

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1128 of 2011

(Arising out of Order-in-Original No. 08/2011 dated 21/01/2011 passed
by the Commissioner of Service Tax, Bangalore)

**Honeywell Technology Solutions
Lab Pvt. Ltd.**

No.151/1, Doraisanipalya, Bannerghatta
Road, Bangalore - 560 076

Appellant(s)

VERSUS

**Commissioner of Service Tax
Bangalore Service Tax- I**

1st To 5th Floor,
TTMC Building, Above BMTC Bus Stand,
Domlur
Bangalore - 560 071
Karnataka

Respondent(s)

Appearance:

Mr. Ravi Raghavan & Ms Sudheeshna,
Advocates
World Trade Centre No.404-406, 4th Floor,
South Wing Brigade Gateway Campus
No.26/1, Dr. Rajkumar Road,
Bangalore - 560 055
Karnataka

For the Appellant

Mr. P. Gopakumar, Jt. Commr. (AR)

For the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20208 / 2020

Date of Hearing: 18/02/2020

Date of Decision: 18/02/2020

Per: ANIL CHOUDHARY

Heard the parties. The issue involved herein is whether salary paid to employees deputed to the appellant by their parent company 'Honeywell International Inc.', for assisting them in their business operations of software development and information technology and other related support service, whether the same is liable to service tax under the category of

'Manpower Recruitment or Supply Agency Service', under reverse charge mechanism.

2. Admitted facts are that a secondment agreement was entered into between Honeywell International Inc and the Appellants on 01.01.2007 effective from 01.04.2003 with an objective to secure the services of managerial and technical personnel to assist the appellants in its business. The terms and conditions of the said agreement were as follows.

- a) Appellant shall request Honeywell International Inc to provide employees (the employees) who have the expertise required by the appellants.
- b) In order to help Honeywell International Inc make the selection, the appellants shall provide HII with a description of the qualifications required by the appellants.
- c) Based on the list provided by the appellants, Honeywell International Inc shall identify the people and select the employees.
- d) Honeywell International Inc agrees to second the employees to the appellants for time period.
- e) The employees seconded to the appellants shall continue to be on the payroll of Honeywell International Inc only for the purpose of continuation of social security/retiral benefits, and for all practical purposes, the appellants shall be the employer.

3. The agreement further stipulates that the employee shall act in accordance with the instructions and directions of the appellants and also all responsibility and risk for work undertaken by the individual will remain with the appellants during the period of secondment. During the Secondment Period, the appellants shall reimburse Honeywell International Inc for the following amounts (collectively the "Reimbursable Expenses"):

a) All remuneration of the employees, including but not limited to, salary, bonuses and social benefits, of the employee paid by Honeywell International Inc.

b) All out-of-pocket expenses incurred by the seconded employees paid by Honeywell International Inc, including business travel expenses and other miscellaneous expenses, directly related to the secondment of the employee.

4. During the period 2005-06 to 2008-09 (up to December 2008) in terms of the above agreement two senior level engineers of Honeywell International Inc was deputed to the appellants to undertake certain specific work. They have taken charge in the position of the **Managing Director** and **Senior Program Manager** respectively.

5. For deputing two employees of Honeywell International Inc to the Appellants, Honeywell International Inc furnished a statement along with debit notes, detailing the reimbursable expenses due to them from the appellants.

6. The appellant Honeywell have paid to the parent Co.-H.I.I., such payments equivalent to the reimbursable, which works out to Rs.10,94,40,471/- (Rupees Ten Crore Ninety Four Lakhs Forty Thousand Four Hundred and Seventy One only) for the period from 2005-06 to 2008-09.

7. TDS (income tax) was deducted by the appellants on account of the salary paid to the seconded employees by Honeywell International Inc and remitted to the exchequer of the Indian Government under personal income tax. Form 16 as prescribed by the Income tax Rules was issued by the Appellants to the seconded employees.

SHOW-CAUSE NOTICE

8. Based on the audit, the appellant was issued show cause notice dated 11.02.2010 proposing to demand Service Tax of Rs.1,25,40,914/- (Rupees One Crore Twenty Five Lakhs Forty Thousand Nine Hundred and Fourteen only) under the category of

'Manpower Recruitment or Supply Agency Service' in terms of Section 66A read with Rule 2(i)(d)(iv) of the Service Tax Rules 1994 for the period from 2005-06 to 2008-09 (up to December 2008).

The appellant filed a detailed reply rebutting all the allegations in the Show Cause Notices followed by which the appellant was also personally heard.

9. The Ld. Commissioner has passed the impugned Order-in-Original No.08/2011 dated 21.01.2011, wherein he has rejected most of the submissions made by the appellant and confirmed the proposals in the notice. The confirmation of the demand by the Ld. Commissioner is based on the following observations/findings.

- 9.1 The activity of providing skilled manpower, on secondment basis, which works under the supervision and control of the appellant for a fixed period of time, on temporary basis, to the appellant, falls in the domain of the 'manpower recruitment or supply agency service' within the meaning of Section 65(68) read with Section 65(105) (k) of the Finance Act, 1994;
- 9.2 Honeywell International Inc would be the service provider and the appellant, who receives the skilled manpower, on secondment basis, would be the service recipient;
- 9.3 That it was seen from the said agreement that Honeywell International Inc was to supply the services of the specified persons at specified rates agreed upon mutually; that the bills are also raised by Honeywell International Inc to the Appellants, indicating the persons supplied and the period of supply; that the consideration is computed by taking into account the agreed upon rates for the persons supplied; that this would amply corroborate the fact that Honeywell International Inc was in fact, supplying skilled manpower to appellant;

- 9.4 That in the instant case the supplier of manpower is a commercial concern and has provided the services of Manpower supply in addition to various other services being rendered by him; that it is not a precondition that only a manpower supply agency should supply the Manpower; that any commercial organization/person can supply the manpower and render the manpower supply agency services, in addition to other usual services being rendered by them;
- 9.5 That the judgment of the CESTAT, Chennai, in the case of ***M/s. Future Focus Infotech India (P) Ltd., V/s Commissioner of Service Tax, Chennai*** is applicable to the facts of the present case;
- 9.6 The fact of payment of Income Tax or the dual employment is not the criteria to decide the taxability of a service under the Finance Act;
- 9.7 Extended period under proviso to Section 73(1) of the Finance Act, 1994 has been rightly invoked, and the same stands test of Law;
- 9.8 That therefore the appellants were liable to pay interest under Section 75 of the Act and liable to be imposed penalty under Sections 76, 77 & 78 of the Finance Act, 1994.

Being aggrieved, the appellants have filed the present appeals.

10. Heard the parties, Learned AR relies on the impugned order.
11. We find that similar issue arose before this Tribunal in the case of ***M/s. Volkswagen India (Pvt.) Ltd. V. CCE, Pune-I – 2014 (34) S.T.R. 135 (Tri.-Mumbai)*** upheld in ***2016 (42) S.T.R. J145 (S.C)*** wherein this Tribunal in para 5.1 held as under:

“5.1 In view of the clauses of agreements noticed herein above and other facts, we hold that the global employees working under the appellant are working as their employees and having employee-employer relationship. It is further held that there is no

supply of manpower service rendered to the appellant by the foreign/holding company. The method of disbursement of salary cannot determine the nature of transaction.”

Revenue had filed appeal against the order of this Tribunal which was dismissed by Hon’ble Supreme Court on the ground of limitation.

12. We further take notice that ruling of Tribunal in **M/s. Volkswagen India (Pvt.) Ltd.** was followed by the Delhi Bench in ***Nissin Brake India Pvt. Ltd. V. Commissioner of Central Excise, Jaipur-I – 2019 (24) G.S.T.L. 563 (Tri.-Del.)*** upheld in ***2019 (24) G.S.T.L. 1171 (S.C)*** wherein under similar facts and circumstances, the issue was decided in favour of the appellant-assessee. Revenue preferred an appeal before the Hon’ble Supreme Court against the order of Tribunal in **Nissin Brake India Pvt. Ltd.** and by order dated 22/02/2019, Hon’ble Supreme court held that it finds no merit in the appeal and was accordingly pleased to dismiss the appeal. Thus, the principle of law laid down in the case of **M/s. Volkswagen India (Pvt.) Ltd.** (supra) and followed in **Nissin Brake India Pvt. Ltd.** have cristalized and attained finality. In this view of the matter, we allow the appeal and set aside the impugned order. Appellant is entitled for consequential benefit in accordance with law.

(Order was pronounced and dictated
in Open Court on **18/02/2020**)

(ANIL CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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