

(2015) 08 CESTAT CK 0013

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Cross Objection Application No. 155 Of 2010, Service Tax Condonation of Delay No. 372 Of 2010, Service Tax Appeal No. 520 Of 2009,

CCE, Bhopal

APPELLANT

Vs

M/s Sanjay Enterprises

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Citation : (2015) 08 CESTAT CK 0013

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : B.B. Sharma

Final Decision : Dismissed

Judgement

1. Revenue is in appeal against the order in appeal dated 11.5.2009 which set aside the order of the primary adjudicating authority in terms of which

service tax demand of Rs.13,08,446/- along with interest and penalty was confirmed against the respondent under cargo handling service.

2. The commissioner (Appeals) held that the respondent was only providing labour and was paying service tax under manpower supply agency service

and therefore was not covered under cargo handling service.

3. The Revenue contended that the activity carried out by the respondent involved work related to ""complete loading of cement bags by trucks and

wagon loaders/hand in all types of wagons or truck"". It was paid Rs.4.29 and Rs.5.43 per MT for mechanical truck and wagon loading respectively

and was responsible for the labourers' supervision and safety. All this, contended Revenue, constituted cargo handling service. Revenue added that the

judgment in the case of M/s J.J, Enterprises Vs. CCE - 2006 (3) STR 655 (Trt-

Del.) has not been accepted and an appeal has been filed before the High Court.

4. In its cross objection the respondent has contended that:

(i) The judgment in the case of J. J. Enterprises (supra) is good law as it has not been set aside by any superior court.

(ii) Its case is clearly covered by the said judgment.

(iii) It is a labour contractor registered as such with the labour department under Labour Act 1970 and was only providing labour to the service recipients.

5. Nobody appeared on behalf of the respondent nor has any adjournment request been received and therefore we proceed to decide the case on merits.

6. We have considered the submissions. It is seen that the respondent is labour contractor registered under the Labour Act, 1970 and was providing

labour for the purposes mentioned earlier. The Revenue's case is that the service rendered by it (i.e. the respondent) fell under cargo handling service.

When manpower recruitment or supply agency service came into existence on 16.5.2005, the respondent approached the Supdt. of the Central Excise

Range who after perusing the agreements of the respondent with the service recipients granted service tax registration under manpower recruitment

or supply agency service. The commissioner (Appeals) has passed the impugned order-in-appeal on the ground that CESTAT in the case of CCE Vs.

Pawan Associates - 2008 (9) STR 458 (Tri.-Bang.) has held that a registered labour contractor is not covered under cargo handling service. Para 1 &

2 of the judgement are reproduced below;

I. Revenue is aggrieved with Order-in-Appeal No.224/2005 CE dated 21.10.2005 setting aside the Order-in-Original No.15/2005 dated

9.5.2005 by which the respondent's activity of supplying labour to M/s. Hindustan Lever Limited (HLL) was considered to be coming within

the ambit of 'Cargo Handling Services' for levy of Service Tax. The respondent produced evidence to show that they were only supplying

labours to HLL and labourers were working under the control of M/s. HLL for handling the goods within the factory for shipment, etc. They

also contended that the labourers were working under the Rules and Regulations

of HLL and the respondents were liable to pay minimum wages under the Minimum Wages Act and were also contributing to the provident fund and ESI and paying bonus. Therefore, the supply of labourers to work in HLL would not come within the ambit of 'Cargo Handling Services'. They also relied on Board's Circular F.No.B11/1/2002 TRU which clarifies the issue. The Commissioner (A) noted that the assessee's were labour contractors registered under the Department of Labour, supplying manpower to HLL and following all the Labour legislations, therefore, he held the activity not covered under the activity of 'Cargo Handling Services'. He also relied on the ruling of the Tribunal rendered in the case of J & J Enterprises v. CCE 2005-TIOL-520-CESTAT-DEL wherein it was held that supplying manpower cannot be equated with providing 'Cargo Handling Services'. Revenue is aggrieved with this order.

2. We have heard both sides and have gone through the entire records. We find that the Commissioner (A) besides examining the issue in question to overrule the Revenue's contention has also relied on Tribunal's ruling rendered in the case of M/s. J & J Enterprises (supra) on the same issue holding that such supply of labour will not come within the ambit of 'Cargo Handling Services'. There is no infirmity in Commissioner (A) following the Tribunal's ruling. The said order has not been appealed before higher authorities. Therefore, there is no merit in this appeal and the same is rejected.

7. Revenue's contention is that the judgement in the Pawan Associates followed the judgement in the case of M/s J.J. Enterprises (supra) which has not been accepted by Revenue and an appeal has been filed there-against in Chattisgarh High Court. However, the said judgement (J.J. Enterprises) has not been set aside so far. Indeed even stay has not been granted there-against and therefore that judgement continues to be good law on this point. Thus on merit Revenue's appeal fails. Further it is seen that the entire demand is beyond the period of one year. The respondent itself approached Revenue when manpower recruitment or supply agency service came into effect on 16.5.05 and obtained a registration which, it is claimed, was granted by Revenue after examining its service contracts. If the intention of the appellant was to suppress the facts and evade tax it

would not have itself approached Revenue to seek registration. It shows that the respondent genuinely believed that it was covered under manpower

recruitment or supply agency service. The primary adjudicating authority has not at all analysed as to how the respondent was guilty of wilful

misstatement/suppression of facts. He noted that Respondent relied on the case of M/s J.J. Enterprises but on the ground that the said judgement has

not been accepted by Revenue which has filed appeal there-against and therefore it had not attained finality, illegally refused to follow the same. In

these circumstances, the allegation of suppression of facts cannot be upheld and as a consequence the demand is also hit by time-bar.

8. In view of the foregoing, Revenue appeal is dismissed.