(2015) 01 BOM CK 0037

In the Bombay High Court

Case No : Central Excise Appeal No. 19 of 2014

Commissioner of Customs, Central Excise and Service Tax APPELLANT

Vs

Godavari Khore Cane Transport Company Pvt. Ltd. RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:
Finance Act, 1994 — Section 65, 65(105)(k)

Citation : (2015) 38 STR 468

Hon'ble Judges : V.K. Jadhav, J.;Anand Vasant Nirgude, J.

Bench : Division Bench

Advocate : Kalpalata and B. Bharaswadkar, for the Appellant; Prasad Paranjape h/f J.R. Shah, Advocates for the Respondent

Judgement

1. This appeal challenges the judgment and order passed by the Customs Excise and Service Tax Appellate Tribunal, Mumbai, holding that the service in question was not taxable on the date when tax was demanded. The facts are very simple and can be narrated as under;-

2. The respondent is a private limited company, who entered into a contract with one M/s. Kopargaon Sahakari Sakhar Karkhana Limited, Kolpewadi, Tq. Kopargaon, District Ahmednagar, for providing certain services. The agreement between these two parties was in essence to harvest the sugarcane of the members of the Karkhana from their fields, load them in various vehicles and deliver them at factory site. For these services, the respondent was to get charges on tonnage basis. This work, on the face of it, clearly involves manpower. The respondent, admittedly, engaged number of labour for harvesting the sugarcane, loading it in vehicle and unloading it at factory site. During the course of work, the respondent on one hand and the sugar factory on the other, exchanged number of documents which showed that the sugar factory specifically paid certain amounts towards labour charges, harvesting charges and transportation charges etc. At some point of time, the sugar factory even paid certain amounts towards Service Tax. Having regard to these facts, a notice was

issued by the appellant on 16.10.2008 to show cause as to why they should not pay service tax as per provisions of Section 65(105)(k) of the Finance Act, 1994, which was made effective from 16.06.2005. The notice specifically mentioned that the services provided by the respondent were Manpower Recruitment or Supply Agency Services. The question between the parties was whether the services would fall within the definition of Manpower Recruitment or Supply Agency Services. The definition of this term is mentioned in Clause 105(k) of Section 65 of Finance Act. It reads as under:

105(k) "Taxable service" means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner. 3. The term "Manpower Recruitment or Supply Agency" is separately defined in Clause 68 of Section 65, which reads as under:

65(68) "manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person. 4. Having regard to the nature of contract between the respondent and sugar factory and the scope of the definitions mentioned above, the Tribunal came to a conclusion that the respondent''s work, though provided service to the sugar factory, did not come within the mischief of the term "Manpower Recruitment or Supply Agency".

5. The learned counsel for the appellant tried quite hard to convince this Court that looking to the nature of work undertaken by the respondent, it would come within the definition of manpower recruitment. She placed reliance on the words "supply of manpower" used in the definition of Manpower Recruitment or Supply Agency, quoted above. She tried to suggest that the respondent admittedly supplied manpower for harvesting, loading and unloading the goods and therefore we must hold that the services provided by the respondent would become supply of manpower.

6. We are not inclined to accept this submission because, as said above, the services provided by the respondent, though for harvesting, loading, unloading, etc., it was essentially a package deal through which the sugar factory would get their essential raw material supplied to their factory site. In what manner the work is done was known to the sugar factory but was not their concern really. The sugar factory was aware that this work is done with the help of number of labours, whose services are procured by the respondent either individually or through some other agencies but how was such work done was not the concern of the sugar factory. Harvesting sugarcane, at-least today, is a labour intensive activity. Very soon, this work would be done mechanically. So, the nature of work undertaken by the respondent must be understood in the context in which it was understood by the respondent and its principal-sugar factory. This interpretation of the agreement between the respondent and its principal is in tune with the Judgment of the Supreme Court in the case of Super Poly Fabriks Ltd. Vs. Commissioner of Central Excise, Punjab, . Paragraph No. 8 of the said judgment

can be relied upon to drag the point home, which reads as under:-

8. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive. 7. In any case, the agreement itself is eloquent enough to draw the above conclusion. In this background, we must look at the show cause notice dated 16.10.2008. On that date, whether the Revenue was in a position to levy tax on services provided by the respondent? The answer has to be in negative. Having regard to the history of service tax in our country, it becomes clear that when the State was in the process of including various types of services in service tax net, the State''s policy was to include different services at different point of time. For the first time in 1997, the State included Recruitment Service as taxable service. Slowly, labour contract services were also made taxable in the year 2005. The package deal which is involved in this case was not subjected to service tax in the year 2005 and so, the Revenue was really not able to demand service tax to the respondent. The provisions of Finance Act did not give them sufficient leeway. So the notice and demand was uncalled for. After the notice was issued and the demand was made, it became a difficult endeavour for the Revenue to bring the service provided by the respondent within the definition of Manpower Recruitment and Supply Agency. In our view, it was not possible for them to do so then. Since then much water has flown and now sufficient amendments are made in the relevant provisions. We are told that now all services, except the services mentioned in the "negative list" are made taxable. Until this provision is made i.e. July 2012, the situation was different for the Revenue and apparently, the services rendered by the respondent at the relevant time were found not taxable.

8. The appeal is dismissed.

