

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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 11417 of 2013-DB

(Arising out of OIA-81-84-2013-RAJ-CE-AK-COMMR-A-AHD dated 25.02.2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT)

MAHENDRAPAL & CO.

GURUVANDANA PARK,
OPP. BABY LAND HOSTEL, KALAWAD ROAD,
RAJKOT-GUJARAT

.....Appellant

VERSUS

C.C. E. & S.T. – RAJKOT

CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

.....Respondent

WITH

(i) **Service Tax Appeal No. 11418 of 2013 (CHANGELA PRASUD POPATBHAI);**

(ii) **Service Tax Appeal No. 11419 of 2013 (GORAKH SUKHAI YADAV);**

(iii) **Service Tax Appeal No. 11420 of 2013 (OMPRAKASH RAMJUGAN);**

(Arising out of OIA-81-84-2013-RAJ-CE-AK-COMMR-A-AHD dated 25.02.2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT)

APPEARANCE:

Shri K.J. Kinariwala, Consultant for the Appellant

Shri. Sanjay Kumar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)**

Final Order No. A/ 10950-10953 /2023

DATE OF HEARING: 03.02.2023

DATE OF DECISION: 26.04.2023

RAJU

These appeals have been filed by Mahendrapal & Co., Changela Prasud Popatbhai, Gorakh Sukhai Yadav and Omprakash Ramjungan against demand of service tax under the category of 'Manpower Supply Service'. The appellants have claimed that the services provided by them do not qualify as 'Manpower Supply Service' as it was a contract for job work on per piece basis. It has been argued that the appellants were providing services to M/s Mars Forge Private Limited. The appellants had raised the bill towards labour charges for the activity of

inspection, loading and dispatch, production, cutting, short blasting, security guards, gardening etc.

2. It was argued that the manpower hired by the contractor was working under the control of contractor and was not under the control of service recipient. The payment received by the appellant was based on the work performed and was not related to number of people employed for the said work. In support of his claim, the appellant produced certain labour bills. In the labour bills, it is seen that the columns are Serial Number, Particulars, Quantity, Rate and Amount.

2.1 The appellant has relied on the following case law:

- Shri Samarth Shetu Audyogik oos Todani Vahtook Society 2014 (36) STR 123 (Tri. Mum)
- CC vs Shri Samarth Sevabhavi Trust 2016 (41) STR 806 (Bom.)
- Talala Taluka Sahakari Khand Udyog Mandali Limited Final Order No. 11858-11862 of 2022 dated 06.12.2022.

3. Learned Authorized Representative relied on the impugned order. He argued that all the jobs undertaken by the appellant are in the nature of manpower supply. He argued that even if the jobs are done at per piece basis, still the nature of service is 'Man Power Supply Service' and therefore, the appellants are liable for service tax under the category of 'Manpower Recruitment and Supply Service'.

4. We have considered rival submissions. We find that the agreement between the appellant and the service recipient in Gujarati language has been produced by the appellant as Exhibit 'F'. The impugned order reproduced the translation of the said agreement as follows:

“M/s. Mars Forge Pvt. Ltd. is engaged in manufacturing of forging and for the process of the forging, this contract is entered into between company and contractor.

2. That Contractor has perform the work at place and time as specified by the Company.

3. That to complete the work, the Contractor can hire the employee persons and the Contractor shall be responsible for the salary and other rights of the said employee hired by them. That Contractor has to comply with the provisions of Contract Labour (Regulations) Act strictly. The control over the employee 1 persons hired by the Contractor shall be solely of Contractor, However, any mis-behavior of the employee, on written complaint from the company, the Contractor shall not hire such type of employee.

4. That work of Loading/Unloading, Shifting, Staking, Grinding and Short Blasting etc. shall be performed by the Contractor as per the policy and rules of the Company. For any loss of goods, the Company shall recover the amount equivalent to the loss of the goods from the Contractor.

5. That Contractor has also look after works pertains to Security Guards, Gardening Work, watering of plants and colour work and masonry of the Building.

6. The tenure of this contract shall remain from 01.02.2003 to 31.03.2004.

7. That Contractor shall not be considered as employee of Company.

8. That on any loss to Goods / Building etc. by the Contractor or his Employee, the contractor shall remain responsible for payment of such loss.

9. That Contractor for the allocated work, whatsoever employee hired, the name and other details of the employee shall be intimated to company in written form. Any changes in employee shall also be intimated to company in written form on the very same day.

10. The responsibility and legal liability in respect of all employees hired by the Contractor shall be of Contractor. That the responsibility for completion of specified work from the hired employee shall be on the Contractor during and after entering into with the Agreement.

11. That Contract can be cancelled anytime with a written notice prior to 7 days.

12. That the employee who have performed work in Company earlier, shall not be hired by the Contractor without permission of the Company.

13. That the Contractor has to got completed the work from the hired employee as directed by the Supervisor / Responsible Person of the Company.

A perusal of the aforesaid bills shows that the amount collected is calculated on the basis of some quantity however, the rate column has been left blank. The contract submitted by the appellant in the appeal memorandum also does not contain any rate list attached with the said contract. In this background it is not possible to verify if the bills raised by the appellant are on per piece basis. The exact nature of the calculation of bills is not clear from the aforesaid documents.

5. The decisions relied on by the appellant are as follows:

- Shri Samarth Shetu Audyogik oos Todani Vahtook Society 2014 (36) STR 123 (Tri. Mum)
- CC vs Shri Samarth Sevabhavi Trust 2016 (41) STR 806 (Bom.)
- Talala Taluka Sahakari Khand Udyog Mandali Limited Final Order No. 11858-11862 of 2022.

6. In the case of Shri Samarth Sevabhavi Trust (supra) Hon'ble High Court of Bombay has observed as follows:

"5. The question between the parties is whether the services would fall within the definition of "Manpower Recruitment or Supply Agency Services". The definition of this term is mentioned in clause (105) (k) r.w. Section 65(68) of the Finance Act, 1994, which read as under :

*(105)(k) "Taxable service" means any service provided or to be provided 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 65(68) 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, temporarily or otherwise, to any other person."

6. In view of provisions of Section 65(68) the "Manpower Recruitment or Supply Agency Services" means any person providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person, and Section 65(105) (k) defines the taxable services for providing such services. From the above definitions, it is rather clear that it envisages supply of labour which can be classified as

"Manpower Recruitment or Supply Agency Services". In the case in hand, there is no supply of labour to the sugar factory concerned. The respondents have undertaken the activities of harvesting of sugarcane and transporting the same to the sugar factory for which labour is employed.

7. Having regard to the nature of contract between the respondents and sugar factory and the scope of definitions mentioned above, it appears that the Appellate Tribunal has rightly come to the conclusion that the respondent's work, though provided services to the sugar factory, did not come within the mischief of the term "Manpower Recruitment or Supply Agency.

8. This interpretation of agreement between respondents and its principal is in tune with the judgment of Supreme Court in the case of Super Poly Fab-nks Ltd. v. Commissioner of Central Excise, Punjab reported in 2008 (10) STR. 545 (S.C.). Paragraph No. 8 of the said judgment can be relied upon to drag the point at home, which reads as under :-

"8. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive."

9. In view of the above, it is clear that no manpower has been supplied by the respondents to the sugar factory to constitute supply of manpower. This Court had an occasion to deal with the similar issue, as is involved in these appeals, in Central Excise Appeal No. 19 of 2014, and this Court by order dated 27-1-2015 [2015 (38) [S.TR](#) 468 (Bom.)] has dismissed the said appeal.

10. In view of the above discussion, in our view, the appeals are devoid of any merits. The judgment and orders, which are impugned in these appeals, passed by the learned Member of the Appellate Tribunal calls for no interference. The appeals are hereby dismissed. No costs."

7. From the above, it is apparent that unless the contract is for supply of manpower, the charge of provision of service under manpower recruitment and supply service cannot be made. A perusal of the bills and the contract submitted by the appellant does not make it clear how the bills have been raised. The bills as well as contract are in Gujarati language. The contract does not contain any per piece rate chart.

8. In this background, we are constrained to set aside the impugned order and remand the matter back to the original adjudicating

authority. The adjudicating authority can examine how the bills have been raised. If the bills have been raised on per piece basis, then following the decision of Hon'ble Bombay High Court in the case of Shri Samarth Sevabhavi Trust (supra), the demand will be set aside. However if it is seen that the bills are raised on the number of person supplied then the demand may be confirmed under the head of 'Manpower Recruitment and Supply Services'. The appeals are allowed by way of remand to the original adjudicating authority with the aforesaid observations.

(Pronounced in the open court on 26.04.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

NEHA