(2020) 12 CESTAT CK 0036

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 25139 Of 2013

M/s Nektar Therapeutics (India) Pvt Ltd @Hash Commissioner Of Customs, Central Excise And Service Tax, Hyderabad - IV

Date of Decision : 10-12-2020

Acts Referred:
Finance Act, 1994 — Section 65(68), 65(105)(k)

Citation : (2020) 12 CESTAT CK 0036

Hon'ble Judges : P. Dinesha, J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Advocate : Sandeep Chilana, N. Bhanu Kiran

Final Decision : Allowed

Judgement

010.02/ 23-

8-07","Business or industrial

organisations engage services of

manpower recruitment or supply

agencies for temporary supply

of manpower which is engaged

for a specified period or for

completion of particular projects

or tasks Whether service tax is

liable on such services under

manpower recruitment or supply

agencyâ??s services [section

65(105)(k)]","In the case of supply of manpower, individuals are contractually employed by the manpower recruitment

or supply agency. The agency agrees for use of the

services of an individual, employed by him, to another

person for a consideration. Employer employee

relationship in such case exists between the agency

and the individual and not between the individual and

the person who uses the services of the individual

Such cases are covered within the scope of the

definition of the taxable service [section 65(105)(k)

and, since they act as supply agency, they fall within

the definition of â??manpower recruitment or supply

agencyâ?[section 65(68)] and are liable to service

tax.

man power deployed by it. Considering the scope and ambit of the definition of â??Man Power Recruitment or Supply Agency Serviceâ?,",,

the CBEC vide Circular No.B1/6/2005-TRU dt. 27.7.2005 has clarified that in order to be categorized under such taxable service, the",,

relevant aspect for consideration is that the staff are not contractually employed by the recipient, but come under his direction. In this case,",,

the fact is not under dispute that the appellant had not entered into any specific agreement with the overseas group companies, so that the",,

later will perform the role of manpower agency for providing or recruiting the man power to the former. On perusal of the contract entered,,

into between both the sides, we find that there is no existence of service provider-service recipient relationship. Further, the appellant had",,

also separately entered into contract with the employees deputed by the group companies, providing for payment of salary and other",,

benefits. Mere transfer of fund on security reason for the benefit of the family of the employees based in abroad cannot create the tax,,

liability under such category of taxable service. It is not the case of Revenue that over and above the amount paid to the employees or their,,

families, any other additional amounts were charged by the overseas entities or paid by the appellant towards such deployment of the",, employees. Thus, under such circumstances, it cannot be said that the overseas group companies have provided the service of recruitment",,

or supply of man power and the appellant should be liable to pay service tax as a recipient of such service under the reverse charge,,

mechanism. We find that this Tribunal in the case of Nissin Brake India Pvt. Ltd. (supra) has held that deputed employees working under,,

control, direction and supervision of the assessee cannot be termed as a taxable service, leviable to service tax under the category of",,

â??Man Power Recruitment or Supply Agency Serviceâ?. The said order of the Tribunal was upheld by the Hon?ble Supreme Court,",,

reported in 2019 (24) G.S.T.L J171 (SC). Further, we also find that in the case of Bain & Co. India Pvt. Ltd. (supra), this Tribunal has held",,

that just because the social security contribution in respect of the expatriate employees was paid by the holding company, the expatriate",,

employees cannot be treated as the employees of the holding company provided to the Indian company on man power supply or recruitment,,

basis.,,

6. In view of the above discussions, we do not find any merits in the impugned order passed by the Ld. Adjudicating authority. Accordingly,",,

after setting aside the same, the appeal is allowed in favour of the appellant.â??",,

6. For the above reasons, the impugned order cannot sustain and the same is set aside and the appeal is allowed with consequential benefits, if any as",,

per law.,,

(Pronounced in the open court on 10.12.2020),,