

(2020) 12 CESTAT CK 0021

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 22573, 22574 Of 2014, 21502 Of 2017,
Service Tax CROSS No. 21077 Of 2017, 20255 Of 2018

**M/s. Northern Operating Systems Pvt Ltd @Hash C.C.,C.E. And S.T
Bangalore (Adjudication)**

Date of Decision : 23-12-2020

Acts Referred:

Finance Act, 1994 — Section 65(68), 65(105), 65(105)(k), 65B(44), 66A, 67, 73(1),
75, 76, 77, 78, 80

Income Tax Act, 1961 — Section 195(6)

Cenvat Credit Rules, 2004 — Rule 3(1) Constitution Of India, 1950 — Article 366

Citation : (2020) 12 CESTAT CK 0021

Hon'ble Judges : S.S. Garg, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Ravi Raghavan, P.Gopakumar

Final Decision : Allowed/Dismissed

Judgement

SL.

NO.",PARTICULARS,,,

1.,Period in dispute,"October 2006 â?" March

2011","April 2011 to

March 2012","April 2012 to

September 2014

2.,"Show Cause

Notice Date",23.04.2012,19.10.2012,"07.05.2014 &

26.11.2015

3.,Order-inOriginal,"No. 29/2013-14 dated

03.03.2014","No. 30/2013- 14

dated 04.03.2014", "No. 54-55/2016- 17

dated

27.02.2017/16.06.

2017

4., "Demand of

Service Tax", "i. Rs.9,22,12,980/- under

â??Manpower Recruitment

or Supply Agency

Serviceâ??

ii. Demand of service tax

amounting to Rs.41,11,742/-

as short payment of service

tax for the period 2008-09

and 2010-11", "Rs.3,48,15,793/-

under

â??Manpower

Recruitment or

Supply Agency

Serviceâ??", "Rs.11,92,24,038/-

under â??Manpower

Recruitment or

Supply Agency

Serviceâ??

5., Interest, "i. Rs.16,82,810/- under

Section 75 of the Finance

Act, 1994

ii. Unquantified interest on

the demand of

Rs.9,63,24,722/-", "Interest under

Section 75 of the

Finance Act, 1994
for the Service Tax
demanded; ", "Interest under
Section 75 of the
Finance Act, 1994
for the Service Tax
demanded;
6., Penalty, "i. Rs.6,000/- being late fee
for belated filing of ST-3
Returns for the periods,
October 2006-March 2007,
April 2007 to September
2007 and April 2008 to
September 2008;
Â ii. As per Section 76 of
the Finance Act, 1994
iii. Rs.9,63,24,722/- imposed
under Section 78 of the
Finance Act, 1994; ", "As per Section 76
of the Finance Act,
1994", "As per Section 76,
77 and 78 of the
Finance Act, 1994
7., "Amounts paid but
not appropriated", "Rs.47,17,537/- (Challans
enclosed at Page No. 89-96
of the paper book)
(Rs.31,39,745/- paid as
differential amount of
service tax to be paid under

reverse charge

Rs.15,77,791/- paid as

interest)",-,-

b) The employees shall act in accordance with the instructions and directions of Appellants. The employees would devote their entire time,,,,

and work to the employer seconded to.,,,,

c) The seconded employees would continue to be on the payroll of the group company (foreign entity) for the purpose of continuation of.,,,,

social security/retirement benefits, but for all practical purposes, Appellants shall be the employer. During the term of transfer or" ,,,,

secondment the personnel shall be the employee of Appellants. Appellants issue an employment letter to the seconded personnel stipulating.,,,,

all the terms of the employment.,,,,

d) The employees so seconded would receive their salary, bonus, social benefits, out of pocket expenses and other expenses from the group" ,,,,

company.,,,,

e) The group company shall raise a debit note on Appellants to recover the expenses of salary, bonus etc. and the Appellants shall" ,,,,

reimburse the group company for all these expenses and there shall be no mark-up on such reimbursement.,,,,

2.1 Appellants issues Form 16 to the seconded employees. The employees also file income tax return in Form 24Q. Apart from this the employees.,,,,

also contribute to the provident fund.,,,,

2.2 The amounts as mentioned above are remitted by the Appellant in foreign currency and accounted in their financial statements. Apart from the.,,,,

reimbursements towards salaries and other related expenses of the seconded employees, the Appellant also makes payment for certain services" ,,,,

received from the group companies. Service Tax is duly discharged on payments for such services in terms of Section 66A of the Act.,,,,

2.3. The relevant major expense heads are Salaries & Allowances, Relocation expenses, Consultancy Charges, Communication Expenses and" ,,,,

Computer Maintenance and repairs.,,,,

3. The gist of the allegations of the Revenue is that the appellant has failed to discharge the service tax under the category of manpower.,,,,

recruitment or supply agency service? with regard to certain employees who were seconded to the appellant by the foreign group companies. On,,,,

these allegations, the Department issued two SCNs dated 23.04.2012 and 19.10.2012 under the proviso to Section 73(1) read with Section 66A of the",,,,,

Finance Act, 1994 proposing to demand service tax under the category of ?? manpower recruitment or supply agency service?. The appellant filed",,,,,

a detailed reply rebutting all the allegations in the SCN followed by which the appellant was also personally heard and after following the due process",,,,,

the learned Commissioner passed the impugned Order-in-Original No. 29/2013-14 dated 03.03.2014 and No. 30/2013-14 dated 04.03.2014 wherein he,,,,

has disregarded most of the submissions made by the appellant and confirmed the proposals in the notice except the demand for the period from April,,,,

2006 to September 2006 and accepting the fact that part of the demand has been raised @ 12.3% instead of 10.30%. The confirmation of the demand,,,,

by the learned Commissioner is based on the following grounds:,,,,

i. The activity of providing skilled manpower, on secondment basis, which works under the supervision and control of the Appellant for a fixed period",,,,,

of time on temporary basis, to the Appellant, falls in the domain of the manpower recruitment or supply agency service within the meaning of Section",,,,,

65(68) read with Section 65(105)(k) of the Finance Act, 1994;"",,,,,

ii. The group companies and their various branches/subsidiaries abroad, as the case may be, would be the service provider and the Appellant, who",,,,,

receives the skilled manpower, on secondment basis, would be the service recipient."",,,,,

iii. There are no exclusion clauses in the definition of manpower recruitment or supply agency, under Section 65(68) of the Finance Act, 1994, that the",,,,,

service provider should possess the status of certain specified person or organization, for the purpose of providing the taxable service of manpower",,,,,

recruitment or supply agency as defined under Section 65(105)(k) of the Finance Act, 1994."",,,,,

iv. The idea behind secondment arrangement is that the secondee will remain employed by the original employer during the secondment, and will",,,,,

following the termination of the secondment return to the seconder as a consequence of which the secondee does not become integrated into the,,,,

host's organization.,,,,

v. The obligation of the service provider would cease once employees were recruited and seconded. Hence the liability of service tax under Section.,,,,

65(105)(k) would be triggered at that event.,,,,

vi. There is no exclusive clause in the Finance Act, 1994 that restricts the taxability of service of manpower recruitment or supply agency, when",,,,

salaries were drawn by the Appellant in respect of the manpower so supplied and TDS under Income Tax, 1961 had been effected thereof.",,,,

vii. With respect to differential service tax liability, mere worksheet without documentary proof would not be sufficient to grant relief as against the",,,,

service tax of Rs.41,11,473/- for the period 2008-2009.",,,,

viii. The fact that the Appellant was not paying the Service Tax would not have come to the notice of the Department, but for the audit of their",,,,

records by the internal audit party.,,,,

ix. The Appellant had not separately disclosed the details of the gross receipts (as receiver of service) in the taxable value in the half yearly ST-3.,,,,

Returns filed by them with the department, of the said services with intent to evade payment of Service Tax.",,,,

x. With respect to the eligibility of CENVAT Credit, the onus of furnishing the evidence or documents indicating factual eligibility of CENVAT credit",,,,

within the scope of Rule 3(1) of the CENVAT Credit Rules, 2004 had not been discharged by the Appellant.",,,,

xi. The Appellant was aware of the provisions of service tax law and that they had placed nothing on record to indicate the circumstances that.,,,,

prevented them from approaching the department or accessing the CBEC website available on public domain. It is only after the issue of the show.,,,,

cause notice that they raised the aspect of bona fide, which is an afterthought to escape liability of the instant demand.",,,,

xii. The Appellant had not adduced any reasonable cause for their failure to pay the Service Tax due and to make a case for waiver of penalty under.,,,,

Section 80 of the Finance Act, 1994.",,,,

Aggrieved by the impugned order, the appellant files these two appeals and as far as the third appeal No. ST/21502/2017 filed by the Department, the",,,,

period involved was from April 2012 to September 2014.,,,,

4. As a sequel to the previous Show Cause Notices, the Assessee was issued two Show Cause Notices bearing C No. IV/16/153/2014- ST. Adjn.",,,,

(SCH No. CAU/153/Div. III/Gr 29 dated 07.05.2014 and C. No. IV/16/293/2015 ST II Adjn. /2043/15 dated 26.11.2015 demanding service tax of,,,,

Rs.4,36,75,590/- and Rs.7,55,48,448/- for the period April 2012 to 2013 and 2013 to September 2014 respectively along with interest and penalty.",,,,

5. The assesses filed detailed replies on 02.07.2014 and 31.12.2015, mainly harping that Service tax cannot be demanded as the services received",,,,

from the foreign affiliates do not fall under Manpower Recruitment or Supply Agency Services for the period prior to Negative List. Further, for the",,,,

period post Negative list, the definition of the term "Service" as per Finance Act, specifically excludes the service provided by the employee to",,,,

the employer. Therefore, the amount paid to the foreign entity as reimbursement of Salary of the seconded employees cannot be construed as",,,,

consideration for supply of manpower services.,,,,

6. After following the due process, the learned Commissioner, Bangalore had vide Order-in-Original No. 54-55/2016-17 dated 27.02.2017/16.06.2017",,,,

dropped the proposals in the Show Cause Notice for the period April 2012 to March 2013 and April 2013 to September 2014, thereby setting aside",,,,

demand of service tax of Rs.4,36,75,590/- and Rs.7,55,48,448/- respectively (Total Rs.11,92,24,038/-).",,,,

7. Based on the perusal of the Secondment Agreement, the Ld. Commissioner in the Order-in-Original No.54-55/2016-17 dated",,,,

27.02.2017/16.06.2017 has categorically made the following observations:,,,,

i. The employee seconded to the Appellants continue to be on the payroll of their foreign group company only for the purpose of continuation of social,,,,

security benefits and for all practical purposes the Appellants shall be the employer of such seconded employee;,,,,

ii. That during the period of secondment, the employee shall devote the whole of their time, attention and skill to the duties of their secondment;,,,,

iii. That each employee shall report and be responsible to the Appellants;,,,,

iv. That on perusal of the letter of agreement entered into between one of the expatriate employees, namely Brian Ovaert and the Appellants, it is",,,,

seen that the agreement is entered into between the employee in his personal capacity and not on behalf of foreign company;,,,,

v. That the obligation to honor the compensation agreement is squarely on the Appellants only;,,,,

vi. That the factual matrix of the present case is similar to the case of Volkswagen India Pvt. Ltd 2014 (34) STR 135 wherein the Honâ??ble,,,,

Tribunal had decided the matter in favour of the assessee;,,,,

vii. That there is no supply of manpower rendered to the Appellants by the foreign holding company and that the method of disbursement of salary,,,,

cannot determine the nature of the transaction;,,,,

viii. That the issue is settled in favour of the assessee in various decisions of the different Tribunals and Courts and therefore the demands proposed in,,,,

both the Show Cause Notices for the period post 2012 is not sustainable;,,,,

ix. That even for the period post 2012, the remittance is a reimbursement based on actuals and there is no amount which is payable in respect of the",,,,

activity in question and therefore there is no consideration involved;,,,,

x. That in any case, the very definition of service under Section 65B(44) of the Finance Act, 1994 specifically excludes provision of service by an",,,,

employee to the employer in the course or in relation to his employment and therefore the demand is not sustainable.

8. Being aggrieved by the order of the Commissioner dropping the demand, the Revenue has filed an appeal challenging the said Order-in-Original in"

which the assessee has also filed cross objection.

9. We have heard the learned Counsels for both the parties and perused the material on record and the decisions relied upon by the appellant.

10. Learned Counsel for the appellants submitted that the impugned order passed in assesseeâ??s appeal is not sustainable in law as the same has,,,,

been passed without properly appreciating the facts and the law. He further submitted that the Department having passed a well-reasoned order,,,,

(Order-in-Original No.54-55/2016-17 dated 27.02.2017/16.06.2017) on merits cannot change the stand for a demand on the very same activity for the,,,,

previous period and therefore the demand ought to be set aside on this ground alone. Learned Counsel also took us through the various clauses of the,,,,

agreement between the appellant and its group companies which are basically for provision of certain specialized services and are not related to,,,,

â??supply of manpowerâ? which is evident from various clauses in the Agreements. The employees seconded to India are required to report to the,,,,

officers of the appellant and such employees are accountable for their performance to the appellant. He further submitted that an employer-employee relationship comes into existence between the appellant and the employees seconded by the group companies abroad and the arrangement will not fall under the taxable service of "manpower recruitment or supply agency" service as defined under the Finance Act, 1994. He also submitted that the seconded employees are in fact the employees of the appellant and the appellant issues Form-16 to the employees who file their income tax return in India and the appellant also deposits provident fund on behalf of such employees. He further submitted that persons seconded to the appellant work in the capacity of employees and payment of salaries etc is made to such employees by group companies only for disbursement purposes. Therefore, the employer-employee relationship exists and such an activity cannot be termed as "manpower recruitment or supply agency". He also submitted that no separate amount apart from reimbursements has been made by the appellant to merit as a consideration for the provision of "manpower supply agency service" and the salary and other benefits of the deputed staff is being disbursed by the foreign group companies on "reimbursable basis" and therefore, the appellant is making the actual payments relatable to the deputed staff and further there is no service provider-recipient relationship in the present case, as required by Section 65(105)(k) since an employer-employee relationship is created between the appellant and the staff supplied. He also submitted that the method of disbursement of salary cannot determine the nature of the transaction and the intention of the parties to the arrangement is to merely transfer employees to the appellant based on request and not to act as supplier of manpower. The learned Counsel further submitted that this issue has been considered by various Benches of the Tribunal and has held in favour of the assessee. He relied upon the following cases: *Â*

- Â· Honeywell Technology Solutions Lab Pvt. Ltd. Vs CST, Bangalore, 2020-TIOL-1277-CESTAT-BANG."
- Â· M/s Volkswagen India Pvt. Ltd. Vs CCE, Pune-I, 2014 (34) STR 135 (Tri. Mumbai) maintained in 2016 (42) STR J145 (SC). *Â*
- Â· CST Vs Arvind Mills Ltd, 2014-TIOL-441-HC-AHM-ST. *Â*
- Â· CCE Vs M/s Computer Science Corporation India Pvt. Ltd, 2015 (37) STR 62

(All.) Â",,,,,

Â· Spirax Marshall P. Ltd. Vs CCE, Pune-I, 2016 (44) STR 310 (Tri. Mum) maintained in 2016 (44) STR J153 (SC). Â",,,,,

Â· Nissin Brake India Pvt. Ltd. Vs CCE, Jaipur-I, 2019 (24) GSTL 563 (Tri. Del.) maintained in 2019 (24) GSTL J171 (SC). Â",,,,,

Â· M/s Mikuni India Pvt. Ltd. Vs Commissioner of CGST, Rajasthan, 2019-TIOL-3188-CESTAT-DEL.",,,,,

Â· M/s India Yamaha Motor Pvt. Ltd. Vs CCE, New Delhi, 2019-TIOL-3675-CESTAT-DEL.",,,,,

10.1 He further submitted that in the present case there is no consideration charged by the foreign companies on the appellant for providing the supply,,,,

of manpower as alleged by the Department and confirmed in the impugned order. He also submitted that the consideration under Section 67 of the,,,,

Finance Act, 1994 is that amount which is (a) charged by the service provider on the service recipient, (b) for the provision of service provided to the",,,,,

service recipient and (c) should flow from the service recipient to the service provider but in the present case there is no consideration charged by the,,,,

foreign company on the appellant for providing the supply of manpower as alleged by the Department and confirmed by the impugned order. He also,,,,

submitted that even the Commissioner in Para 5.16(c) of his order records that â??I find from Form-15 CB, Form-15 CA prescribed under Section",,,,,

195(6) of the Income Tax Act, 1961 and the Debit Notes placed before me along with the aforesaid SCN that there exists remittance by the assessee",,,,,

to M/s TNTC, towards the reimbursement of expenses pertaining to expat salaryâ? and hence the gross amount charged by the foreign entity is Nil",,,,,

and consequently the values is also Nil. For this submission, the learned Counsel relied upon the decision in the case of Intercontinental Consultants",,,,,

and Technocrats Pvt. Ltd. Vs UOI reported at 2013 (29) STR 9 (Del.). This decision was upheld by the Honâ?ble Apex Court reported in 2018,,,,

(10) GSTL 401. He further submitted that foreign company deputing the employee may be considered as a Pure Agent and for an agency which is,,,,

involved in manpower recruitment or supply agency, the contractual responsibility can only be recruiting the people or supplying people and therefore",,,,,

these companies cannot be described as engaged in providing any service directly or indirectly for recruitment or supply of manpower. He also,,,,

submitted that the Department has invoked the extended period of limitation but the same cannot be invoked because in the present case the appellant,,,,

is entitled to take credit of the tax paid and hence there cannot be any intention to evade the payment of tax when the tax paid is available as credit.,,,,

He also submitted that differential service tax and interest to the extent of Rs.31,39,745/- and Rs.15,77,791/- respectively were paid but not",,,,

appropriated. He also submitted that the actual liability of service tax to be paid on this account works out to be Rs.31,39,745/- instead of",,,,

Rs.,41,11,473/-. The interest on the same works out to be Rs.15,77,791/- instead of Rs.16,82,810/- The Department has disregarded the fact that",,,,

certain credit notes were received by the appellant with respect to Information Technology Software Services for the month of August, 2008. The",,,,

service tax implication on the same worked out to be Rs.17,45,698/- which was deducted from the final amount of service tax remitted by the",,,,

appellant under reverse charge mechanism for the year 2008-9. He also submitted that the entire amount totaling to Rs.47,17,537/- (service tax and",,,,

interest) has been paid vide GAR-7 challans and has also furnished the said challans but the same has not been appropriated. Nevertheless, the",,,,

learned Commissioner has at Para 6.3(g) of the impugned order held that the appellants are entitled for the adjustment of service tax of Rs.,,,,

31,39,745/- against the short payment of Rs. 41,11,742/-. Learned Counsel also submitted that when the appellants are not liable to pay service tax, the",,,,

question of payment of interest does not arise.,,,,

11. On the other hand, learned AR reiterated the findings of the impugned order in assessee's appeals and in the Department's appeal",,,,

learned AR submitted that the activity of providing skilled manpower on secondment basis, which works under the supervision and control of the",,,,

appellant for a fixed period of time on temporary basis, to the appellant, falls in the domain of the manpower recruitment or supply agency service",,,,

within the meaning of Section 65(68) read with Section 65(105)(k) of the Finance Act, 1994. He further submitted that the overseas group companies",,,,

would be the service provider and the appellant, who receives the skilled manpower, on secondment basis, would be the service recipient and there is",,,,

no exclusive clause in the definition of manpower recruitment or supply agency under Section 65(68) of the Finance Act, 1994 that the service",,,,

provider should possess the status of certain specified person or organization for the purpose of providing the taxable service of manpower," ,,,,

recruitment or supply agency. He further submitted that the obligation of the service provider would cease once employees were recruited and ,,,,

seconded. Hence the liability of service tax under Section 65(105)(k) would be triggered at that event. With respect to differential service tax liability," ,,,,

mere worksheet without documentary proof would not be sufficient to grant relief as against the service tax of Rs.41,11,473/- for the period 2008-09." ,,,,

For invoking the extended period, the learned AR submitted that the fact of not paying the service tax came to the notice of the Department during the" ,,,,

audit. ,,,,

12. After considering the submissions of both the parties and perusal of the material on record, we think that before we answer the question involved" ,,,,

in the present case, it is pertinent to examine the relevant definitions involved in the present case, which are re-produced herein below:" ,,,,

Section 65 â?" definitions - (105) â?"taxable serviceâ?" means any service provided or to be provided, -" ,,,,

(k) 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;" ,,,,

Explanation. â?" For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of" ,,,,

manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and" ,,,,

authenticity of documents submitted by the candidate; ,,,,

12.1. Further, we note that the scope of â?"Manpower Recruitment or Supply Agencyâ?" service has been explained by Circular F.No." ,,,,

B1/6/2005-TRU dated 27.07.2005 as follows: ,,,,

22.3 In these cases, the individuals are generally contractually employed by the manpower supplier. The supplier agrees for use of the" ,,,,

services of an individual employed by him to another person for a consideration. The terms of the individualâ?"s employment may be laid ,,,,

down in a formal contract or letter of appointment or on a less formal basis. What is relevant is that the staff are not contractually employed ,,,,

by the recipient but come under his direction.â?" ,,,,

12.2. Further, for the period post July 2012, the nomenclature bases classification of service tax was done away with and "service" was",,,,

specifically defined under Section 65B (44) of the Finance Act, 1994. Clause 44 of Section 65B read as:",,,,

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not",,,,

include:",,,,

(a) an activity which constitutes merely,"",,,,

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or",,,,

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the",,,,

Constitution; or",,,,

(iii) a transaction in money or actionable claim;,,,,,

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;,,,,,

(c) fees taken in any Court or tribunal established under any law for the time being in force.,,,,,

12.3. Further, after examining the various definitions cited supra, we find that in order to classify any service under the manpower recruitment or",,,,

supply agency service the following conditions needs to be satisfied:,,,,,

i. The agency must be any person,,,,,

ii. It must be engaged in providing a specified service,,,,,

iii. The specified service is recruitment or supply of manpower,,,,,

iv. The service can be provided "temporarily or otherwise",,,,,,

v. The service may be provided directly or indirectly,,,,,

vi. The service may be provided in any manner,,,,,

vii. The service must be provided to any other person,,,,,

12.4. Further, we find that the definition of "Manpower Recruitment or Supply Agency" seeks to bring under its ambit, two types of activities i.e.",,,,,,

recruitment of manpower and supply of manpower and further the service becomes the taxable service only if provided by a manpower recruitment or",,,,

supply agency but in the present case, we are concerned only with the supply of

manpower. Further, we find that after the post July 2012, the",,,,,

definition of service specifically incorporated seeks to exclude certain transactions from the ambit of service and provision of service by an employee,,,,

to the employer in the course of or in relation to his employment stands excluded from the definition of service. We also note that the legal position,,,,

post negative list regime does not make any departure from the settled position of law as existed before 2012 with respect to the service tax,,,,

implications on deputation of employees. In fact, the above exclusion in the definition of service amplifies the position of law to keep employees",,,,,

providing service to the employer in the course of their employment out of the purview of service tax. We have also examined the agreements entered,,,,

into by the appellant with a group company which are specifically for provision of certain specialized services and are not related to "supply of",,,,,

manpower" which is evident from various clauses in the Agreements and we also find that group companies are not in the business of supplying,,,,

manpower. Further, we find that the persons seconded to the appellant working in the capacity of employees and payment of salaries etc is made to",,,,,

such employees by group companies only for disbursement purposes and hence employee-employer relationship exist and such an activity cannot be,,,,

termed as "manpower recruitment or supply agency" and the whole arrangement between the appellant and its group companies does not fall,,,,

under the taxable service of manpower recruitment or supply agency service as defined under the Finance Act, 1994. We also find that there is no",,,,,

service provider-recipient relationship in the present case, as required by Section 65(105)(k). This issue is no more res integra and has been settled by",,,,,

various decisions of the Tribunals and the High Courts and upheld by the Hon'ble Apex Court. We may refer to few of the decisions in the case,,,,

of Honeywell Technology Solutions Pvt. Ltd. Vs CST, Bangalore, 2020-TIOL-1277-CESTAT-BANG wherein recently this Tribunal based on same",,,,,

set of facts set aside the demand in as much as there was a distinct employee-employer relationship between the seconded employee and the,,,,

assessee. We also hold that method of disbursement of salary cannot determine the nature of the transaction and this issue was considered in the case,,,,

of M/s. Volkswagen India Pvt. Ltd. v. CCE, Pune-I reported in 2014 (34) S.T.R. 135 (Tri. - Mumbai) which has been upheld by the Hon'ble",,,,,

Apex Court in the case of Commissioner Vs Volkswagen India (Pvt.) Ltd. - 2016 (42) S.T.R. 1145 (S.C.). We also find that in the case of Computer,,,,

Sciences Corporation India Pvt. Ltd. v. Commissioner of Service Tax, Noida reported in 2014-TIOL-434-CESTAT DEL as affirmed by",,,,,

Commissioner of Central Excise v. M/s Computer Science Corporation India Pvt. Ltd. 2015 (37) S.T.R. 62 (All.) wherein the facts of the case were,,,,,

similar to the present case. The Honâ??ble High Court of Allahabad has dealt with the same issue and has held as under:,,,,,

â??8.In the present case, the Commissioner clearly missed the requirement that the service which is provided or to be provided, must be by",,,,,

a manpower recruitment or supply agency. Moreover, such a service has to be in relation to the supply of manpower. The assessee obtained",,,,,

from its group companies directly or by transfer of the employees, the services of expatriate employees. The assessee paid the salaries of the",,,,,

employees in India, deducted tax and contributed to statutory social security benefits such as provident fund. The assessee was also",,,,,

required to remit contributions, which had to be paid towards social security and other benefits that were payable to the account of the",,,,,

employees under the laws of the foreign jurisdiction. There was no basis whatsoever to hold that in such a transaction, a taxable service",,,,,

involving the recruitment or supply of manpower was provided by a manpower recruitment or supply agency. Unless the critical,,,,,

requirements of clause (k) of Section 65(105) are fulfilled, the element of taxability would not arise.â??",,,,,

12.5. Further, the Honâ??ble High Court of Gujarat in the case of Commissioner of Service Tax Vs Arvind Mills Ltd, 2014(35) STR 496=2014-",,,,,

TIOL-441-HCAHM-ST has held that even if the actual cost incurred by appellant in terms of salary remuneration and perquisites is only reimbursed,,,,,

by group of companies, there remains no element of profit or finance benefit. The arrangement is that of the continuous control and the direction of",,,,,

the company to whom the holding company has deputed the employee, such an arrangement is out of the ambit to be called manpower supply service.",,,,,

This Tribunal also in appellantâ??s own case as decided by Final Order No. 70436/2019 dated 11.10.2019 by relying upon the case of Volkswagen,,,,,

India Pvt. Ltd. Vs. CCE, Pune-I -2014 (34) STR 135(Tri.-Mumbai) and the above discussed case law has held that the expatriates working under the",,,,,

appellant are the employees of the appellant as there is an employer-employee relationship. As such, there is no supply of manpower service which is",,,,

rendered to the appellant by the foreign/holding company. As far as short payment of service tax of Rs.41,11,742 and the interest of Rs.16,82,810 is",,,,

concerned, the learned Counsel has submitted that the entire amount totaling Rs.47,17,537/- (service tax and interest) has been paid vide GAR Challan",,,,

and the challans have also been annexed but the learned Commissioner has not considered the same and appropriated the same also. For this",,,,

discrepancy, we remand the matter to the learned Commissioner to examine the payment of service tax paid by the appellant through various challans",,,,

and thereafter determine the demand of service tax and interest due from the appellant, if any.",,,,

13. In view of our discussion above, by following the ratios of the various decisions cited supra, we allow the appeals of the assessee and dismiss the",,,,

appeal of the Department and we also remand the matter only for the limited purpose as observed above and cross objections in the Departmentâ??s",,,,

appeal filed by the appellant are also accordingly disposed of.",,,,

(Order pronounced in the open court on 23/12/2020),,,,