Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Service Tax Appeal No. 551 of 2011

[Arising out of Order-in-Appeal No OIA-85/2011/AHD-III/DSINGH/COMMR-A-/AHD dated 16.06.2011 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

M/s. Sai Utsav Services .... **Appellant**
7, Sarvoday Mill Kamdar Society,
B/h, Railway Station,
KALOL, GUJARAT-382721.

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
CUSTOM HOUSE... 2ND FLOOR,
OPP. OLD GUJARAT HIGH COURT, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

APPEARANCE :

Shri S.J. Vyas, Advocate for the Appellant
Shri K.J. Kinariwala, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11066 / 2019

DATE OF HEARING : 25.06.2019
DATE OF DECISION: 05.07.2019

RAJU

This appeal has been filed by M/s. Sai Utsav Services against the confirmation of demand of service tax, interest and imposition of penalties under Sections 76 and 78 of the Finance Act, 1994.

2. Ld. Counsel for the appellant argued that they are not contesting the demand on merits except for the demand on contract in respect of Reliance Fresh Limited. He pointed out that in the case of Reliance Fresh Limited, the contract does not relate to Manpower Supply Services but it is for the service

provided by the appellant for handling agricultural products. He argued that the control and direction to the manpower remained with the appellant and therefore it is not covered under Manpower Recruitment or Supply service. He relied on the decision of the Tribunal in the case of *Shri Ramdhar Singh vs. CCE, Kanpur – 2017 (5) TMI 1536 – CESTAT New Delhi and Shaily Traders vs. CCE, Indore – 2018 (3) TMI 1282 CESTAT New Delhi* to assert that unless the manpower is working under control and direction of the service recipient, the service does not qualify as Manpower Recruitment or Supply Agency Service. He argued that in the present circumstances when the manpower is under the direct control and supervision of the appellant, it qualifies as Business Auxiliary Service and by virtue of Notification No. 14/2004-ST dated 10.09.2004 as amended, which exempts the services provided in relation to agricultural produce. He also relied on the CBEC Circular F. No. B1/6/2005-TRU dated 27.07.2005 wherein it has been clarified in Para 22.3 that only when the manpower provided are under the direct control and working under the directions of service recipient, the service qualify as Manpower Recruitment or Supply Agency Service.

3. Ld. AR relies on the impugned order. He pointed out that the contract clearly envisages the supply of manpower and the payment is charged on the basis of man-days. He pointed out that agreement does not specify the exact nature of work to be done by the appellant and payment is not linked with to the amount of work done by the appellant but to the number of man-days only.

4. We have gone through the rival submissions. We find that the appellant is contesting the demand of tax only in respect of service given to Reliance Fresh Limited. It has been argued that service provided to Reliance

Fresh Limited is not Manpower Recruitment or Supply services as the Manpower deployed for the purpose of handling agricultural produce is not working under the directions and control of the service recipient but under the directions and control of the appellant. It is seen that this specific assertion was made before the lower authorities but the same is not contested or refuted by the impugned order. The agreement with Reliance Fresh Limited also indicates that the contract is a Work Order though the payment has been made on the strength of man-days provided. The contract is for handling the agricultural produce and not for supplying the manpower. Moreover, in the case of M/s. Shailu Traders as well as in the case of M/s. Shri Ramdhar Singh, in similar circumstances, it has been held that such services are not liable to tax under Manpower Recruitment or Supply Agency Service. The Tribunal in the case of Shri Ramdhar Singh (supra) has observed as under:-

> **"5.** Since the essence of contract is execution of the assigned work and control over the workman and supervision was always with the appellant, it cannot be said that the activities undertaken by the appellant falls under the category of "Manpower Recruitment and Supply Agency Service", for levy of service tax. Further, the documents available on records show that the service receiver M/s. Super Iron and Steel Ltd. has paid for the lump sum amount for the contract executed by the appellant. Thus, in our considered view the appellant cannot be considered as Manpower Recruitment or Supply Agency inasmuch as the deployment of the labour/workforce was for the execution of the job by itself and not by its client**."**

In view of the above, we find force in the arguments of the appellant that the service provided to M/s. Reliance Fresh Limited does not qualify as Manpower Recruitment and Supply Agency Services and the demand in so far as it relates to such service cannot be upheld. Accordingly, the demand on the said service provided to M/s. Reliance Fresh Limited is set-aside along with penalty and interest. It is also noticed that penalty has been imposed under Section 76 and 78 of the Finance Act, 1994. It is a settled law that penalties under both the sections simultaneously cannot be imposed, the penalty imposed under Section 76 is set-aside. Since the demand relates to supply of Manpower to Reliance Fresh Agency is set-aside, the penalty imposed under Section 78 to that extent is also set-aside.

5. The appeal is partly allowed in the above terms.

(Pronounced in the open court 05.07.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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