CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70466 of 2024

(Arising out of Order in Appeal - MRT-EXCUS-000-APPL-MRT-202-2023-24, dated -29/12/2023 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

M/s Pawan Contractor **.....Appellant**
(Shiv Vihar, Rail Par,
Shamli, Uttar Pradesh 247776)

VERSUS

Commissioner, CGST, Meerut **....Respondent**
(Opposite C. C. S. University,
Mangal Pandey Nagar
Uttar Pradesh 250002)

APPEARANCE:
Shri Rajesh Chibber, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**

FINAL ORDER NO.-70333/2025

DATE OF HEARING : 03.06.2025
DATE OF DECISION : 03.06.2025

R. MURALIDHAR:

The Appellant was issued Show Cause Notice on 28.12.2020 on the ground that as per Income Tax Return for the period 2015-16 the Appellant has received a consideration of Rs.1,08,36,459/-. In terms of Section 26AS of Income Tax Return, such consideration is towards the services provided by the Appellant. Accordingly, the Show Cause Notice was issued demanding Rs.15,86,545/-. The Appellant did not file their reply nor they appeared for Personal Hearing. The Adjudicating Authority confirmed the demand by *Ex-Parte* order vide Order-In-Original dated 12.07.2022. Being aggrieved, the Appellant has filed their appeal before the learned Commissioner (Appeals). Before him they submitted that they have been registered with the Service Tax Department under the category of 'supply of manpower'. They submitted that since they have been providing services of manpower to various corporates, the Service Tax, if any, is required to be discharged by the recipient of service on reverse charge basis. They provided all the documentary evidence in the form of agreement with various corporate. They also contested the issue on account of time bar stating that they are registered with the Service Tax Authorities and were filing Returns regularly. Even the data for quantification of demand has been taken from their Income Tax Returns. Therefore, there cannot be any case of suppression on their part.

2. The learned Commissioner (Appeals) has gone through the work order issued by the clients of the Appellant and has drawn a conclusion that the Appellant is not providing manpower services but is getting lumpsum amount every month towards maintenance and repair work. Accordingly, he has not found any merits in the appeal filed by the Appellant. He has relied upon certain case laws to reject their claim on account of limitation. Accordingly, he has dismissed the appeal filed by the Appellant. Aggrieved Appellant is before this Tribunal.

3. Learned counsel appearing on behalf of the Appellant submits that the Appellant provided manpower to corporates. The men are at their disposal. The corporates pay the appellant for providing such manpower. He submits that the workers are not skilled in any way to take up repair and maintenance works. They are only normal workers to be deployed by service recipients at various locations. Therefore, he submits that this should not be treated as 'maintenance and repair service'.

4. He further submits that though the Appellant is registered with the Service Tax Department, the Show Cause Notice was issued only on 28.12.2020 merely based on Income

Tax Return and Form 26AS. He relied on the case law of this Bench in the case of **Pappu Crane Service V/s Commissioner, C.E. & S.T., Lucknow in Service Tax Appeal No.70707 of 2018 Final Order No.71246 of 2019**. Accordingly, he prays that the appeal may be allowed.

5. The learned Authorized Representative for the Revenue submits that the learned Commissioner (Appeals) has gone through the documentary evidence and has held that the Appellant is not providing 'manpower services'. He submits that since the Department had to undertake detailed verification, the Show Cause Notice was issued by invoking the extended period provisions. Accordingly, he justifies the impugned order and prays that the present appeal may be dismissed.

6. Heard both sides and perused the appeal papers and submissions made by both the sides.

7. On going through the copy of the agreement provided by the Appellant, I find that the agreement clearly is for 'works of maintenance of 11KV feeder'. On this work, the Appellant is getting consideration of Rs.1,77,800/- per month. Though the Appellant is agreeing to provide manpower, the contract is basically only for maintenance and repair service. In case of manpower service the payment is based on the per day rate for each and every person deployed plus the percentage of commission payable to the service provider, which is not the case here. Therefore, I reject the submissions of the Appellant that they are providing manpower services. Accordingly, on merits their case fails.

8. However, I find force in their arguments that the Department has not brought in any specific evidence to the effect that they have indulged in any suppression. The Income received has been declared by them in their Income Tax Returns for which Form 26AS has been issued. The Department has quantified demand based on data under Form 26AS only.

9. On identical issue, this Bench in the case of M/s Pappu Crane Service (Supra) has held as under:-

> *"2. We note that though the appellant have assailed the impugned order on merits as also on limitation by submitting that the activities undertaken by him were not supply of tangible goods service, inasmuch as, he was providing services to his customers by using the cranes owned by him. The said job-work was being done by him on time basis i.e. weekly, daily & monthly etc. Further, the figures reflected in balance sheet are also relatable to construction of road etc. which are not a taxable activity. Otherwise also, he submitted that the demand raised by invoking the longer period of limitation is solely based upon the profit and loss account and 26AS form submitted with the Income Tax Authorities which has been held to be as not proper by the Tribunal in various decisions. Reference stands made to the decision of Hon'ble High Court in the case of M/s Firm Foundation and Housing Pvt. Ltd. Vs Principal Commissioner of Service Tax, Chennai (Madras) pronounced on 06.04.2018 in Writ Petition No.21799 of 2017, as also to the Tribunal's decision in the case of M/s Sigma Trade Wings Vs Commissioner of Central Excise, Lucknow Final Order No.70049 of 2019 dated 07.01.2019. It stands held in both the above decisions that the revenue's reliance upon profit and loss account are irrelevant for the purpose of confirmation of tax.*
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> *3. Inasmuch as, the revenue's entire case is based upon the profit and loss accounts read with the 26AS Form and the service tax stands confirmed by invoking the longer period of limitation, we are of the view that the impugned order of Commissioner (Appeals) is not sustainable on limitation itself. Accordingly, we set*

aside the same and allow the appeal with consequential relief to the appellant."

10. Accordingly, following the ratio laid down in the case cited above, I set aside the impugned order on account of time bar. The Appellant would be eligible for consequential relief, if any, as per law.

(Dictated & pronounced in open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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