CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/203/2009-DB

[Arising out of OIA No. 309-2008 dated 19/12/2008 passed by CCE(Appeals), Mangalore]

EFFICIENT SECURITY & DETECTIVE BUREAU,
NO-1, GOKULA MAIN ROAD,
JAYALAKHMIPURAM MYSORE

Appellant(s)

Versus

C.C.,C.E.& S.T-MYSORE
S1-S2...VINAYA MARGA,
SIDDHARTHA NAGAR,
MYSORE
KARNATAKA
570011

Respondent(s)

Appearance:

Shri N. Anand, Advocate
K.S. RAVI SHANKAR
152, RACE COURSE ROAD,BANGALORE
BANGALORE
KARNATAKA
560001

For the Appellant

Shri K. Murali, Superintendent(AR)

For the Respondent

Date of Hearing: 19/02/2019
Date of Decision:21/02/2019

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. SANJIV SRIVASTAVA, TECHNICAL MEMBER

Final Order No: 20194 / 2019

Per : S.S. GARG.

The present appeal is directed against the impugned order dt. 19/12/2008 passed by the Commissioner(Appeals) whereby the

Commissioner has rejected the appeal of the appellant.

2. Briefly, the facts of the present case are that the appellant is engaged in the business of providing security and detective services. The appellant rendered typing services to the University of Mysore and to carry out the said activities, had sent their staff to the University campus. The appellant has wrongly paid the service tax under the category of 'manpower recruitment and supply' for the period from January 2006 to January 2007 as directed by the Audit Wing of the Department. Subsequently they filed refund claim on 13/06/2007 on the ground that the typing work undertaken for the University of Mysore did not fall within the ambit of any taxable service. Thereafter a show-cause notice dt. 19/07/2007 was issued by the Department proposing to reject the refund claim on the ground that the appellant is a service provider and the said service of providing casual labour attract service tax. Further following the due process, the original authority rejected the refund claim and aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who also rejected the appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the definition of manpower supply as defined in

Section 65(105)(k) of the Finance Act, 1994. He further submitted that the appellant having not supplied any manpower but instead have executed the work of typing, housekeeping etc. in terms of Agreement dt. 21/07/2004 entered with the University of Mysore vide which they have executed the work of typing and other works and paid for it. The learned counsel also referred to various clauses of the Agreement to demonstrate that the appellant had executed the work of typing and housekeeping etc. and they were solely responsible for executing the work / job and the contract could be terminated if the work is found to be unsatisfactory and hence it is not mere supply of manpower but involved actual execution of typing etc. by the appellant. He further submitted that the service tax was wrongly paid under protest and the same is liable to be refunded. In support of this submission, he relied upon the following decisions:-

i. Aakriti construction (P) Ltd. Vs. CCE [2017(7) GSTL 478 (Tri. Del.)]
ii. Divya Enterprises Vs. CCE [2010(19) STR 370 (Tri. Bang.)]
iii. Dhanashree Enterprises Vs. CCE [2017(5) GSTL 212 (Tri. Mum.)]
iv. Shailu Traders Vs. CCE [2018(10) GSTL 462 (Tri. Del.)]
v. Seven Hills Construction Vs. CST [2013(31) STR 611 (Tri. Mum.)]
vi. CCE Vs. shri Samarth Sevabhavi Trust [2016(41) STR 806 (Bom.)]

5. On the other hand, learned AR defended the impugned order and submitted that the appellants are engaged in supply of manpower and therefore they are liable to pay service tax. In support of his submission, he relied upon the following decisions:-

i. Ganapati Labour Suppliers Vs. CCE, Jaipur-I [2017(51) STR 72 (Tri. Del.)]
ii. Mehta Security & Detective Services Vs. CCE, Jaipur [2007(7) STR 287 (Tri. Del.)]

6. After considering the submissions of both sides and perusal of the material on record, we find that as per the Agreement between the appellant and the University of Mysore, the appellant is to execute the typing work and housekeeping work of the University. Perusal of the various clauses of the Agreement shows that the appellants are involved in actual execution of work and not merely supplying of manpower. Further we find that for cleaning, material is also to be used by the appellant. Further we find that the definition of manpower supply as contained in Section 65(105)(k) is not applicable to the appellant as the appellant has not supplied the manpower but is only executing the work on typing and housekeeping for which he is paid and if his work is found to be unsatisfactory, the contract could be terminated as per the terms of the Agreement. Further we find that the ratio of the decision relied upon by the appellant squarely applicable in the present case and the decisions relied upon by the Revenue are not applicable in view of the terms and conditions of the Agreement between the parties. In view of our discussion above, we are of the considered view that the impugned order is not sustainable in law. Therefore we set aside the same by allowing the appeal of the appellant, with consequential relief, if any.

(Order was pronounced
in Open Court on **21/02/2019**)

SANJIV SRIVASTAVA
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...