

(2021) 11 CESTAT CK 0088

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 263, 264 Of 2011

Jayesh C Patel And Anr.

APPELLANT

Vs

C.C.E. And S.T.-Ahmedabad-iii

RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Finance Act, 1994 — Section 105(k)

Citation : (2021) 11 CESTAT CK 0088

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellants have undertaken the job of manufacturing Plastic Jars and Containers in the factory of the service recipient by the help of their own manpower. The dispute is whether such activity falls under supply of Manpower and Recruitment Service or Job work manufacturing.

2. Shri Vipul Khandhar, Learned Chartered Accountant appearing on behalf of the appellant submits that the appellants have not provided the service of Manpower Recruitment whereas they have undertaken the manufacture of excisable goods in the factory of the service recipient. Therefore, the activity is of manufacture on a Job worker basis and not Supply of Manpower. On query, he further submits that all the obligation as regard manpower is upon the appellants and the service recipient i.e. M/S NKPL has nothing to do with the payment to manpower such as Salary, Wages, PF etc.

Accordingly, the activity is not falling under Manpower Recruitment Service but under the Job Work. Therefore, the same is not chargeable to service

tax. He also placed reliance on the following judgments:-

â?¢ OM Enterprises- 2018 (17) GSTL 260 (Tri.Mum.)

â?¢ Shailu Traders- 2018 (10) GSTL 462 (Tri.-Del.)

â?¢ Rameshchandra C. Patel- 2012 (25) STR 471 (Tri.-Ahm.)

â?¢ Fire Controls- 2010 (19) STR 99 (Tri.-Bang.)

â?¢ S. S. Associates- 2010 (19) STR 438 (Tri. Bang.)

â?¢ Divya Enterprises- 2010 (19) STR 370 (Tri.-Bang.)

â?¢ Ritesh Enterprises- 2010 (18) STR 17 (Tri-Bang.)

â?¢ Dinesh Chandra R Agarwal Infracon Pvt. Ltd- 2010 (18) STR 39 (Tri.-Ahm.)

â?¢ A.P. Enterprises- 2008 (12) STR 585 (Tri.-Chennai)

3. Shri Dharmendra Kanjani, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. There is no dispute in the fact that the appellants have

entered into the contract for undertaking the manufacturing of Plastic Jars and containers in the factory of the Service recipient .The charges for the

job is on per container basis, the appellants are not collecting the fixed wages or salary against providing the manpower. Therefore, we are of the

clear view that the activity carried out by the appellant is of Job Work manufacturing and not of Manpower Recruitment Service. On the same set of

facts in respect of other contractors providing services to the same service recipient , this tribunal has considered the matter in the case of Ramesh

Chandra C. Patel wherein the tribunal has passed the following order:

â??Appellant is a labour contractor and was doing conversion of tin plate to containers or granules to jars/pet bottles in the factory

premises of M/s. N.K. Proteins Ltd. (NKPL). The machinery, space and all other facilities were provided by NKPL. The appellant was

required to take the required labour to the factory of NKPL and was required to undertake the conversion of tin plate to containers or

granules to jars/pet bottles depending upon the requirement of NKPL. According to the agreement between NKPL and the agreement, the

appellant was to pay specific amounts determined on the basis of number of containers/jars/pet bottles produced by the appellant.

Proceedings were initiated against the appellant on the ground that the activity undertaken by the appellant amounts to providing

manpower recruitment or supply agency service which has resulted in confirmation of demand for service tax of Rs. 3,93,905/- with interest

and penalties under various sections of Finance Act, 1994.

2. The learned Chartered Accountant on behalf of the appellants submitted that according to the contract, the appellant was doing only

contract manufacturing work and there was no question of any labour supply or manpower supply or manpower recruitment agency.

Nowhere in the agreement there is any mention with regard to manpower supply or recruitment and the agreement specifically talks about

the products to be manufactured and payments to be made. He also submits that appellant is also registered with the labour department as a

contract manufacturer and not as a labour supply or manpower supply or manpower recruitment agency. Therefore he submits that the

activity undertaken by the appellant is not liable to service tax at all. The learned A.R. submits that the appellant was supplying manpower

for conversion of raw materials to finished products and in view of the fact that plant & machinery, space and all other facilities are

provided by the principal, the activity undertaken by the appellant is nothing but supply of manpower only and therefore the department is

justified in demanding the service tax with interest and imposing penalty.

3. I have considered the submissions made by both the sides. Before I proceed further, it would be appropriate to have a look at the

definition of manpower recruitment or supply service. According to Section 105(k) of Finance Act, 1994, manpower recruitment or supply

agency service is a taxable service provided by a manpower recruitment or supply agency to any person in relation to the recruitment or

supply of manpower, temporarily or otherwise in any manner, 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. 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.â??

From the above judgment it can be seen that the contractor has provided the same service to the service recipient i.e. M/s N K Proteins Ltd and this tribunal held that it does not fall under Manpower Recruitment service.

5. As per our above discussion and finding which is supported by the judgments above cited, we are of the view that the services cannot be classified under the head of manpower recruitment service.

6. Accordingly, impugned orders are set aside and appeals are allowed.

(Dictated and pronounced in the open court)