Gratuity shall be reimbursed, as & when applicable as per prevailing statutory laws and shall be reimbursed at actual. Contractor shall pay the Gratuity amount at the time of separation to the eligible employees for the length of service at CFCL and claim reimbursement. The payment shall be certified by Manager (F&S).

c) Rates are inclusive of Bonus, which will be settled in prior consultation with CFCL only. For purpose of Gratuity only those employees who have completed five years service with contractor at CFCL shall be eligible.

d) The Contractor shall be responsible for various taxes/levies of the State Govt./Central Govt. and other statutory bodies. TDS at the prescribed rate will be deducted at source from his monthly bill value and the certificate to this effect will be issued to him.

e) The Principal Employer will retain 5% of the invoice value every month and shall release the same on compliance of all statutory obligations.

f) The Principal Employer will have liberty to en-cash the BG submitted towards security amount to discharge any legal obligation otherwise cast on the Contractor under any Labour Law. The security will remain with the Principal Employer upto three months after termination / completion of contract. No interest is payable on such security deposit.

g) Vendor shall furnish proof of submission for Provident Fund of previous month with every invoice. The contractor shall provide the clearance certificate along with proof of payment of all dues within two months of person leaving the job. However in case of final bill same shall be submitted along-with final bill & No dues certificate to enable release of payment.

**INDEMNIFICATION / PERFORMANCE GUARANTEE:**

a) Contractor shall deposit an amount of Rs. 10,000/- towards satisfactory performance of the contract. The above amount shall be interest free deposit and shall be refunded after satisfactory completion of contract. The amount shall be forfeited if the job is not carried out to the satisfaction of the Company or due to any violation of the terms & conditions mentioned in the contract or for recovery of any dues.

b) All separations / settlements / disputes / arrangements & compromises between you and your employees shall be settled by you smoothly & without disruption of any sort and recourse to CFCL.

c) During execution of the job assigned, in case any financial/material loss is suffered directly or indirectly by the Company on account of negligence, indiscipline, theft, misappropriation or any other act of your representatives/persons, you will immediately on demand by the company, make good such loss in the manner and to the extent called upon by the company. Alternately, the Company reserves its absolute right to recover the loss/losses either by adjustment against your bill or otherwise asking you to repay at your risk and cost.

**EXIT CLAUSE**  
 Upon satisfactory Completion of job or termination of contract, the contractor shall present full Reconciliation of Materials and his accounts with CFCL. Clear all dues payable to CFCL, clear all dues to the Government and to Statutory authorities, Clear all dues to his employees and his other liabilities, sub contractors and their liabilities. The contractor shall send his confirmation to this effect along with his Final Bill.

**OTHER TERMS & CONDITIONS:**

a) This contract is subject to the conditions that none of CFCL Director or any of their relatives has interest in your firm.

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**Chambal Fertilisers and Chemicals Ltd.**  
**WORK ORDER**

Head Office : Q. GADEPAN-325208 DISTT KOTA(RAJASTHAN) Tele : 07455-274121(7 lines) FAX : 07455-274129/274130 E-Mail : Website : www.cfcl.co.in	ECC NO.1405033151 Collectrate:Jaipur Div:Kota.Range:Rural-1 TIN No. 08222951511 (Under RST & CST Act)	Order No. : CFCL/PUR/ JKG/95332      Date : 29/12/2005 Enq.No. : CFCL/PUR/JKG/12296 Qtn. Ref : MOM DATED OCT 13, 2005      BRN No 17750 Indentor : 58 Fire Fighting & Safet      Contractor :      Amd. Dt. Indent Ref : 12296      15070021 EA No :      Amd. No.
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b) All the Personnel deployed will be on your Pay - Roll and will work under your absolute control & supervision. The company shall not have nor shall exercise any control over the persons engaged by you to discharge your obligations and you will be fully responsible to CFCL-Gadepan for the job assigned.

c) For proper co-ordination and close follow-up, you will depute one of your senior representatives, who will visit once every fortnight compulsorily at our site, for proper supervision and control and administration of contract.

d) Contractor shall station additional manpower if required for short notice replacement to cover leave / shortfall and meet contingencies, without any cost to CFCL.

e) The job shall be carried out by you to the entire satisfaction of the Company on your absolute responsibility and cost; //

f) You will closely liaise with our Manager - F & S for effective services and your personnel will assist the management in any emergent/unforeseen situation like Fire, Natural calamities etc. //

g) Contractor shall ensure that no post is unmanned due to absence of manpower and any overtime payment for doing so shall be borne by contractor.

h) You shall indemnify and legally protect owner and/or its employees from all claims, demands, causes or action or suits arising out of services/works provided by you under this work order.

j) You will be entirely responsible for all statutory obligations/payments to the persons etc. engaged by you or to the authorities concerned, for carrying out of the job and CFCL shall have no obligation whatsoever in this regard.

**COMPLETION PERIOD:**

a) The contract shall be valid for a period of 12 months w.e.f. 'A' shift [starting at 6.30 AM] of First day of contract (indicated against Completion Period Column). It will automatically terminate by end of 'C' Shift of Last day of the contract. Besides, the contract shall also be terminable by the Company at its sole discretion by giving one month's advance notice, without assigning any reasons;

b) The contract shall come to and end of the expiry of the last day of the contract in case same is not renewed in writing. You will request 30 days in advance before expiry of the contract for extending the tenure of contract and company may at its discretion renew the contract on same rates, terms and conditions.

**PENALTY FOR NON PERFORMANCE:**

a) In case any position remains vacant in any shift due to any reason, double penalty on pro-rata basis per incidence for deficiency in services noticed shall be recovered from monthly invoice. Further in case the total strength goes down below agreed strength on roll or in barrack on any day due to any reason whatsoever (except resignation) irrespective of category, penalty @ Rs. 300/- per day shall be levied.

b) In case of your failure to execute desired quality of work, penalty as deemed necessary will be imposed. The decision of our GM - TS & P will be firm & binding.

c) The Company also reserves the right to make alternative arrangements from any other source at your risk and cost if, at any stage, it is felt that the services provided by you are not in accordance with the requirement.

d) The Mgr - F&S shall certify the Contractors' bill each month with specific reference to all these points mentioned above.

e) Contractor shall strictly adhere to CFCL's Standard Conditions for Execution of work at site and safety policy and provision of the Contractor' Safety Manual for safe execution of job. (Copy available on request).

f) Contractor shall ensure that the PPE provided to the personnel engaged for execution of job are strictly used. In case any worker is found violating this condition and moving in the plant without mandatory PPE's or carrying out the work without personnel protective equipments as listed in work permit CFCL reserves the right to cancel the Gate passes/refuse entry to the worker involved.

g) A penalty as below shall also be deducted from Contractor's bills for these violations as observed by CFCL Job In-charge/Safety In-charge: (i) Rs. 500/- for 1st observed violation (ii) Rs. 800/- for 2nd observed violation (iii) Rs. 1,200/- for 3rd observed violation. Iv) For violation beyond three

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Chambal Fertilisers and Chemicals Ltd.		WORK ORDER	
Add. Office : O. GADEPAN-325208 DISTT KOTA(RAJASTHAN) Phone : 07455-274121(7 lines) FAX : 07455-274129/274130 Mail : Website : www.cfcl.co.in		ECC NO.1405033151 Collectrate:Jaipur Div:Kota.Range:Rural-1 TIN No. 08222951511 (Under RST & CST Act)	
Order No. : CFCL/PUR/ JKG/95332 Date : 29/12/2005		Enq.No. : CFCL/PUR/JKG/12296	
Qtn. Ref : MOM DATED OCT 13, 2005 BRN No 17750		Indentor : 58 Fire Fighting & Safet Contractor : Indent Ref : 12296 15070021 Amd. Dt.	
		EA No : Amd. No.	
<p>Instance, the contract shall be cancelled and job executed through alternate vendor at your risk and cost.</p> <p>h) In case of any accident involving Contractor or his workman and departmental enquiry concluding that accident has taken place due to violation of any safety norms by you or your staff or due to any unsafe act performed by your staff during execution of the job, CFCL reserves the right to impose appropriate penalty depending on the nature of the accident.</p> <p>i) In case violation of safety or gross negligence on part of your staff is observed which may have caused the accident, CFCL reserves the right to terminate the contract and get the job executed through another contractor at your risk and cost.</p>			
<b>Remarks :- FOR EXECUTION OF JOB AT SITE - REFER ENCLOSED ATTACHMENT FOR APPLICABLE TERMS AND CONDITIONS. THE JOB SHALL BE EXECUTED AS AGREED DURING MEETING DATED OCTOBER 13, 2005</b>			
Completion Period : 52 Week(s) From January 01, 2006		<b>Payment Terms :</b> 95% PAYMENT WITHIN 10 DAYS OF SUBMISSION OF INVOICE & BALANCE 5% ON COMPLAINE OF STATUTORY OBLIGATIONS	
Taxes : Inclusive LD Clause:- Not Applicable		<b>Test Documents Description :</b>	
Our <b>Manager - F &amp; S</b> or his authorised representative will verify the work and contractor would be required to complete the job within stipulated completion period.			
I have read all terms and Conditions and this contract is hereby accepted.		For CHAMBAL FERTILISERS AND CHEMICALS LTD.	
Date _____ Signature _____ Desigation _____		Dy. General Manager(Materials)	
Contractor's copy / Contractor's Acceptance copy / Indentor / Finance / Purchase / Master Copy/ P & A/Stores/Buyer			

A perusal of the above mentioned work order makes it clear that annual contract was for assisting fire fighting and to handle any emergency arising due to fire incidence in the complex of M/s. Chambal Fertilizers and Chemicals Limited and to maintain fire safety equipments in healthy and



working condition and for this purpose, the appellant are being paid an amount of Rs. 1,63,000/- per month. In the terms of contract, we find that it is the responsibility that appellant to make statutory monthly payment like PF, ECI etc. for his employees and the receipt of the same need to be forwarded to the unit entering into the contract for fire safety with the appellant.

6. Further, we also find that most of the work orders as well as invoices are for maintenance and fire fighting service as claimed by the appellant. It is also relevant to consider the definition given in the Finance Act for Manpower Recruitment or Supply Agency Service which provides that for service under the category of Manpower Recruitment or Supply Agency Service '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'. From the work order which we have mentioned in the forgoing paras, there is no contract for providing manpower and the same is for specific purpose for fire fighting and to handle any emergent situation as well as for maintenance and keeping the fire fighting equipments in good condition. We are of the view that activity undertaken by the appellant does not fall under the category of Manpower Recruitment or Supply Agency Service.

7. Before parting with the issue, we also rely upon this Tribunal decision in the case of M/s. Sureel Enterprise Pvt. Limited vs. CCE&ST, Ahmedabad vide order No. A/11947-11949/2019 dated 18.10.2019, which is as under:-

5. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant entered into agreement dated 20.11.1999 with M/s Nirma Ltd, Bhavnagar, according to which the appellant was supposed to manufacture of detergent on job work basis. however, subsequently, they made another agreement dated 28.05.2005 according to which the appellant were required to carry out the process of converting the raw-material into detergent/cake in the factory premises of M/s Nirma Ltd, Bhavnagar, with the plant or machinery, material land, and building provided by M/s. Nirma Ltd, Bhavnagar. We observed from both the agreement that the ultimate activity which is to be performed by the appellant is to convert raw material and packing material into packed detergent/cake irrespective of the fact whether the same is carried out in the appellant's premises or at the premises of the service recipient i.e. M/s. Nirma Ltd. Even as per the agreement the clear understanding between the appellant and M/s Nirma Limited is not for supply of manpower but to carry out manufacturing activity of detergent/cake, therefore, in our view it is clear contract of manufacturing of excisable goods.

6. There is no dispute that the appellant after carrying out the manufacturing handed over the excisable goods to M/s. Nirma Ltd who ultimately cleared the said goods on payment of excise duty. It is also observed that the appellant were paid the service charges, as per the quantity of excisable goods i.e. detergent/cake manufactured by the appellant and the consideration is not with reference to the number of man power/man hour deputed for the manufacturing of excisable goods. This also shows that there is no contract between the appellant and M/s. Nirma Ltd for supply of man power. The activity carried out by the appellant is at the most considered as "production or processing of goods on behalf of the client" which is covered under the service head of "Business Auxiliary Service". If this be so, then the service is exempted under Notification No. 8/2005-ST. Since, the demand was raised under wrong head i.e. Man Power Recruitment and Supply Agency Service, for this reason also the demand is not sustainable. This tribunal time and again held that if contract is for particular job and not for man power supply the demand of service tax under Man Power Recruitment And Supply Service cannot be raised, the relevant judgments are referred below:-

**Rameshchandra C. Patel-2012 (25) STR 471(Tri.-Ahmd.)**

"4. From the above it can be seen that there are two requirements for determining whether a service is taxable service under the category of manpower recruitment or supply agency. First of all, it should be provided by a manpower recruitment or supply agency and secondly it should be in relation to manpower supply or recruitment. In this case, whether it is in the agreement entered into between the two parties or in the activity undertaken by the appellant which is contract manufacturing, looked into, it is seen that nowhere the question of supply of manpower or recruitment arises. In fact the agreement is totally silent as regards the manpower. It does not have any provision relating to the number of men or labour to be used or the manner in which they have to be used or the quantum of payment to be made to them etc. The department has totally failed to show in which manner the service provided by the appellant can be categorized under manpower recruitment or supply. In the Order-in-Original, the adjudicating authority proceeded on the ground that there was no challenge to the liability of tax at all since the appellant had deposited the amount during investigation. Commissioner (Appeals) in her order simply stated that she agreed with the view of the adjudicating authority and went on to say that appellants had wilfully suppressed the fact of service and appellants failed to pay service tax. Both the authorities have not at all discussed how the service provided by the appellant amounts to service of manpower recruitment or supply. After considering the records, submissions and the orders passed by the lower authorities, I am unable to find any ground on which the appellant can be held liable to service tax on the activity undertaken by them. In the result appellant succeeds and the appeal is allowed with consequential relief to the appellant."

**Jubilant Industries Ltd-2013 (31) STR 747 (Tri.-Del)**

"13. We are in agreement with the contention that the same activity cannot be considered as manufacturing and subjected to excise levy and at the same time considered to be a service and subjected to service tax. This principle does not need much discussion and is also recognized under Section 65(19) of Finance Act, 1994 levying service tax on processing of goods not amounting to manufacture. Process amounting to manufacture is kept specifically out of the scope of the entry. That being the case such an activity cannot be brought under service tax levy under "Business Support Service" because the underlying principle will apply to this entry also. The specific exclusion is not seen under 64(104c) for the reason that the legislature intended to deal with the issue under Section 65(19). We find that Revenue is also not disputing the position that manufacturing activity cannot be subjected to service tax. Revenues

contention is that what JLSL was doing was manufacturing and what appellant (earlier known as PMSL) was doing was support services.

14. So the essential question to be determined is whether the impugned activity can be split into two - one as manufacturing by JLSL and the other as service by appellant (earlier known as PMSL) to JLSL. While considering this issue another issue that arises is whether there can be two manufacturers for the same goods. In the instant case JLSL claimed to be the manufacturer and the claim was accepted by Central Excise Department and JLSL was paying excise duty. In such circumstances is there any scope for PMSL to claim that their activity should also be considered as manufacturing activity in respect of the same goods?

15. We have perused the contract dated 1-4-2007 between the two parties. It is seen that as per the contract JLSL was supplying all the raw materials required for manufacturing final products. JLSL was also supervising the manufacturing process and was taking steps to ensure the quality of the products. All activities like handling the raw materials, its accounting and processing was done by appellant (earlier known as PMSL). This means that both the parties were involved in the manufacturing activity. It is also to be noted that such manufacturing arrangements are very common in the country. In such situation legal provisions exist in Central Excise laws for considering either of the two parties as manufacturer. In most cases the persons doing the job-work claims to be the manufacturer and pays excise duty as applicable in his hands. There are situations where the person supplying raw materials undertakes to pay excise duty and for that reason excise duty is not charged in the hands of the person doing the manufacturing activity. Notification 214/86-C.E. is applicable in such cases.

16. Section 2(f) of Central Excise Act defines manufacture and manufacturer as under :

“manufacture” includes any process, -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer; and the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

17. Therefore if either party was to apply for registration as a manufacturer the department would have accepted the application. Excise registration is only to the effect that one of the parties undertakes to discharge the excise duty liability on the goods manufactured. This cannot be interpreted to mean that the activity done by the other party is not manufacturing activity. Notification 214/86-C.E. only provides a mechanism by which the duty liability is fixed on the person supplying raw material and enables the clearance of the goods from the factory of actual manufacture subject to undertaking for payment of duty by the other party or its further use in the manufacture of excisable goods. In a situation where the other party (JLSL in this case) was willing to pay excise

duty at the time of clearance of the goods from the factory of manufacture there was no need to adopt the procedure laid down in Notification 214/86-C.E.

18. We find that the predominant activities for manufacture were done by appellant (earlier known as PMSL). Their plant and machinery was used and their employees were doing the processes. In the matter of deciding who is the manufacturer of excisable products, ownership of raw materials is not a critical criterion. We do not see any merit in the argument of Revenue that the activities of making available the factory and infrastructure and doing activities of raw material handling, accounting etc. are to be considered as activities distinct from manufacturing activity. All the activities done by the appellants have to be seen together and when it is so seen it is clear that they were doing manufacturing activity. For reasons already explained, the fact that PLSL was paying excise duty does not lead to a legal position that the appellant (earlier known as PMSL) was not doing manufacturing activity. The fact that appellant (earlier known as PMSL) was charging two components towards job-charges separated as fixed cost and variable cost cannot alter this situation so long as goods were manufactured. In a situation where goods were not manufactured but charges were collected under the fixed component it could have been considered as a service. While working out cost of any manufactured product costing is done by splitting cost elements into fixed cost and variable cost and that cannot change the nature of the activity. What could have changed the nature of the activity is a situation where no manufacturing activity took place and still the appellant collected their charges.

19. We also do not find merit in Revenue's argument regarding suppression of facts. The contract was placed before the department from the very beginning when JLSL took Central Excise registration. The Department did not raise any issue at that time. The contention of Revenue is that the fact that they were charging separately for fixed costs and variable costs was not disclosed to the department. As already stated we are of the view that this aspect could not actually change the nature of the activity.

20. In view of the analysis as above we hold that the activities under taken by the appellant during the period April 07 to Sept. 09 being a manufacturing activity carried out cannot be classified as business support service and subjected to service tax and hence the demand fails. This demand fails on account of time-bar also because we are of the view that all relevant facts have been disclosed to the department in time. So this part of the appeal is allowed.

21. For the period 1-10-2009 to 14-11-2010 the appeal is dismissed as withdrawn."

**Shiv Narayan Bansal-2013 (31) STR 747 (Tri.-Del.)**

"3. Heard both sides and perused the records. We have gone through the finding of adjudicating authority and also the observations of the authorities at page 63 of the appeal folder, wherein the authorities had noted that :- "In the instant case all the three persons mentioned in last para of the above letter are not covered under the above referred service as they did the job work themselves. The service receiver has not paid amount individual person who have performed the job work. Moreover, labour employed for the job work remained under the control of job worker and not in the control of the service receiver. Thus, party's contention appears to be correct."

4. On totality of the construction of the agreement at page 48 of the appeal folder without being read in piece-meal does not throw light to hold that the objective of the parties was to provide manpower only without carrying out manufacture. Had that been the objective, the appellant would have ceased to operate after supply of manpower.

But that was not so. While object is clear from Clause 3 of agreement, that appears to be determining factor to decide incidence of tax under law.

5. When we are able to appreciate above fundamental concept, waiving requirement of pre-deposit, we do not propose to keep the appeal pending. We hold that the appellant had not provided service of manpower but had acted as job worker in absence of finding that no manufacture activity was carried out.

6. Appeals are thus allowed. Consequently, both stay applications and appeals get disposed of in the above manner.”

7. 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.

8. In view of entire above discussion and following the above decision, we hold that impugned order-in-appeal is not sustainable. We set-aside the same. Accordingly, the appeal is allowed.

*(Pronounced in the open court on 10.09.2024)*

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

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

KL