
(2023) 04 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 831, 832 Of 2011

M/s Syal & Associates And Others

APPELLANT

Vs

Commissioner Of Central Excise, Chandigarh

RESPONDENT

Date of Decision : 18-04-2023

Acts Referred:

Central Excise Act, 1944 — Section 2(f)

Citation : (2023) 04 CESTAT CK 0031

Hon'ble Judges : S.S.Garg, Member (J);P.Anjani Kumar, Member (T)

Bench : Division Bench

Advocate : Krati Singh, Shreya, Manoj Nayyar

Final Decision : Allowed

Judgement

P. Anjani Kumar, Member (T)

1. These two appeals are directed against the Order-in-Original No. 02/STC/CHD-I/2011 and No. 03/STC/CHD-I/2011 both dated 03.03.2011 passed by the Commissioner of Central Excise, Chandigarh-I. As the issue involved in both the appeals is same, therefore, the same are taken for decision together by a common order.

2. Brief facts of the case are that the appellants are engaged in the business of transportation of tractors by driving the tractors from the factory of M/s Punjab Tractors Ltd to the premises of dealers. As per the agreement, the tractors were to be driven by the drivers appointed by the appellants; consideration was paid to the appellants on the basis of the rates fixed on per kilometer basis; the appellants were required to ensure that the tractors were delivered in proper and good condition. The department was of the opinion that the service rendered by the appellants was squarely covered by 'Manpower Supply Agency Service'; accordingly, the show cause notices were issued to the appellants and were confirmed by the above cited Orders-in-Original.

3. Ms. Krati Singh, Learned Counsel, appearing on behalf of the appellant places

the definition of 'Manpower Recruitment or Supply Agency' and submits that the work undertaken by the appellants is not supply of manpower; the contract itself was for transportation of the vehicles and they were paid for on per kilometer basis; the appellants were required to ensure the delivery of the tractors in proper and good condition; in case of accident, if any, the appellants were required to get insurance and Police procedure completed so as to help their clients to get the claim of the insurance; once the contract is made, their clients have no control or superintendence on the drivers which continuous to remain with the appellants who paid wages on job basis by drafting drivers per job basis; the issue has been clarified by the board. On limitation she would submit that there have been various clarifications on the issue and by CBEC for time to time; the department also initially raised the issue holding that the appellants have rendered Business Supply Service, however, the show cause notice came to be issued alleging non-payment of service tax under the category of 'Manpower Recruitment or Supply Agency service' and therefore extended period cannot be imposed as bona fide belief on the part of the appellants cannot be ruled out. In support of her argument, she relies on the following case-laws:-

- (1) Commissioner of Customs, CE & ST vs. Godavari Khore Cane Transport Company (P) Ltd – 2015 (3) TMI 483 – Bombay High Court
- (2) Nishkarsh Industrial Services vs. Commissioner of CE & ST, Vadodara-II – 2022 (9) TMI 901 – CESTAT Ahmedabad
- (3) Talala Taluka SahakariKhandUdyogMandali Limited & others vs. CCE & ST, Bhavnagar – 2022 (12) TMI 468 – CESTAT Ahmedabad
- (4) M. Arul Prakasam & others vs. CGST & CE, Chennai - 2021 (8) TMI 1063 – CESTAT Chennai
- (5) M/s Beta Enterprises vs. CGST & CE, Madurai – 2021 (11) TMI 897 – CESTAT Chennai
- (6) M/s Fire Controls vs. CCE & ST, Mysore – 2019 (8) TMI 1028 – CESTAT Bangalore
- (7) Tiwari Services vs. CCE, Aurangabad – 2019 (4) TMI 1917 – CESTAT Mumbai
- (8) Deomogra Ustodani Vahatuk Sahakari Sanstha Ltd vs. CCE, Nashik – 2019 (4) TMI 589 – CESTAT Mumbai
- (9) G. Ramakrishnan & others vs. CCE & ST, Madurai – 2019 (3) TMI 42 – CESTAT Chennai
- (10) Cauvery Enterprises vs. CCE & ST, Madurai – 2018 (8) TMI 898 – CESTAT Chennai
- (11) M/s Flotech Consultant & Services Pvt Ltd & others CCE, Shillong – 2019 (6) TMI 11 – CESTAT Kolkata
- (12) Dhanashree Enterprises vs. CCE, Pune-I – 2017 (5) GSTL 212 (Tri. Mumbai)

(13) Bhagyashree Enterprises vs. CCE, Pune-I – 2017 (3) GSTL 515 (Tri. Mumbai)

(14) Bharat Hotels Ltd vs. CCE (Adjudication) – 2018 (2) TMI 23 – Delhi High Court

4. Shri Manoj Nayyar, Learned Authorised Representative, for the Revenue reiterates the findings of the respective orders-in-original and submits that the CBEC vide Circular dated 30.07.2008 has clarified that the cases such as the present one are squarely covered by 'Manpower Recruitment or Supply Agency service'.

5. Heard both sides and perused the records of the case.

6.1 On going through the contract, we find that a consideration for the job undertaken by the appellants is on the basis of per kilometer. Letter dated 02.01.2004 written by Punjab Tractors Ltd to the appellants indicates the same. The said letter inter alia requests the appellants to organize drivers as required. It appears that the department has understood the same to be request for supply of the drivers and apparently the department did not consider the other terms of the contract such as

- the rates mentioned are inclusive of all expenses i.e. diesel, driver wages, return bus/rail fares, incidental expenses etc.
- responsibility to deliver the tractors at its destination in proper and good condition;
- in case of any accident, it was the appellants' responsibility to arrange spot survey, lodge FIR and to send related documents to M/s Punjab Tractors Ltd; appellants to get tractors released from the Courts and handover the same to the dealers.
- it shall be the appellants' responsibility to comply with all statutory formalities on the way like Rahadari, clearance of Sales Tax forms etc.

6.2 A perusal of the above conditions indicates that the terms of the contract were not for supply of the drivers. The appellants had to undertake the transportation of tractors from premises of Punjab Tractors Ltd to their dealers and in the bargain they may appoint drivers for the work. Appellants were required to take all responsibilities on the way. The Circular cited by the Learned adjudicating authority clarifies as under:

"-----

2. The matter has been examined; ?Manpower recruitment or supply agency service? was brought under service tax net w.e.f.

7 th July, 1997. Any service provide to a client, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner is taxable under ?manpower recruitment or supply agency service?. ?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, temporary or otherwise, to a client.

3. In the present case, such agencies are providing drivers to either manufacturers or dealers for driving the vehicles to the dealers or purchasers, for a consideration, Drivers are on the pay roll of the agencies. Therefore, this service is taxable under the taxable service category of 'Manpower recruitment or supply agency'.

4. -----"

6.3 Clear meaning of the above is that even where the wages of the workers or the employees supplied by the agency are paid by the agency, the liability to pay the service tax would be under said agency and not on the clients. In other words, the Circular clarifies that mere payment of wages by the manpower recruitment or supply agency does not take away their status. However, as far as the facts of the present case are concerned, there are no reasons for applying the said circular; the terms of the contract are very clear and the appellants have rendered the job assigned by Punjab Tractors Ltd and did not at all supply any manpower.

6.4 We find that the Tribunal in the case of Talala Taluka Sahakari Khand Udyog Mandali Limited & others vs. CCE & ST, Bhavnagar reported in 2022 (12) TMI 468 – CESTAT AHMEDABAD has observed as under :

"5. We have carefully considered the submissions made by both the sides and perused the record. We find that the fact is not in dispute that the appellants have no arrangement for supply of manpower for harvesting and transportation of sugarcane for supply to sugar mills. It is also the fact that charges were calculated on per ton basis therefore, the number of manpower, man-days or man-hours is not relevant for carrying out the activities of harvesting, transportation etc. The arrangement is job specific and not the manpower specific. In the identical issue, this Tribunal has taken consistent view in the following judgments:-

(a) Satara Sahakari Shetu Audyogik Oos Todani Vahtook Society vs. CCE, Kolhapur

(b) CCE&ST, Aurangabad vs. Samarth Sevabhavi Trust

(c) Bhogavati Janseva Trust vs. CCE, Kolhapur

(d) CCE, Kolhapur vs. Shriram SAO TVS Limited."

Similarly in the case of M/s Fire Controls vs. CCE, Cus & ST, Mysore, reported in 2018 (8) TMI 1028 – CESTAT BANGALORE the Tribunal has observed as under:

"7. We have considered the arguments on both sides and perused the records. A bare perusal of the terms and contracts of the agreement as elaborated above shows that the contract which the appellant and M/s. L & T have is one for

packing of the meters manufactured by M/s. L & T in the premises of M/s. L & T. They do not have any contract for supply of any number of persons. In fact, M/s. L & T is not concerned as to how many people they employ. The appellants get paid if they pack the meters as per the specifications on per piece basis. We do not find anything in the scope of the contract which can remotely suggest that it is a contract for supply of manpower to M/s. L & T. We also find force in the argument of the learned counsel for the appellant that packing is a process incidental or ancillary to the manufacture and therefore should be considered as part of manufacture as per Section 2(f) of the Central Excise Act. Packing of goods per se may not be manufacture in itself but when it is done along with the manufacture in the factory of the manufacturer, packing is included in the process of manufacture. On the entire value of the goods including the cost of packing, M/s. L & T is paying Central Excise duty. In view of the above, we find that the demand on the appellant under the head of "Manpower Recruitment or Supply Agency Service" cannot survive by any stretch of imagination. In view of the above, the demand in the impugned order needs to be set aside and we do so. Consequentially, the interest and penalties also get set aside."

6.5 In view of the above, we have no hesitation whatsoever in concluding that the job work undertaken by the appellants does not fall under the category of 'Manpower recruitment or supply agency service', therefore, the demand confirmed therein are liable to be set aside and we do so. Once demand itself is set aside, the penalty and the interest do not survive.

7. In view of the above findings and discussion, both the appeals are allowed.