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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10616 of 2017 – DB

(Arising out of OIO-AHM-EXCUS-003-COM-030-16-17 dated 22/12/2016 passed by Commissioner of Central Excise-AHMEDABAD)

Komal Enterprise ....**Appellant**
F/119 Dharti Manan Plaza
Jail Road
Mehsana, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS-AHMEDABAD ......**Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Ms. Krati Jain, Advocate for the Appellant
Shri Rajesh Nthan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 12956/2024

DATE OF HEARING: 21.11.2024
DATE OF DECISION: 02.12.2024

RAMESH NAIR

The facts of the case are that the appellant had carried out the activities namely packing/filling of milk pouches, loading/unloading of crates and ancillary activities to Mehsana District Co-Operative Milk Producers Union Ltd. on rate contract basis during the period from 2010-11 to 2014-15. The charge for the above activities, is on the basis of quantum of work and not on the basis of number of manpower or manhours involved in the said job.

1.1 The case of the department is that the appellants have provided the service of "Manpower Recruitment or Supply Agency Services" under Section 65(68) of the Finance Act. Accordingly, a show cause notice dated 19.10.2015, demanding Service Tax, interest and imposing penalty was issued which was adjudicated by the adjudicating authority, whereby the demand upto 30.06.2012 was confirmed under "Manpower Recruitment or Supply Agency Services" and from 01.07.2012 onwards under the service in terms of 65(b)44 of the Finance Act, 1994.

1.2 Being aggrieved by the Order-in-Original, appellant filed the present appeal.

2. Ms. Krati Jain, Learned Counsel appearing on behalf of the appellant submits that firstly, the activity carried out by the appellant is amounting to manufacture in terms of Central Excise Act, 1944 for that reason the same is not liable to service tax. Alternatively, she submits that the contract with the client is for particular job of filling and packing of milk pouches, loading and unloading of crates and ancillary and the rate for the said job is also per piece basis. Therefore, there is no service of "Manpower Recruitment or Supply Agency Services". Accordingly, the service tax for the period upto 30.06.2012 is not leviable She submits that this issue has been considered in various judgments. She placed reliance on the following judgments: -

- Super Poly Fab-riks Ltd. Vs. Commissioner of Central Excise, Punjab 2008 (10) STR 545
- Commissioner of Customs, C. EX. & S.T. Aurangabad Vs. Samarth Sevabhai Trust- 2016 (41) STR 806
- Commissioner Vs. M/s. Surya Trading and Services- 2018 (15) GSTL J 209

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

3.1 He submits that the activity carried out by the appellant is not amount to manufacture and even for the period prior to 01.07.2012, the appellants have deputed the manpower for carrying out certain job. Therefore, it was correctly clarified under "Manpower Recruitment or Supply Agency Services". Hence, the demand confirmed by the lower authorities is correct.

4. We have carefully considered the submission made by both the sides and perused the records.

4.1 We find that the period involved in the present case is divided into two parts, one is upto 30.06.2012 and second post 01.07.2012. For the period up to 30.06.2012, there was a concept of classification of service. The department has classified service under "Manpower Recruitment or Supply Agency Services". In this regard it is necessary to refer to the contract between the appellant and their client. On perusal of such contract, we find that firstly the contract is not for supply of manpower but for undertaking particular jobs involving filling and packing of milk pouches, loading and unloading of crates and ancillary and the rate for the such job is also on the per piece basis. Therefore, the client is not concerned about the number of manpower or manhours involved in the job under taken on their behalf. Therefore, with this undisputed fact, the activities cannot be classified as "Manpower Recruitment or Supply Agency Services". This view is supported by the catena of the judgments, some of the judgments are referred below: -

a) In case of M/s. S.S. Associates V/s. Commissioner of Central Excise Bangalore 2010(19)S.T.R. 438 (Tri.-Bangalore) wherein Hon'ble CESTAT held as under:-

> *"Manpower Recruitment or Supply Agency service-Lump sum work - Contract for execution of work of loading. Unloading, bagging, stacking and destacking Records not indicating supply of manpower-Essence of contract was execution of work as per contract and invoices- Tenor of agreement indicating execution of lump-sum work or job- No agreement for utilization of services of an individual- Lump-sum work not covered under Manpower Recruitment or Supply Agency service- Impugned order set aside- Section 654(68) of Finance Act, 1994 (paras 9,11,12)."*

b) In the case of M/s. Divya Enterprises V/s Commissioner of Central Excise, Mangalore, 2010(19) S.T.R. 370 (Tri.-Bang.) wherein the Hon'ble CESTAT held as under:-

> *"Manpower Recruitment or supply Agency service-Lump-sum work- Contract for execution of work of loading, unloading, bagging, stacking and destacking Records silent on supply of manpower- Essence of contract was execution of work as per contract and invoices- Tenor of agreement and purchase orders indicating execution of lump-sum work as understood by appellant and service recipient - No agreement for utilization of services of an individual- Lump-sum work or job not covered under Manpower Recruitment or supply Agency service - Impugned order set aside- Section 65(68) of Finance ACT, 1994. (Paras 9,11,12).*

c) In the case of K. DAMODARAREDDY 2010 (19) S.T.R. 593 (Tri. Bang.) it has been held that:-

> *"6. We have heard both sides. We find that the appellant had carried out the activities of loading of cement bags into wagons, spillage cleaning, stenciling, wagon door opening/closing, wagon cleaning etc., for M/s. India Cements Ltd., during the material period. We find that the appellants were compensated for the various items of work at separate rates prescribed under the contract. The appellants did not supply manpower charging for the labour provided on man-day basis or man-hour basis. The appellants carried out the work as a contractor employing its own labour. Such an activity is not classifiable as "manpower recruitment or supply agency."*

In view of the above judgments, it is categorically held that any job under taken by the contractor and the rate for the same is as per the quantum of the job and not on the basis of number of manpower or manhours. In the present case also, the appellants have not taken the service charge as against the wages/ salary of the manpower deputed to the appellant. Therefore, the service is not covered under the "Manpower Recruitment or Supply Agency Services" up till 30.06.2012, therefore, no service tax is payable.

4.2 As regard the period with effect from 01.07.2012, there was a negative list regime and the definition of individual service was done away so all the activities are taxable, except falling under negative list or under exemption Notification No. 25/2012-ST, if any applicable in the present case. In this regard, we find that the activity under taken by the appellant is clearly manufacturing activity, in terms of Central Excise Act, 1944 for the reason the product milk pouches is falling under Chapter Heading 04.02 of Central Excise Tarif Act, 1985. For the purpose of this particular chapter, the 3rd scheduled as provided under Section 2(f) is applicable. According to which activities such as packing/labeling or any other treatment which render the product marketable, is amount to manufacture. In the present case, the appellants have carried out packing of milk in the pouches and various other activities which obviously for rendering a product marketable. Therefore, their activity amount to manufacture in terms of Section 2(f) of Central Excise Act, 1944. Accordingly, the same is covered under exemption Notification No. 25/2012-ST dated 20.06.2012 under Sr. No. 30 which reads as under: -

> *"30. Services by way of carrying out,-*
>
> *(i) any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption; or*
>
> *(ii) any intermediate production process as job work not amounting to manufacture or production in relation to –*
>
> > *(a) agriculture, printing or textile processing;*
> >
> > *(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);*
> >
> > *(c) any goods excluding alcoholic liquors for human consumption, on which appropriate duty is payable by the principal manufacturer; or*
> >
> > *(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value*

> *had not exceeded one hundred and fifty lakh rupees during the preceding financial year;"*

4.3 From the above sub Sr. No. (i) of Sr. No. 30 any process amounting to manufacture or production of goods is exempted, the definition of the term "process amounting to manufacture or production of goods" is given in clause (ya) of para 2 of said notification which reads as under:-

> ***"(ya) " process amounting to manufacture or production of goods"*** *means a process on which duties of excise are leviable under Section 3 of the Central Excise Act, 1944."*

4.4 As discussed above, the process in the present case is clearly amount to manufacture and leviable to central excise duty under the Central Excise Act, 1944. Therefore, the activity in the present case being amount to manufacture under Central Excise Act, 1944, the same is exempted under Sr. No. 30(i) read with Clause (ya) of para 2 of the Notification. Therefore, for the period from 01.07.2012 also no service tax is payable on the appellant's activity.

5. As per our discussion and findings, impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 02.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha