IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

CROSS APPLICATION No.ST/CROSS/50384/2014
In APPEAL No.ST/60066/2013-CU[DB]

(Arising out of Order-in-Appeal No.51-ST/MRT-II/2013 dated 30/05/2013 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II)

Commissioner, Customs, C. Excise & S. Tax, Meerut-II **Appellant**

Vs.

M/s Ajay Singh, **Respondent**

Appearance:

Shri Mohd. Altaf, Assistant Commissioner (AR), for Appellant

Shri Rakshit Verma (Adv.) for Respondent

CORAM:

Hon'ble Justice Shri Dilip Gupta, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 16/10/2018
Date of Decision : 16/10/2018

FINAL ORDER NO. **72458 / 2018**

Per: Anil G. Shakkarwar,

Present appeal filed by the Revenue is directed against the impugned Order-In-Appeal No.51-ST/MRT-II/2013 dated 30 May, 2013 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II.

2. Brief facts of the case are that the respondent were engaged by M/s Simbhaoli Sugar Ltd. for carrying out

some jobs in the factory of M/s Simbhaoli Sugar Ltd. It appeared to Revenue that said activities were covered by “Manpower Recruitment or Supply Agency Service.” Therefore, respondent were issued with a show cause notice demanding Service Tax amounting to Rs.21,83,784/- under the category of “Manpower Recruitment and Supply Agency Service”. On contest the said Show Cause Notice was adjudicated through the Order-In-Original dated 28 December, 2012 by confirming the demand and imposing equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) has considered the works contract and the works orders issued by M/s Simbhaoli Sugar Ltd. to the respondent and observed that the work was related to shifting of Coal from outside coal yard to inside factory, packing of cartons of sugar, repairing at new bagasse yard and certain such other works. Learned Commissioner (Appeals) also took into consideration the Bills showing payments in respect of activities earlier referred. The learned Commissioner (Appeals) has held that the said activities did not amount to Man Power Recruitment and Supply Agency Service relying on the Final Order passed by This Tribunal in the case of M/s

Ritesh Enterprises V/s Commissioner of Central Excise reported at 2010 (18) STR 17. Aggrieved by the said order Revenue is before this Tribunal.

3. The grounds of Appeal filed by Revenue *inter-alia* referred to the terms of condition of the works allotted to the respondent by M/s Simbhaoli Sugar Ltd. wherein it was stated that it was the obligation of the respondent that all statutory obligation with regard to labour engaged by them were to be fulfilled by the Respondent. The ground of appeal further, indicates that the said condition is an evidence that the respondent were supplying Manpower.

4. Heard the learned A.R. who has presented the grounds of Appeal.

5. Heard the learned Counsel for the respondent. The learned Counsel for the appellant has submitted that the said condition only establishes that the respondent were responsible for complying with all provisions of law for carrying out any job assigned to them by engaging labourers. He further, submitted that by no stretch of imagination this condition can be interpreted to suggest

that the respondent were engaged in Manpower Supply and Recruitment Agency Service.

6. We have carefully gone through the contentions raised by both the sides, the ground of appeal and findings by the learned Commissioner (Appeal). The learned Commissioner (Appeals) has scrutinized the individual contracts and observed that the contracts were for jobs to be completed by the respondent. From the observation of learned Commissioner (Appeals), we note that there was no contract for supply of any fixed number of labours to M/s Simbhaoli Sugar Ltd. and that the contracts were fixed job to be performed in fix time frame. From the record, we observed that the respondent's responsibility was to get the job completed and it was not merely supply of manpower to M/s Simbhaoli Sugar Ltd. We, further, note that the finding of learned Commissioner (Appeals) has not been rebutted by Revenue through grounds of appeal. The only ground of appeal raised by Revenue is that the respondents were responsible to comply with all provisions of law in respect of labours engaged by them. Such condition in a contract does not indicate that such contract is for supply of labours. We observe that for carrying out any job, manpower is required and all laws related to such

manpower employed are required to be implemented. We, therefore, do not find any merit in the ground raised by Revenue. We, therefore, do not find any reason to interfere with the impugned Order-In-Appeal.

7. The appeal filed by Revenue is dismissed. Cross-Objection also stands disposed.

(Pronounced in Court)

Sd/-
(Justice Dilip Gupta)
President

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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