(2014) 12 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 51960 Of 2014 In Service Tax Appeal No. 51652 Of 2014

Shri Pankaj Kumar APPELLANT

Vs

CCE And ST, Raipur RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:
Finance Act, 1994 — Section 65(68), 76, 77, 78

Citation : (2014) 12 CESTAT CK 0005

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Jitin Singhal, Sanjay Jain

Final Decision : Allowed

Judgement

1. The stay application along with appeal has been filed against Order-in-Appeal No. 200(ST)/RPR-I/2013 dated 6.12.2013 which upheld the Order-

in-Original dated 1.3.2013 in terms of which duty demand of Rs.3,89,492/- for the period 2007-2008 and 2008-2009 (up to October) was upheld along

with interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994 on the ground that the appellants had supplied labour but did not pay

service tax under manpower recruitment or supply agency service.

2. The appellants have contended that they had not supplied manpower but were actually doing job work. In terms of the agreement entered with M/s

Shivam Structural and Rolling Mills Pvt. Ltd. they were to carry out â??production of the millâ? without causing any hardship to the company or their

regular employees and they were to be paid @ Rs.160/- PMT of production. The contract stipulated that EPF etc. of the appellantsâ?? employees

would be paid by them (appellants). The Commissioner (Appeals) has not correctly appreciated the issue and held that they were liable to service tax

under manpower recruitment or supply agency service because the machinery, space, raw material and other facilities were provided by the principal

i.e. M/s Shivam Structural and Rolling Mills Pvt. Ltd. and thereby holding that the appellants did not have the facility to do such job. The ld. AR

supported the impugned order.

3. We have considered the submissions of both sides. It is seen that as per the agreement the appellants were being paid for operating the mill @ Rs.

160/- PMT of the quantity of goods produced. It is thus evident that the payment was based on production as a result of operation of the mill. Under

Section 65(68) of the Finance Act, 1994 manpower recruitment or supply agency means â??any person engaged in providing any service directly or

indirectly in any manner for recruitment or supply of manpower temporarily or otherwise, in any mannerâ?. It is evident that the activity rendered by

the appellants does not fall in the said definition inasmuch as they did not supply any manpower to any other person and merely engaged the

manpower themselves to operate the mill and got paid on the basis of production on per metric ton basis. It also comes out that the activity done by

them amounted to manufacture. As regards, the extended period, it is noticed that the extended period has been invoked on the ground that the

appellants had never disclosed these facts and non-payment of service tax which came to notice of the department only at the time of audit and thus

the appellants had intentionally not paid service tax with intent to evade the same. It is thus evident that mere non-payment of service tax has been

ipso fact equated with the intention to evade which, as is too well settled to need citing of precedents, is legally unsustainable. In the case of the

Rameshchandra C. Patel Vs. CST, Ahmedabad - 2012 (25) STR 471-(Tri.-Ahmd.), it was held that the Agreement between parties talking about

products to be manufactured and payments to be made, and silent about number of men or labour to be used or manner in which they have to be used

or quantum of payment to be made to them would not be covered under manpower recruitment or supply agency service.

4. In the light of the foregoing, we waive the requirement of pre-deposit and allow the appeal.

