CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 21333 of 2015

(Arising out of Order-in-Appeal No. TVM-EXCUS-000-APP-206-14-15 dated 19.02.2015 passed by the Commissioner of Central Excise (Appeals-III), Cochin.)

M/s. Self Employed Women's Association (SEWA)
KRAD 51, Kuthiravattom Road,
Kunnumpuram GPO,
Thiruvananthapuram – 695 001.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
C R Building, I S Press Road,
Kochi – 682 018.

Respondent(s)

APPEARANCE:

Mr. Kurian Thomas, Advocate for the Appellant

Mr. Rajashekar B.N.N., Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20991 /2026

DATE OF HEARING: 04.05.2026
DATE OF DECISION: 03.09.2026

PER : P.A. AUGUSTIAN

The issue in the present case is the sustainability of service tax demand by considering the activity carried out by the Appellant under manpower recruitment or supply agency service.

2. Alleging that the activities carried out by the Appellant are falling under the service tax category, proceedings were initiated and show cause notice was issued on 27.05.2008 for the period

from 16.06.2005 to 31.12.2007 and thereafter Adjudication authority as per Order-in-Original dated 30.09.2009 confirmed the demand for the period from 01.05.2006 to 31.12.2007 with interest and dropped the demand for the period from 16.06.2005 to 30.04.2006. Further no penalty was also imposed. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 19.02.2015 rejected the appeal.

3. When the appeal came up for hearing, Learned Counsel draw our attention to the impugned order and the nature of organization and functioning of the appellant organization would go on to suggest that the appellant is not in fact acting as a manpower supply agency. The appellant's main goals are to organise women workers for full employment. Full employment means employment whereby workers obtain work security, income security, food security and social security (at least health care, child care and shelter). The appellant organises women to ensure that every family obtains full employment. By self-reliance it is meant that women should be autonomous and self-reliant, individually and collectively, both economically and in terms of their decision-making ability. It is in this context that the appellant gives training to economically backward women. The women are part of the appellant. The organisational structure of the appellant would go on to suggest that it is essentially in the nature of a trade union organisation, where the members themselves constitute the organisation. The organisation would be steered by the executive committee which consists of the workers themselves, and a secretary. The members acquire knowledge through the training programmes organised at the auspices of the organisation. These members would then go to various customers/clients, and take up employment. The organizational endorsement by the appellant would ensure the payment of prompt and correct wages to the

workers/members, so that chances of exploitation are reduced to a minimum. The Appellate Authority ought to have considered these factual aspects while issuing the impugned order. The Learned Counsel further submits that even after the amendment of the definition of the services in issue, the appellant organisation would not fall within the ambit of taxable services. Since the appellant is not engaged in the rendering of any service in any manner for the supply of manpower. The organisation, which itself is the workforce, undertakes various assignments with the customers. In such circumstances, it cannot be accepted that the appellant organisation is engaged in rendering services for supply of manpower. The appellant submits that what the levy contemplates is a situation where a person is engaged in the supply of manpower and not a situation where a person offers himself as a worker (skilled/unskilled). In other words, no intermediaries are present in the present case, and hence no manpower supply occurs in the present case. The Learned Counsel also drew our attention of the clarification issued by Tax Research Unit vide F. No. B1/6/2005-TRU dated 27.07.2005, wherein while examining the scope of the services in respect of the Gem and Jewellery industry has clarified that where the services of artisans are directly sought by the organisations or business, without engaging the services of any other persons in any manner, such artisans are contractually employed by the organisations or business. Service tax would be leviable only when the services of a person are engaged for the recruitment or supply of artisans. In the present case, the workers unite together and with this institutional backing they seek direct employment with the clients. Such a situation cannot be highlighted as a case of manpower supply, primarily because the workers and the organisation are not separately identifiable. The Joint Commissioner, on adjudication of the show cause notice, found that the appellant is not a commercial concern. As the definition of "Manpower Recruitment and Supply Agency" could taken in only a commercial concern for the periods prior to 01.05.2006, the Joint Commissioner held that the appellant cannot be treated as "Manpower Recruitment and Supply Agency" for the periods prior to 01.05.2006. Consequently, the demand was limited for the periods from 01.05.2006 to 31.12.2007. Commissioner also refrained from imposing penalties, on finding bonafide belief as regards non-taxability and extended the benefit of Section 80 of the Finance Act, 1994.

4. Learned Counsel also draw our attention to the certificate issued by as the appellant is falling under Travancore Cochin Literacy Scientific and Charitable Societies Registration Act. Further Learned Counsel draw our attention to the Bylaws of the society and submits that as per the clarification issued by the Board vide Circular No. 96/7/2007-ST dated 23.08.2007.

010.02/23-8-07	Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)].	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.

5. Learned Counsel also draw our attention to the judgment of Hon'ble Supreme Court in the matter of **M/s Joint Commercial Tax Officers vs Young Men's India Association & others** and the judgment of the Hon'ble Supreme Court in the matter of **State of West Bengal vs M/s Kolkata Club Ltd** 2019 (29) G.S.T.L. 545 (S.C.) wherein it is held that:

> "31. What arises for deliberation now is whether the 46th Amendment has done away with the principles contained in

Young Men's Indian Association (supra) and the other judgments on the doctrine of mutuality, as applied to members' clubs.

32. It can be seen that the 61st Law Commission Report had observed that there cannot be said to be any evasion of tax as a member of members' clubs "really takes his own goods" and, therefore, did not seek to tax such goods. The framers of the 46th Amendment thought otherwise, and made it plain that they sought to bring to tax sales made by unincorporated clubs or an association of persons to their members, as it was thought that such transactions were not taxable, as such club or associations in law has no separate existence from that of the members.

33. Quite obviously, the Statement of Objects and Reasons has not read the case of Young Men's Indian Association (supra) in its correct perspective. As has been noticed hereinabove, Young Men's Indian Association (supra) had three separate appeals before it, in one of which a company was involved. To state, therefore, that under the law as it stood on the date of the 46th Amendment, a sale of goods by a club having a corporate status to members is taxable, is wholly incorrect. Proceeding on this incorrect basis, what the 46th Amendment sought to do was to then bring to tax sales by clubs which have no separate existence from that of their members. In so doing, the 46th Amendment used the expression "any unincorporated association or body of persons". This expression, when read with the Statement of Objects and Reasons, makes it clear that it was only clubs which are not in corporate form that were sought to be brought within the tax net, as it was wrongly assumed that sale of goods by members' clubs in the corporate form were taxable. "Any" is the equivalent of "all". This word, therefore, also lends itself to the aforesaid interpretation, as the emphasis of the Legislature is on all unincorporated associations or bodies being brought within sub-clause (e).

34. Thus, it is clear that even going by Shri Dwivedi's eloquent argument as to the intention of the Legislature, as seen through the object that the Legislature sought to achieve, would lead to

the aforesaid expression applying only to clubs which were not in the corporate form."

6. Learned Counsel also drew our attention to the statement showing details of collection and reimbursement expenses as below:-

Annexure – 1

SEWA – TRIVANDRUM

Statement Showing Details of Collections and Reimbursement for the purpose of Service Tax Matters

A. **Reimbursable Expenses Collected and Paid**

Type of Allowance	16.06.05 to 03.03.06	1.04.06 to 30.04.06	01.05.06 to 31.03.07	01.04.07 to 30.11.07
N.A. Allowance Collected	45,57,824.00	4,71,534.00	51,58,557.00	35,62,719.00
N.A. Allowance Reimbursed	44,65,085.00	5,22,008.00	51,73,154.00	34,99,699.00
Balance (+ or -)	92,739.00	(-50,474.00)	(-14,597.50)	63,020.00
Office Cleaning Allowance Collected	1,71,736.00	8,605.00	1,43,883.00	1,35,810.00
Home Cleaning Allowance Collected	9,05,204.00	94,548.00	11,54,764.00	8,92,595.00
Total Cleaning Allowance Collected	10,76,940.00	1,03,153.00	12,98,647.00	10,28,405.00
Cleaning Allowance Reimbursed	10,32,901.00	1,04,887.00	13,20,176.00	10,14,451.00
Balance (+ or -)	44,039.00	(-1,734.00)	(-21,525.00)	13,954.00

B. **Registration Fee Collected**

Registration Fee Collected (N.A.)	2,98,665.00	25,600.00	3,03,330.00	2,23,250.00
Registration Fee (Home & Office) Cleaning	59,408.00	5,050.00	63,800.00	48,700.00
Service Charge for Office Cleaning	2,500.00	200.00	4,160.00	6,725.00
Total Collections	3,60,573.00	30,850.00	3,71,290.00	2,78,675.00

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ADVOCATE

7. Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that the appellant had not registered with the department under Service Tax Rules for payment of service tax. Department on intelligence gathered by officers of Preventive Unit had booked an offence case for non registration and non-payment under the service tax category Manpower recruitment or supply agency service. Service ibid as per Section 65(68) of the Finance Act, 1994 defines service provider as any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client.

Recruitment of manpower was introduced with effect from 7.7.1997 and supply of manpower introduced with effect from 16.06.2005. From the nature of the service rendered by the appellant, it can be rightly construed and classify the same under Manpower recruitment or supply or agency service. The appellant contended that they are collecting an annual membership of Rs. 10/-, an amount of Rs. 300/- from its members for giving training in cleaning activities and an amount of Rs. 500/- for giving training in nursing activities. They are also deducting an amount of Rs. 3/- per day from the wages of the employee towards employee provident fund and Rs. 5/- from each member towards the cost of the passbook, Further vide Board's Circular No. 96/7/2007-ST dated 23.08.2007, in identical issue, had clarified that in the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable service and since they act as supply agency, they fall within the definition of manpower recruitment or supply agency service and are liable to service tax. Further the representation of the appellant for exemption of service tax had been turned down by the Ministry of Finance vide letter F. No. 332/10/2007-TRU dated 14.09.2007 add to the non eligibility for any exemption from payment of service tax. Section 67(1) stipulates that in a case where the provision of service is for a consideration in money, the taxable value will be the gross amount charged by the service provider for such service provided or to be provided by him. Regarding the adoption of taxable value, the appellant's contention that that the collection and subsequent disbursement of the wages are done by the appellant only with the intention of preventing any exploitation and that the wages do not form part of the cost of providing the services, if any, and would be excluded from the wages collected from the clients hence cannot be accepted. Thus there is no infirmity in the impugned order passed by the lower authority. The Appellate Authority ought to have found that the appellant is not rendering any services falling under the category of 'Manpower Recruitment or Supply Agency Services'.

8. Heard both sides. We find that the appellant organises women to ensure that every family obtains full employment and the appellant is not engaged in the rendering of any service in any manner for the supply of manpower. Further even if is held that the activity carried out by the appellant amounts to supply of manpower, as per the evidence available on record, considerable part of the amount was reimbursed as wages to its members for providing the service and balance amount charged as registration fee is negligible and is not falling within the monetary limit of taxable service. Thus, the adoption of gross amount for assessing the service tax without deducting the reimbursable expenses is unsustainable.

9. Accordingly, appeal is allowed with consequential relief if any in accordance with law.

(Order pronounced in Open Court on …………………………...)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Gb/Raja…