(2014) 03 GUJ CK 0117

In the Gujarat High Court

Case No : Tax Appeal No. 138 of 2014

Commissioner of Service Tax APPELLANT

Vs

Arvind Mills Ltd. RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:
Finance Act, 1994 — Section 65

Citation : (2014) 45 GST 591 : (2014) 35 STR 496 : (2014) 73 VST 251

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : A.Y. Kogje, Advocate for the Appellant; Bharat T. Rao, Advocate for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—Revenue is in appeal against the judgment of the Customs Excise & Service Tax Appellate Tribunal ("the Tribunal" for short) dated 26.7.2013 raising following questions for our consideration:--

(a) Whether in the fact and the circumstances of the case the Hon''ble CESTAT has erred in applying the ratio of a case decided by CESTAT Delhi in case of Paramount Communication Ltd. v. CCE 2013 (29) STR 317 without narrating and applying the same to the facts of the present case?

(b) Whether in the facts and the circumstances the activity of the Respondent is covered under the definition of "Manpower Recruitment Agency" as contemplated in Cl 168 of S. 65 of the Finance Act, 1994 R/w. Cl 105(k), thus the respondent is liable for the Service Tax?

(c) Whether in the facts and circumstances of the case whether the service rendered by the respondent is a taxable activity attracting Service Tax?

Issue in brief is whether the respondent is a Manpower Supply Recruitment Agency. Definition of the said term applicable at the relevant time reads as under:-

Manpower recruitment or supply agency means any commercial concern engaged in providing any service directly or indirectly, in any manner for recruitment or supply of manpower, temporary or otherwise to a client.

2. Brief facts are that respondent had a composite textile mill and was engaged in manufacturing of fabrics and ready-made garments. In order to reduce its cost the respondent deputed some of its employees to its group company, who were also engaged in similar businesses. Reason for such deputation was also on certain occasions stipulated work arising for a limited period. The Tribunal recorded that there was no allegation of finding that the respondent had deputed employees to any other concerns outside its own subsidiary companies. The Tribunal also recorded that undisputedly the employees deputed do not work exclusively under the direction or supervision of the subsidiary company and upon completion of the work they were repatriated to the respondent company. On such basis, the Tribunal held that the respondent cannot be said to be Manpower Supply Recruitment Agency and, therefore, not exigible to service tax.

3. Counsel for the Revenue vehemently contended that the definition of Manpower Supply Recruitment Agency is very wide and would include range of activities of supply of manpower either temporarily or permanently, He submitted that sizeable manpower was required for the respondent from the group companies for deputation of the staff. He drew our attention to the amendment of such definition to contend that after the amendment, the definition was widened.

4. It is true that in the present form, the definition of Manpower Supply Recruitment Agency is wide and would cover within its sweep range of activities provided therein. However, in the present case, such definition would not cover the activity of the respondent as rightly held by the Tribunal. To recall, the respondent in order to reduce his cost of manufacturing, deputed some of its staff to its subsidiaries or group companies for stipulated work or limited period. All throughout the control and supervision remained with the respondent. As pointed out by the respondent, company is not in the business of providing recruitment or supply of manpower. Actual cost incurred by the company in terms of salary, remuneration and perquisites is only reimbursed by the group companies. There is no element of profit or finance benefit. The subsidiary companies cannot be said to be their clients. Deputation of the employees was only for and in the interest of the company. There was no relation of agency and client. It was pointed out that the employee deputed did not exclusively work under the direction or supervision or control of subsidiary company. All throughout he would be under the continuous control and direction of the company.

5. We have to examine the definition of Manpower Supply Recruitment Agency in background of such undisputable facts. The definition though provides that Manpower Recruitment Supply Agency means any commercial concern engaged in providing any services directly or indirectly in any manner for recruitment or

supply of manpower temporarily or otherwise to a client, in the present case, the respondent cannot be said to be a commercial concern engaged in providing such specified services to a client. It is true that the definition is wide and would include any such activity where it is carried out either directly or indirectly supplying recruitment or manpower temporarily or otherwise. However, fundamentally recruitment of the agency being a commercial concern engaged in providing any such service to client would have to be satisfied. In the present case, facts are to the contrary. In the result, no question of law arises. Tax Appeal is dismissed.

