

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 42414 of 2016

(Arising out of Order in Appeal No. 509/2016 (STA – I) dated 01.09.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

Updater Services Pvt. Ltd.
No. 2/302A, UDS Salai
Off. Old Mahabalipuram Road
Thoraipakkam, Chennai – 600 097.

Appellant

Vs.

Commissioner of GST & Central Excise
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

Respondent

APPEARANCE:

Shri G. Shivakumar, Advocate for the Appellant
Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40542/2026

Date of Hearing: 15.12.2025
Date of Decision: 28.04.2026

Per M. Ajit Kumar,

This appeal challenges Order-in-Appeal No. 509/2016 (STA-I) dated 01.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai.

2. The appellant provides services classified as Manpower Supply Services and filed a refund claim of ₹42,13,554/- for service tax paid during April 2012 to September 2013. The claim was based on a contract with ITC Ltd. for processing unmanufactured tobacco, which the appellant contended was classifiable under Business Auxillary

Service (**BAS**) upto 30.06.2012 and after 01.07.2012 (introduction of Negative List), was treated as BAS for reporting purposes. They claimed that the activity was exempt as per Notification No. 14/2004-ST as an agriculture-related service. A Show Cause Notice dated 29.01.2014 proposed rejection of the refund on the ground that the services rendered were classifiable as Manpower Supply Services (**MSS**) and was not eligible for the exemption. The Original Authority rejected the refund, holding that the notification was inapplicable during the relevant period. This decision was upheld by the Commissioner (Appeals), leading to the present appeal.

3. The learned Advocate Shri G. Shivakumar appeared for the appellant and Ld. Authorized Representative Shri N. Satyanarayanan appeared for the respondent.

3.1 Shri G. Shivakumar, Ld. Advocate, submitted on behalf of the appellant that:

A. The appellant has entered into a contract with ITC Ltd for processing unmanufactured tobacco including the related activities of packing and other incidental activities connected thereto.

B. Exemption was available to the service rendered by them under Notification 14/2004-ST, dated 10.09.2004 during the Pre-Negative List regime and was continued in Post-Negative List regime as per Sl. No. 30 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

C. A comparison of Section 66D(d)(v) of the Negative List with Mega Exemption Notification No. 25/2012, S. No. 30(a) shows substantial similarity and are favourable to the appellant.

D. The term "agricultural produce" is defined under Section 65B(5) of the Finance Act 1994, and covers the activity done by the appellant.

E. From the definition, it is evident that any produce of agriculture qualifies as agricultural produce, and therefore, tobacco is agricultural produce at that stage. Its only when any further processing is undertaken on tobacco, it ceases to qualify as agricultural produce within the meaning of Section 65B(5).

F. Had the legislative intent been to restrict the exemption only to processing undertaken to make agricultural goods marketable in the primary market, the statute could have expressly used the phrase "production process in relation to agricultural produce."

The Ld. Counsel prayed that the impugned order may be set aside and the refund granted.

3.2 Shri N. Satyanarayanan, Ld. Authorized Representative, walked us through the findings in the OIO and the impugned Order. He stated on behalf of revenue that:

A. The service provider's employees carried out work within ITC's factory premises. The consideration payable comprised the employees' wages/salaries plus a 10% margin, as expressly provided in the contract.

B. The contract also specified the exact number of workers and supervisors to be deployed. Such an arrangement is typical of manpower supply services, where labour is provided according to the client's requirements and consideration is directly linked to labour

cost. Accordingly, the service provider did not carry out tobacco processing but only supplied manpower for the same.

C. The service provider merely supplied skilled and unskilled personnel and did not perform any independent activity on behalf of ITC.

D. Classification under Business Auxiliary Service would arise only if the service provider undertook an activity independently for the client, which is not the case here.

E. As no exemption under the Negative List or Mega Exemption Notification applies to manpower supply services, the services are taxable and service tax is payable.

He prayed that the appeals may be rejected.

4. Heard both sides and perused the appeal memorandum and connected papers. The issue pertains to a claim for refund. The dispute prima facie relates to the classification of the service rendered by the appellant to ITC and secondly as claimed by the appellant the service is exempted from Service Tax both in the pre and post Negative List period as it relates to agriculture.

4.1 The Ld. Original Authority choose to dispose of the refund claim solely on the basis of the classification of the service under MSS. Since he did not find any exemption from Service Tax for MSS under the Mega Notification or in the Negative List for the said activity, the refund claim was rejected.

4.2 On the other hand the Ld. Commissioner Appeals, vide the impugned order, examined the claim of the Appellant for exemption

under Notification 14/2004-ST, dated 10.09.2004 and under the Negative List and recorded in his order as under:

“6. **The main contention of the appellants is that their activity is related to agriculture and is exempted from service tax.** It is observed that though they had claimed that they had **undertaken the activity of processing of unmanufactured tobacco,** they had neither produced the copy of agreement entered with M/s. ITC, nor produced any documents in support of their claim. Whereas, it is an undisputed fact that they had supplied manpower to carry out certain activity as required by their client and collected charges for the same. Also, prima facie, the recipient of service, M/s. ITC, is a manufacturer of cigarettes and not a 'Tobacco grower' and there is nothing on record to substantiate that the activity carried out by them is related to agriculture. It is a known and admitted fact that one who claims the benefit should come out with clean hands to prove his eligibility. In the absence of any such proof to substantiate their claim, the appellant's contention cannot be accepted. Accordingly, they are not entitled for exemption as provided in the Notification No.14/2004-ST dated 10.09.2004. Similarly, the activity is not covered by the negative list for the period post 01.07.2012, as **there is no evidence of providing services related to agriculture.** Therefore, the appellants are liable to pay service tax on the services provided by them for the periods both prior to and post 01.07.2012 and consequently, they are not entitled for refund.

7. As regards the reliance placed on the Circular No.143/12/2011-ST dated 26.05.2011 and the case laws, it is observed that they are not applicable to their case as their activity is not proved to be provided in relation to agriculture.

8. In view of the foregoing discussions, the impugned order rejecting refund is upheld and finds that the appeal merits to be rejected.

9. Appeal rejected.”

(emphasis added)

We propose examining the classification of the service before examining the eligibility of the service for Service Tax exemption.

5. It would be apposite to examine the Agreement between the parties at this stage. The salient details of the Agreement dated

22.03.2012, which was also submitted to the Original Authority, vide appellants letter dated 01.03.2014 in reply to the SCN, are as under:

PART-2
PREAMBLE

WHEREAS

1. ITC is engaged in the business of threshing green leaf tobacco in the KGLT which involves the services of suitable and qualified workmen for various processes and job areas

2. **ITC has explained in detail to the contractor, the entire nature and scope of work and the type of manpower required to handle such jobs and the contractor hereby confirms that it has understood the entire nature and scope of works and assured ITC that it has the required competency and is capable of carrying out the said job/s.**

3. ITC has accepted the offer of the contractor on certain terms and conditions to which the contractor has agreed to revert.

PART-3
TERMS

NOW THIS AGREEMENT WITNESSETH AS UNDER

1. DEFINITIONS

Unless otherwise specified or defined, in this Agreement-

(i) **'COMPANY'** means **'ITC LIMITED 'PROJECT KGLT'**

(ii)
. . . .

(viii) **JOB SPECIFICATION** means the Annexure - I to this Agreement wherein the details of the scope of work, the special conditions attached to it, the minimum manpower ordinarily required to carry out the jobs etc. The job specification may be amended from time to time by the Company depending on requirements.

2. NATURE & SCOPE OF AGREEMENT

(i) This is an Agreement to carry out certain jobs as mentioned in the job Specification in the KGLT for the period specified in the Agreement

(ii) **ITC has explained to the contractor, entire details of the work involved and the type of the manpower required to carry out such works and the contractor has submitted that it has the competency and manpower to carry out the scope of work.** The operations in the factory are of a seasonal nature. The requirements under this agreement would therefore be dependent on the availability of the product during the season.

(iii) **The Contract Workmen shall work under the supervision of and be under the direct control of the contractor. Neither the Company nor its officials shall have any control whatsoever over the Contractor Workmen.**

(iv) It is expressly agreed between ITC and the Contractor that this Agreement is not an Agreement for supply of manpower but is an Agreement to carry out and complete certain jobs related to processing works for the period specified below in this Agreement.

.....

5. COMPLIANCES BY THE CONTRACTOR

(i) The Contractor agrees to comply with all the provisions of the law in force and as would be amended from time to time.

(ii) The Contractor agrees that it shall be responsible for any claims arising under the Workmen's Compensation Act or "Employees State Insurance Act or any such similar act in force.

.....

(vi) The Contractor agrees to provide at his own cost an identification badge/card to the workforce or personnel employed by him for the fulfillment of this Agreement. **The identification badge / cards so provided shall not bear the name or address of the company, but shall bear name and address of the contractor.**

(vii) The Contractor shall maintain up to date Forms, Registers and other books prescribed under the various applicable laws and produce the same to the ITC along with the monthly bills. Non-production of these required documents will be held as a non-compliance of the mandatory legal requirements and the payment will be withheld. ITC may also terminate this agreement without any notice for non-production of these documents

.....

(x) **The Contractor shall pay the labour force engaged by it not less than the minimum wages, as may be prescribed by the Government of Karnataka or by such other competent concerned authorities from time to time.** Any revision in the minimum wages will be reimbursed by the company provided the wages as per Annexure II are not less than the prescribed minimum wages.

.....

(xv) The contractor shall ensure that the Contract Workmen maintain discipline and that there is no misconduct from their part. If there is any misconduct then the Company shall bring the same to the notice of the contractor. However, the company or its officials are not authorized to initiate any disciplinary action or impose punishment against the contract workmen. **The imposing of disciplinary action or mending the misconduct shall be the sole responsibility of the contractor and the contractor agrees to take prompt action as called for to maintain utmost discipline, peace and tranquility.** Further, the company shall not suggest or recommend any particular disciplinary action and it shall be left to the judgment of the contractor on a case to case basis.

.....

(xviii) The Contractor shall provide to his workmen at least two exclusive similar pairs of dress/uniform that can be visually differentiated from the ITC uniform. All the Contract Workmen have to compulsorily wear the uniform while in the premises. The Contractor shall take the consensus of ITC before choosing the colour of the uniform. **This is to distinguish the Contractor Workmen from the rest of the workforce.**

.....

6. WORKING HOURS, DAYS & PATTERN

(i) Since the Contract Workmen have to work in coordination with the other workmen of ITC, the Contractor shall follow the Production Calendar/Schedule of ITC. A copy of the current production calendar/schedule is given to the Contractor. ITC shall inform the Contractor about any change in the Production Calendar/Schedule.

.....

(iv) The working hours and shift pattern of the Contract Workmen (including maintenance shift/schedule) shall be as per the ITC working hours and shift pattern. The decision of ITC is final in determining the working hours and shift patterns.

7. NO RIGHTS OF EMPLOYMENT

(i) The employees or the workforce or the personnel of the contractor, under no circumstances shall be construed as the employees of the Company. The Contractor shall be solely liable and responsible for the payment of employee dues, salaries and applicable statutory payments.

(ii) On the expiry of the term of this contract or early termination of this contract the employees of the Contractor shall have no right to enter the premises of the Company

(iii) Any disputes between the Contractor and his employees/workmen shall have no bearing on the Company and under no circumstances neither the Company nor its personnel shall be held liable for such disputes.

(iv) in the event of any workman or personnel of the Contractor filing any kind of suit or claim or case against the Company for claiming of regularization of employment rights or any such similar rights, then the Contractor agrees to implead himself and support the contention of the Company that such personnel are the employees of the Contractor and not the Company. The Contractor fully indemnifies ITC in this regard and shall keep indemnifying forever

8. FACILITIES TO BE PROVIDED TO CONTRACT WORKMEN

(i) The Contract Workmen are allowed to use the canteen facilities of ITC during the period of this Agreement.

(ii) The Contract Workmen are allowed to use the toilets provided in the work areas.

(iii) The Contractor shall provide to the Contract Workmen all the necessary protective gear and safety equipment as given in Annexure - III. However the same shall be returned to ITC after usage or at the expiry/termination of the agreement. The Contractor shall make good any material loss or wilful damage cause to the protective gear and safety equipment. However, the Contractor shall not be responsible for the damages or loss arising out of the normal course of work or the normal wear and tear of the equipment.

(iv) The ITC Occupational Health Center (Dispensary) shall give first aid to the Contractor Workmen who may suffer injuries while carrying out their normal work in the premises.

(v) For any major injuries suffered by the Contract Workmen while carrying out their normal work in the premises the Contractor shall make

the necessary arrangements for the medical treatment and other related facilities. The major injuries are those injuries for which first aid alone is not sufficient and requires additional and/or specialized medical care/treatment and may include hospitalization. The Contractor shall have covered the costs of the hospitalization and the treatment for the injuries under a separate insurance policy and keep the insurance valid in the course of the aforesaid agreement. The Company shall not be liable for the costs of the same and the contractor keeps the Company indemnified in this regard.

(vi) The Contractor shall be responsible to compensate the Contract Workman or his Legal Representatives for any claim of compensation arising from the partial or complete disablement of the workman or death of the workman due to any work related accident or during the course of work. The Contractor indemnifies ITC in this regard and shall continue to keep indemnifying forever

(vii) ITC shall provide the Contractor the required administrative facilities (like office chairs / tables) in the premises.

9. CONSIDERATION AMOUNT AND PAYMENT

(i) The consideration amount for the purposes of this agreement will be as per the rates agreed upon by ITC and the contractor and detailed ANNEXURE of this agreement

(ii) The contractor shall raise an expenses bill on a monthly basis as per the rates detailed in ANNEXURE

(iii) **There is no assured minimum payment under this agreement.** The contractor understands and agrees to this.

(iv) The payments shall be made in the form of an Account Payee Cheque only in the nama/favour of the Contractor Updater Services Pvt. Ltd.

(v) The Contractor shall submit to ITC its bills for the services provided for a month on or before 25th day of each along with statement of accounts and such other document as may be prescribed by ITC from time to time. If such bills are complete in all respects, ITC shall make payments for the same on or before 5th day of the succeeding month. **It is also agreed between the parties that the contractor shall disburse the salary to its employees on the of 5th of every month in case of any holiday, it is agreed between the parties that the bills/ payments shall be made on a working day after such holiday.** If there are any deficiencies or mistake in the bills, ITC will intimate about such points and after rectification of such defects by the contractor payment towards those will be made within 15 days thereafter.

(vi) The payments shall be made after making appropriate deductions (wherever required or applicable) as mentioned in the agreement or as may be agreed upon by the parties from time to time

(vii) The contractor shall not stop work without prior intimation of at least thirty days to ITC for any non-payment of bills or part-payment of bills due to any disputes.

10. GENERAL TERMS AND CONDITIONS

.....

(iii) The contractor and his workmen shall abide by all the rules or guidelines specified in the Job Specification, this agreement.

(iv) The contract workmen shall work only in the areas specified by ITC from time to time, to fulfill the terms and obligations of this agreement.

(v) In the event of any complaint by the Company against the contract workmen for any willful or intentional damage (including theft) the parties agree to jointly investigate the same and go by the "Test of Reasonableness" for coming to any conclusion on the cause of damage and the extent of damage. **If the damage is found to be willful or intentional, then the Contractor may wherever possible repair / restore the damage caused or make good the losses to the Company.** If the Contractor fails to make good the loss within the stipulated and mutually agreed time frame, the Company, after giving adequate notice, can recover the costs of the damage from the payments to be made to the Contractor under this agreement. Further if such a circumstance arises, the Contractor assures the Company that he shall not withhold the statutory / obligatory / mandatory payments he is required to make to his workmen (deployed in the Company under this Agreement) under this Agreement or any statute in force. Further, in case of theft (wherever required and decided by (TC), an information shall be given to the Police for further investigations and ITC will offer support, if any, required by the Contractor.

(vi) The contractor shall not appoint any sub-contractors or agents without the written consent of the Company for the fulfilment of this agreement

(vii) **The contractor shall be solely responsible for maintenance of discipline and for the performance of duties by his employees. ITC shall not have any right for control or supervision over the employees of the contractor.**

.....

(xi) It is made clear by ITC and understood by the contractor that in the event of the State Government or the Central Government or the High Court or the Supreme court as the case may be, making any amendment to the Contract, Labour Act or its Rules, or issuing any Circular or Notification, as the case may be, the employment of Contract Labour Act or its Rules, or issuing any Circular or Notification, as the case may be, prohibiting the employment of Contract Labour in any activity or in any Section of factories to which KGLT belongs the employment of contract labour in that activity or section shall immediately cease. **The contract labour who may or who are likely to lose their engagement due to such change in law shall not save any right to demand any regularization of employment in the company.** This clause shall apply mutatis-mutandis to any judgement of the high Court or the Supreme Court, as the case may be, which has the consequence of abolishing contract labour.

.....

11. TERMINATION:

(i) In addition to the termination clauses entered in other parts of this Agreement ITC shall have the right to terminate this Agreement at anytime by giving sixty (60) days notice to the contractor without assigning any reasons and under such circumstances the contractor shall not be liable for any relief or compensation whatsoever other than what is specifically covenanted in this Agreement.

.....

- e) The Contractor can terminate this agreement by giving ITC sixty (60) days written notice

Annexure 1

JOB SPECIFICATION

1. **Decaking.** Decaking is an activity to remove icp and bottom gunny jute patta of tobacco bale loading the bale in to the bale trolley and bundling of the collected gunny pattas for recycling
2. **Hauling:** Having is an activity of transporting the bale trolley from decaking area to the feed end and empty trollies back manually.
3. **Case preparation:** The activity involves preparation of relevant cartons for lamina and stem products as per the customer requirements.
4. **Packing Support:** The activity involves final adjustment of weight and presentation of package at hold on press area and subsequent strapping and labeling of the packed case.
5. **Sampling.** The activity involves collecting and transporting of samples from the Lamina, Stem and Scrap packing line to the testing lab.
6. **Inspection:** The activity involves layout of cases from the warehouse in the inspection cay.
7. **Coal Crusher Feeding:** This activity involves feeding of coal from coal yard with a dumper in to crusher hopper and simultaneously remove stones before feeding.
8. **Coal Stoking:** The activity involves stoking/poking and breaking of coal, which is fed in the boiler.
9. **Loading/Unloading:** The activity involves unloading of raw material, packing material and coal, and loading of finished goods by products ejected raw material and packing material for recycling.
10. **Helpers:** The activity involves office support and material handing /hygiene in engineering and quality control lab.
11. **Material Movement:** This activity covers receipt of raw material into the allocated storage area issues to Plant movement of finished/raw materials to allocated storage areas, the associated recording of transactions in the systems provided.

Service Levels for all the above mentioned activities to be mutually discussed arc agreed upon from time to time

(emphasis added)

6. An Agreement that is enforceable in a court of law is a contract.

The Hon'ble Apex Court in **DLF Universal Ltd. & Anr. Vs Director, Town, and Country Planning Department, Haryana & Ors.**

[(2010) 14 SCC 1], stated the principle involved in the interpretation of contracts:

“Interpretation of contract

13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. **It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.**”

(emphasis added)

7. Recently the Hon'ble Supreme Court in **GENERAL MANAGER, U.P. COOPERATIVE BANK LTD. Vs ACHHEY LAL & ANR.** [2025 INSC 1175 / Civil Appeal No.2974/2016, Dated: 11.09.2025], examined a catena of judgments so as to consolidate and lay down the relevant **tests to determine the employer-employee relationship**. It held:

“FEW TESTS TO DETERMINE EMPLOYER EMPLOYEE RELATIONSHIP TO BE KEPT IN MIND WHILE DECIDING MATTERS ARISING FROM LEGISLATIONS LIKE INDUSTRIAL DISPUTES ACT, 1947, THE FACTORIES ACT, 1948 ETC:

1. Control Test

(i) **The control test postulates that when the hirer has control over the work assigned and the manner in which it is to be done, an employer-employee relationship is established.** The control test is derived from common law application in vicarious liability claims.

(ii) The earliest instance of applying the control test in India is in **Shivanandan Sharma Vs Punjab National**

Bank Ltd. reported in AIR 1955 SC 404. Here, a claim under the Industrial Disputes Act arose as to whether a head cashier was the bank's employee. The bank had an agreement with a contracted treasurer who nominated people to work for discharging function of the bank under the agreement, including the cashier in question. The court held that although the treasurer chose the nominees who discharged the functions, yet the bank had complete control over the nominee's disciplinary matters, leave of absence, how the nominees discharged their functions, and, importantly, their salaries were paid by the treasurer from the funds provided by the bank. It was held that the bank manager had the same degree of control over the nominees as he did over numerous other employees, and thus an employer-employee relationship existed. The bank also had the right to select bank personnel who would have the authority to supervise how the cash department conducted its work. The court concluded that the cashier was an employee of the bank. The scope of indirect employment was expounded as under:

"If a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master." (emphasis supplied)

(iii) While **Shivanandan Sharma** (supra) was the first instance of the control test being applied, an important step in the test's evolution was in **Dharangadhara Chemical Works Ltd. Vs State of Saurashtra** reported in (1957) 1 LLJ 477. The dispute was whether agarias (salt workers) were employees and whether the claim under the Industrial Disputes Act 1947 was maintainable. To establish that the hirer had control over the hired person, it was ruled that control must exist in two aspects. First, control over the nature of the work performed and, secondly, the manner in which the work is conducted. It was argued that since agarias assisted several persons in performing work, they were independent contractors.

(iv) For the court, the true difference between the workers and independent contractors was whether the work was being committed for oneself or a third party. The existence of external help would not rule out an employer-employee relationship. The court opined that the greater the degree of control, the more likely the hired person would be an employee. Accordingly, the agarias were held as employees and eligible for benefits under the Industrial Disputes Act 1947.

(v) The court enunciates the manner to make this distinction as under:

"The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer" (emphasis added)

(vi) Thus, the control test was expanded to mean due control and supervision. In numerous cases, the control test adopted in Dharangadhara (supra) remained the sole factor determining employer-employee relationship. The degree and level of control required would depend on the facts and circumstances of each case.

2. Organisation/Integration Test

(i) The first instance of the shift from the control test as a sole determinative factor was in **Silver Jubilee Tailoring House Vs Chief Inspector of Shops and Establishments** reported in (1974) 3 SCC 498. This Court observed that the earlier reliance on the control test was attributed to the agrarian economy, where masters often exercised control over workers. This occurred due to masters having more knowledge, skill and experience. The shift to a multifactor. test is due to modern work being conducted by professionals where masters lack the technical expertise to direct the manner in which the work is undertaken. The court arrived at these conclusions relying on judgements in the **Market Investigations Ltd. Vs Minister of Social Security** reported in (1969) 2 WLR 1, Cassidy v Ministry of Health reported in (1951) 2KB 343, Montreal v Montreal Locomotive Works Ltd reported in 1947 1 DLR 161 (Privy council). In Silver Jubilee (supra) reliance was placed on a combination of the organisation test (also known as the integration test) as interpreted in the Market Investigations Ltd. (supra), Cassidy. (supra), Montreal Locomotive Works (supra) and the control test used in India.

(ii) **The organisation test looks at the degree of integration in the work committed in the hirer's primary business with the understanding that the higher the level of integration, the more. likely the worker is to be an employee.** A combination of control and integration tests allows the professional workers to be classified as employees, notwithstanding a lack of control over the manner of work. Furthermore, the existence and potential use of factors beyond the control and integration in future cases was also recognised. This opened the path for the multifactor test.

3. Multiple Factor test

(i) The multifactor test includes:

- a) Control
- b) Ownership of the tools
- c) Integration/Organisation
- d) Chance of profit
- e) Risk of loss
- f) the master's power of selecting his servant
- g) The payment of wages or other remuneration
- h) The master's right to control the method of doing the work, and
- i) The master's right of suspension or dismissal.

(ii) In **Steel Authority of India Limited Vs National Union Waterfront Workers**, reported in 2017 NLS Bus L. Rev. 20, it was opined that where sham arrangements exist, the Contract Labour (Regulation and Abolition) Act, 1970 would not apply, and workers would be deemed employees and have the right to raise an industrial dispute in the same manner as an employee.

(iii) To identify whether sham arrangements exist, this Court in **Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N.** reported in (2004) 5 SCC 514 ruled that piercing the veil was necessary. **Whether the arrangement was a sham was not considered as a question of law.** Such a determination must be adjudicated based on the evidence adduced in the court by either party and not merely by referring to the provisions. The relevance of factors other than the control and integration to determine whether the workers are employees or independent contractors was brought out. The court examined the following factors:

- a) who is the appointing authority?
- b) who is the paymaster?
- c) who can dismiss?
- d) the duration of an "alternative service";
- e) the extent of control and supervision;
- f) the nature of the job, e.g. whether it is professional or skilled work;
- g) nature of establishment;
- h) the right to reject.

(iv) This Court in **Bengal Nagpur Cotton Mills v. Bharat Lal** reported in (2011) 1 SCC 635 laid down two factors to be considered to determine the true nature of the hiring entity, i.e., whether it is the principal employer or contractor:

(i) Whether the principal employer pays the salary instead of the contractor; and

(ii) Whether the principal employer controls and supervises the work of the employee?

4. Refinement of the multifactor test

(i) The courts, over the years, have refined the scope of the multifactor test by adding various factors based on the facts and circumstances. This Court, in many cases, has applied the refinement of the multifactor test.

(ii) In **Sushilaben Indravadan Gandhi v The New India Assurance Company** Limited, reported in (2021) 7 SCC 151, this Court revisited the distinction between a contract of service and a contract for service. After analysing *Market Investigations Ltd. (supra)*, *Cassidy (supra)* and *Montreal Locomotive Works (supra)*, the multifactor test was reiterated, consisting of the following factors:

- a) Control over the work and manner in which it is conducted
- b) Level of integration into employers' business
- c) Manner in which remuneration is disbursed to workers
- d) Economic control over workers
- e) Whether work being conducted is for oneself or a third party

(iii) In **Sushilaben** (supra) priority was given to factors of control and mode of remuneration, noting these would ordinarily suffice to identify the true nature of the relationship unless other contractual terms indicated otherwise.

(iv) In **Sushilaben** (supra) the articulation of the control test has been given importance as it varies from that in **Balwant Rai Saluja Vs Air India Ltd.** reported in 2014 9 SCC 407. This was elucidated as under:

"The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases." (emphasis added)

(v) The use of the term "sufficient degree of control" is in stark contrast to the "effective and absolute control" ruling in **Balwant Rai Saluja** (supra). However, no reference to Balwant Rai Saluja (supra) was made while discussing the evolution of the various tests. (Referral: IIMA, Working Paper by M.P. Ram Mohan and Sai. Muralidhar K.)

(emphasis added)

The Court held that everything would depend upon the facts that are involved in the particular case.

8. **We find that the CBIC has taken a similar view in its Circular** No. 190/9/2015-ST dated 15.12.2015, relevant portion of which is extracted below;

"2. **The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service** are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service providers accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

2.1 On the other hand, the **essential characteristics of job work service** are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

3. **Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case.** The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided. . ."

(emphasis added)

9. Before assessing the parties' relationship to determine whether the Contract is a 'contract for service' or a 'contract of service', in light of the "tests" laid down by the Hon'ble Supreme Court in **Achhey Lal** (supra), it is apposite to reproduce the decision in **Sushilaben Indravadan Gandhi Vs New India Assurance Co. Ltd.**, (2021) 7 SCC 151, to serve as a guide while examining the issue.

"28. It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. **It is equally clear that no magic formula can be propounded, which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction** [See Atiyah, PS. "Vicarious Liability in the Law of Torts", pp. 37-38].
(emphasis added)

10. The legal position and various tests governing determination of an employer-employee relationship stands conclusively clarified by the Supreme Court in **Achhey Lal & Anr.** (Supra). The Court held that the existence of such a relationship is a mixed question of fact and law and must be determined on the cumulative application of viz., the control test, organisation/integration test and the multi-factor test. **That financial assistance, infrastructural support, or operational coordination, without direct control over employment conditions, does not create a master-servant relationship.** The terms of this Agreement and its Annexures demonstrate that the Contract Workmen remain under the supervision, direction and disciplinary control of the Contractor, and that ITC is only

the principal organisation for whose premises and production schedule the job outputs are aligned. Application of the various tests to the impugned Agreement indicate:

A. Control and Supervision Test

(i) Express contractual allocation of control: Clause 2(iii) expressly provides that the contract workmen shall work under the supervision of and be under the direct control of the Contractor, and that neither ITC nor its officials shall have any control over them.

(ii) Disciplinary control rests solely with the Contractor: Clause 5(xv) stipulates that, while ITC may report misconduct, ITC is not authorised to initiate disciplinary action or impose punishment; the entire disciplinary domain (including choice of action) is the sole responsibility of the Contractor.

(iii) Control over performance and discipline: Clause 10(vii) reiterates that the Contractor is solely responsible for maintenance of discipline and performance of duties; ITC has no right of control or supervision over the Contractor's employees.

B. Organisation / Integration Test

(i) Job-work contract (not manpower supply): Clause 2(iv) expressly records that this is not an agreement for supply of manpower but an agreement to carry out and complete certain identified jobs (set out in Annexure I). This indicates that what is integrated, if at all, is the output/service, not the workmen as part of ITC's workforce.

(ii) Visual and identity separation from ITC workforce: Clause 5(vi) mandates contractor-issued ID cards bearing the Contractor's name/address (not ITC's). Clause 5(xviii) requires contractor uniforms

that are visually differentiable from ITC uniforms, reinforcing that the Contract Workmen are not absorbed into ITC's organisational set-up.

(iii) Facilities do not imply employment: Clause 8 permits use of canteen/toilets and provides first aid through ITC's occupational health centre, which are welfare/access arrangements customary for on-premises contract work and do not evidence integration as employees.

C. Multi-factor Test

(i) Wage payment obligation is of the Contractor: Clause 7(i) makes the Contractor solely liable for payment of employee dues/salaries and statutory payments. Clause 9(v) separately obliges the Contractor to disburse salary to its employees (with ITC's payment being made to the Contractor against monthly bills). The arrangement is thus principal-to-contractor consideration, not ITC-to-workman wages.

(ii) Statutory compliances and labour law liabilities are of the Contractor: Clause 5(i), 5(ii) and 8(vi) place compliance with applicable laws and responsibility for compensation/ESI/insurance/accident claims upon the Contractor, with ITC indemnified. This is consistent with the Contractor being the employer.

(iii) No right of employment against ITC; disputes are contractor-workman disputes: Clause 7(i) to 7(iii) negates any employment relationship with ITC and clarifies that disputes between the Contractor and its workmen shall have no bearing on ITC. Clause 7(iv) obliges the Contractor to support ITC's stand in any regularisation claim.

(iv) Termination rights relate to the contract, not engagement by ITC: Clause 11 permits termination of the Agreement by ITC or the Contractor with notice; upon expiry/termination, Clause 7(ii) provides

that the Contractor's employees have no right to enter ITC premises—reflecting that access is derivative of the Contractor's engagement, not an employment right.

D. Coordination Requirements Do Not Amount to Employer's Control

Clauses 8(i) and 8(iv) (requiring the Contractor to follow ITC's production calendar and shift pattern) and Clause 10(iv) (work to be performed only in specified areas) **are operational coordination and site-regulation conditions inherent in performing contract work within an operating factory.** They regulate when and where the job outputs must be delivered so that the Contractor's work is carried out in tandem with ITC's seasonal production, but they do not confer upon ITC the power to appoint, discipline, pay, or terminate the Contract Workmen, which remain with the Contractor.

10.1 Accordingly, on an overall application of the above tests, the dominant and determinative indicia—direct supervision, disciplinary control, wage and statutory liability, and the express character of the arrangement as a job-work contract—establish that the Contract Workmen are employees of, and remain under the supervision and control of, the Contractor, and do not stand in an employer–employee relationship with ITC. The Contract is hence a 'contract for service' and not a 'contract of service'. The service is correctly classified under 'BAS' and not 'MSS'.

11. The finding of the Ld. Commissioner (Appeals) in the impugned order (extracted above), that the Appellant neither produced a copy of the agreement with M/s. ITC nor any documents in support of the claim

is incorrect. The OIO itself records that a copy of the Agreement was furnished. In any event, the Ld. Commissioner (Appeals) could have called for the same. He has further observed that it is an 'undisputed fact' that the Appellant supplied manpower to carry out activities as required by the client and collected charges therefor. However, the refund claim proceeds on a position contrary to such observation, and it is precisely this dispute which led to the present appeal. He has also held, prima facie, that M/s. ITC, being a manufacturer of cigarettes, is not a 'tobacco grower' and that there is nothing on record to show that the activity is related to agriculture. This finding is superficial and unreasoned, as it is common knowledge that cigarette manufacturers also deal with uncut tobacco at the primary stage prior to processing it into cigarettes. The whole issue was dealt with cursorily, without due care and application of mind and merits to be set aside. We therefore proceed to examine the Appellant's claim for exemption.

12. The issue whether the Appellant was required to pay duty or was eligible for exemption for the period from April 2012 to September 2013, can be split into two periods for ease of discussion i.e.:

- a. Pre-Negative List regime – i.e. April 2012 to June 2012
- b. Post-Negative List regime – i.e. July 2012 to September 2013.

13. Notification 14/2004-ST, dated 10.09.2004 as it stood during the Pre-Negative List regime reads as under :-

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service provided to a client by 4/any person) in relation to the **business auxiliary service**, in so far as it relates to,-

(a) Procurement of goods or services, which are inputs for the client,

(b) **production or processing of goods for, or on behalf of, the client;**

(c) Provision of service on behalf of the client; or

(d) a service incidental or auxiliary to any activity specified in (a) to (c) above,

and provided in relation to agriculture, printing, textile processing or education, from the whole of service tax leviable thereon under section 66 of the said Finance Act:"

(emphasis added)

13.1 Mega Notification No. 25/2012-Service Tax dated- 20th June, 2012, read as under:

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

.....

30. Carrying out an intermediate production process as job work in relation to -

(a) **agriculture**, printing or textile processing;"

(emphasis added)

13.2 Post the introduction of the Negative List, the relevant portions of Section 66B and 66D are reproduced below:

SECTION 66B. Charge of service tax on and after Finance Act, 2012.— There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, **other than those services specified in the negative list**, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

(emphasis added)

***** ***** *****

“SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :—

.....

(d) **services relating to agriculture or agricultural produce** by way of-

.....

(v) loading, unloading, packing, storage or warehousing of **agricultural produce;**”

(emphasis added)

14. For much of the pre-Negative List period, exemption Notification 14/2004-ST applied, exempting services to a client under “BAS” to the extent they involved production or processing of goods for/on behalf of the client (including incidental or auxiliary services) and were provided in relation to agriculture. The issue was whether the job specifications in the ‘Annexure’ to the Agreement qualify as incidental or auxiliary to such production or processing in relation to agriculture. In the subsequent period, exemption from tax similarly turns on the phrases “intermediate production process as job work in relation to agriculture” and “services relating to agriculture or agricultural produce.” Which are similar.

15. The issue of what constitutes ‘agriculture produce’ came up for consideration before the hon’ble Supreme court in the case of **Commissioner of Sales Tax, Lucknow Vs D. S. Bist and Sons, Nainital** [1979 (4) SCC 471]. The commodity involved was processed and packed tea leaves. The issue in brief was that he assessee owned tea gardens in Uttar Pradesh and sold processed and packed tea. Claiming the tea as self-grown agricultural produce, the assessee contended that it was not liable to sales tax. The contention was

rejected, and the Revision Authority referred the matter to the High Court on whether the tea had ceased to be agricultural produce and was exigible to sales tax. The High Court answered in favour of the assessee. Aggrieved, the Revenue filed an appeal before the Apex Court. The Hon'ble Court held that most agricultural produce requires minimal processing to prevent perishability and to make it transportable and marketable. **The key test is whether the processing is merely minimal or so extensive that the commodity ceases to be regarded as agricultural produce in common parlance or the market.** Since fresh tea leaves are not marketable and, even after withering, crushing, and roasting, remain tea leaves with enhanced flavour and colour, the processing was only incidental to preservation and marketing; therefore, such sales were not liable to sales tax.

15.1 A similar view was taken by the Apex Court in **Commissioner of Income Tax Vs Cynamide India Ltd.** [1993 (3) SCC 727 (SC)].

The Court held:

5. The High Court has answered the question in favour of the assessee and against the revenue. Having referred to the definition of 'agricultural product' in **Black's Law Dictionary**, the High Court has held that the **operation of de-husking paddy is not an industrial or manufacturing operation as commonly understood**; it is essentially agricultural operation and such changes as are brought about in the product are an outcome of agricultural operation. Both rice and husk remain in their natural form as a result of de-husking and are covered by the term 'agricultural product'

6. The High Court has also formed an opinion that section 35C of the act was designed to encourage development of agriculture and therefore gave, a weighted deduction in respect of expenditure 'incurred in providing to the agriculturists services and facilities specified there in. **The term 'agricultural product' or 'product of agriculture'**

is required to be construed liberally so as to include not merely the primary product as it actually grows, but also a product which under goes a simple operation so as to make it more saleable or more useable. The rice and the husk through separated remain as they were produced and hence continue to be `agricultural product' or `product of agriculture'.

7. We find ourselves in entire agreement with the view taken by the High Court and hold the appeals filed by the revenue devoid of any merit. The appeals are dismissed.

(emphasis added)

15.2 Further "Agricultural produce" is defined under Section 65B(5) of the Finance Act 1994. It reads:

65B. Interpretations : In this Chapter, unless the context otherwise requires,--

...
(5) **"agricultural produce" means** any produce of agriculture on which either **no further processing is done or such processing** is done as is usually done by a cultivator or producer **which does not alter its essential characteristics but makes it marketable for primary market"**

(emphasis added)

16. The definition of "agricultural produce" and the cited judgements apply to tobacco plant too. Therefore, it's clear the appellant processes unmanufactured tobacco for or on behalf of their client which include incidental or auxiliary services related to agriculture. These services constitute an intermediate production process in relation to agriculture or agricultural produce. Consequently, the impugned services are eligible for exemption under the law discussed above, both pre and post the Negative List. Since no other issues were raised in the impugned order, it merits to be set aside without any further ado.

17. We find that a coordinate bench of this tribunal at Hyderabad, while examining a similar issue in **Commissioner of Central Tax**

Guntur – G.S.T. Vs Premier Tobacco Packers on 13.03.2026 held

as under;

"10. The short issue that arises for consideration is whether further processing, drying and packing of tobacco leaves undertaken on job work basis amounts to 'Business Auxiliary Service' or whether the same is processing of agricultural produce not liable to service tax. The definition of 'agricultural produce' under the Service Tax (Removal of Difficulty) Order, 2002, clarifies that agricultural produce includes produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator, which does not alter its essential characteristics but make it only marketable. This issue came up for consideration before this Bench in **Green Leaf Tobacco Threshers Ltd and others Vs CCE & ST, Guntur** [Common Order No. A/30302-30350/2017 dt.22.02.2017], wherein, **it was held that processing and drying of tobacco leaves do not result in manufacture of any new product.** The essential characteristic of tobacco remains unchanged. The activity is in relation to agricultural produce and such activity is not liable to service tax under BAS. In this regard, the relevant para of the order is cited below for ease of reference.

"5.2 It is seen that as per Notification No.14/2004-ST, BAS in respect of inter alia, 'production of goods on behalf of client', inter alia 'in relation to agriculture' is exempted from service tax liability. This exemption got further broadbanded vide Notification No.19/2005 dt.07.06.2005 as a result of which such BAS in respect of 'production of processing of goods for, or on behalf of the client' was exempted. Board's circular No.143/12/2011 had, in the wake of representations, clarified that the process of threshing and drying of tobacco undertaken for, or on behalf of the clients by the processing units are covered by the expression 'processing of goods for, or on behalf of, the client... and provided in relation to agriculture....' Appearing in the Notification No.14/2004-ST (as amended) dated 10.09.2004. We further note that product of agriculture has been defined by the Hon'ble Supreme Court in the case of **CIT Vs Cynamid India Ltd** (supra). Here, dictionary meaning of 'agricultural product' was also discussed. **Accordingly, tobacco and these activities come under the product of agriculture.** In the case of **Tasty Bite Eatables Ltd** (supra), the issue was regarding the preparation of vegetables, fruits, processing the same packing in consumer packs for their clients. That was not

considered as business activity. Relevant para 5.1 of the Tribunal's decision is reproduced below:-

5.1 The above said clarification would squarely apply in the facts of this case as it is undisputed that appellant is undertaking the processing of vegetables on behalf of their client. It is settled law that revenue officers cannot argue against the board's circular. In the case in hand, the first appellate authority as well as the authorized representative of the Revenue are arguing against the board's clarification as reproduced hereinabove. We do not have any hesitation to hold that such arguments put forth by the departmental representative needs to be dismissed. In our view, the activity of processing the vegetables by the appellant will be in relation ST/30423/2018 to agriculture hence not liable to service tax under business auxiliary services.

5.3 The Ministry of Agriculture, Department of Agriculture and Co- operation has clarified in letter dt.20.10.2010 as under:-

“Directorate of Marketing and Inspection, Ministry of Agriculture, Government of India, deals with only food and agricultural commodities. It does not deal with industrial commodities. The grading of tobacco by the Directorate of Marketing and Inspection is purely Agricultural quality control operations for facilitation exports. The certification is done only after removing unwanted/not useful material from the tobacco leaf as per the standard specifications. Here the product form will not change. Only the shape of the leaf will change. There are no chemical changes involved. The product will stabilize after threshing and the shelf life of tobacco will increase. In the absence of these processes, the object of Virginia tobacco cultivation will remain incomplete and gets defeated. **After threshing also the tobacco is still called as manufactured tobacco only. Therefore the entire threshing operation can be technically called Post Harvest Operations** and Virginia Tobacco cultivation for quality control and pre-shipment inspection.”

5.4 **In view of the above, we are of the view that the activity of the assessee is in relation to the**

agriculture and not subject to service tax as a Business Auxiliary Service even before or after the negative list was issued on 01.07.2012.

Hence, we find no merit in the impugned orders where the said activity of threshing and redrying was brought under BAS. On this issue, the concerned assessee-appellants will get the relief. By implication, Department's appeals against the relevant impugned orders which have set aside demands made by original authorities on BAS will require to be dismissed."

11. We further note that **the said decision has attained finality, as the appeals filed by the Revenue before the Hon'ble Supreme Court, were dismissed. Once the Coordinate Bench has taken a view on an identical set of facts and the same has been affirmed by the Hon'ble Apex Court, judicial discipline mandates that we follow the same.**

(emphasis added)

The decision fortifies our findings in the matter.

18. Accordingly, we set aside the impugned order. The appellant is eligible for consequential relief. The appeal is disposed of on the said terms.

(Order pronounced in open court on 28.04.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Rex