(2021) 08 CESTAT CK 0076

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 42152 Of 2013, 40194, 40195, 40196, 40197, 42650 Of 2014, 41449, 41450, 41820, 41822 Of 2015

M. Arul Prakasam And Ors. — APPELLANT

Vs

Commissioner Of GST And Central Excise — RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Citation : (2021) 08 CESTAT CK 0076

Hon'ble Judges : Sulekha Beevi C.S., J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The issue involved in all these appeals being the same, they are heard together and are disposed by this common order.

2. The appellants were issued Show Cause Notice demanding service tax under the category of 'Manpower Supply Service'. After due process of law, the original authority confirmed the demand along with interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence these appeals before the Tribunal.

3. The ld. Counsel Shri N. Viswanathan appeared and argued on behalf of the appellants. He submitted that the appellants in these appeals are independent contractors undertaking production with their work force and cannot be considered as persons who entered into contract for supply of manpower. M/s. Tractors and Farm Equipments Ltd. (TAFE) outsourced the work of manufacturing of tractors to various persons like the appellants on job work basis. The ld. Counsel adverted to the agreement and submitted that the clause in 1, 2, 3, 7, 11 and 12 would specifically show that it is an agreement entered into for doing works on behalf of TAFE. These works are in the nature of tyre fitting works etc. and are part of manufacturing activity. The appellants were doing such work as job worker on behalf of TAFE. They were not engaged by TAFE for supply of

manpower. The department has relied more upon clause 14 of the agreement to contend that the appellant is a labour contractor. Clause 7 of the agreement would establish that appellants were doing job work on behalf of TAFE and there is no employer-employee relationship between employees of the appellant and TAFE. As per the agreement, the appellant is responsible for defect in the works done and appellants have to compensate the company or the customer, as the case may be, for any defect in the work done. All these clauses in the agreement would go to show that the appellant was not a supplier of manpower but only an independent contractor for job works.

4. He submitted that in the appellants' own case, for different period, the Tribunal has set aside the demand holding that the said services would not amount to manpower supply service. For the period upto 2012, the appellant is not liable to pay service tax on the said services and the demand along with interest and the penalty is required to be set aside. The demand in these appeals are prior to 1.7.2012 (before the introduction of negative list). The period and the amount involved in each appeal is given in the table below as furnished by counsel for appellant.

S. No.

Appeal No.

Appellant

Amount of service tax involved Rs.

Period covered

1.

ST/42152/2013

M.Arul Prakasam

4,83,896/-

4/2009 to 3/2010

2.

ST/40194/2014

G. Subburayalu

3,60,506/-

4/2010 to 3/2011

3.

ST/40195/2014

G. Ramakrishnan

5,66,447/-

4/2010 to 3/2011

4.

ST/40196/2014

R. Athinarayanan

7,53,423/-

4/2010 to 3/2011

5.

ST/40197/2014

M. Arul Prakasam

6,51,085/-

4/2010 to 3/2011

6.

ST/42650/2014

G. Ramakrishnan

7,99,917/-

4/2011 to 3/2012

7.

ST/41449/2015

R. Athinarayanan

10,79,795/-

4/2011 to 3/2012

8.

ST/41450/2015

M. Arul Prakasam

9,33,695/-

4/2011 to 3/2012

9.

ST/41820/2015

G. Ramakrishnan

2,82,978/-

4/2011 to 6/2012

10.

ST/41822/2015

P. Kannusamy

2,52,185/-

4/2011 to 6/2012

5. The ld. AR Shri Arul C. Durairaj appeared for the department and supported the findings in the impugned order.

6. Heard both sides.

7. The issue was analysed in the appeals filed earlier by these appellants and the Tribunal vide Final Order No. 40359 to 40367/2019 dated 19.2.2019 holding that the activity undertaken by the appellants cannot fall under the category of manpower supply service. The relevant paragraph is as under:-

"6. Heard both sides. The issue is whether the activity of the appellant would fall within the category of Man Power Recruitment or Supply Agency Service. We have perused the agreement placed before us in the case of Shri R.Athinarayanan. The relevant paragraphs are reproduced as under :

"1. The Contractor agrees to execute, fulfil and discharge the work and obligations hereinafter provided in the manner herein after agreed to the entire satisfaction of the management of the Company.

2. The Contractor will execute and efficiently handle the work entrusted to him in accordance with the specification as having been correctly executed and efficiently handed until it is approved by the Company.

3. In case the jobs entrusted / assigned to the Contractor are not satisfactory or not in accordance with the specifications or samples given by the Company, the Contractor shall be liable to change the same and in default whereof the Contractor shall compensate to the Company or the customer, as the case may be.

... ...

7. If in case of any default by the CONTRACTOR to carry out the requirement of the condition referred to in clause 6, supra, the CONTRACTOR will indemnify the COMPANY from liability to pay any compensation to the accidentee employees on this account.

... .

11. The Company will have privity of contract with the Contractor only and will

give instructions to him and will have nothing to do or be concerned with the conditions of employment of the workers working for the Contractor.

12. The Company will not retain any control, supervision or the manner of the discharge, dismissal or retrenchment or re- 6 Appeal Nos.ST/40570-40575, 40577,40996,40997/2013 employment of the workers engaged / employed by the Contractor.

...

14. The Contractor will obtain license under the Contract Labour (Regulation and Abolition) Act according to the number of workers engaged by him by depositing the fees and complying with the formalities. He will also seek the renewal of the contract at or before the expiry of the license."

On perusal of the preamble of the agreement itself it is seen that appellant is an independent contractor appointed for executing work that are entrusted to him by TAFE. So also, at clause 3 as well as clause 7, it is stipulated that appellant shall be responsible for the defect in executing the works. Appellant executes the works along with other workers and merely because he has engaged other workers in executing the work, it cannot be said that he is the supplier of man power. In clause 11 of the agreement, it is stated that the company will have privity of contract with the contractor only and will give instructions only to the appellant/contractor and has nothing to do with the conditions of employment of the workers who work with appellant. Reliance placed by the department in clause 14, in our view, is misconceived. It can be seen that while the workers are engaged to work within the manufacturing activity premises they have to abide by certain labour legislations. Merely taking such licence or abiding by such labour law, it cannot be said that the contract for executing works within the manufacturing activity would be supply of man power. The argument of Ld. AR is that original authority has observed that the agreement is tailor-made for specific purpose, however we find that no evidence has been brought forth by the department to prove that the agreement per se was not followed in its letter and spirit or for that matter, there is no evidence that has been unearthed by the 7 Appeal Nos.ST/ 40570-40575, 40577, 40996, 40997/ 2013 department contrary to the piece rate payment being made to the appellants and that payments were not for man hour or per persons supplied. There being so, the conclusions that have been arrived by lower authorities can at best be termed as presumptive without any evidential or legal basis. The decision relied by Ld. AR is not on facts. The decision relied upon by the Ld. Counsel for appellants especially that of the decision in the case of Bhagyashree Enterprises (supra) covers the issue under consideration. Following the same, we are of the considered view that demand cannot sustain. Impugned orders are set aside. Appeals are allowed with consequential benefits, if any, as per law."

8. Following the said decision, we are of the view that the demand for the period prior to 2012 cannot sustain and requires to be set aside which we hereby do.

The impugned orders are set aside and the appeals are allowed with consequential relief if any, as per law.

(Operative portion of the order was pronounced in open court)

