CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 513 of 2009

[Arising out of Order-in-Appeal No. 25/2009-ST dated 23/02/2009 passed by Commissioner of Central Excise(Appeals), Cochin]

Golden Wings
"pappurath" Krishanswami Road, Pulleppadi,
Cochin-682035

Appellant(s)

VERSUS

C.C.,C.E.& S.T-Cochin-cce
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN,
KERALA
682018

Respondent(s)

Appearance:

Shri G. Subramanian, Advocate for the Appellant

Shri P. Rama Holla, Superintendent(AR) for the Respondent

CORAM:
HON'BLE MR. RAMESH NAIR, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No: 20149 / 2022

Date of Hearing: 22/03/2022

Date of Decision: 29/03/2022

Per : RAMESH NAIR

The brief facts of the case are that the appellant is acting as a mediator between the candidates(job seekers) and the Manpower Recruitment Agency (MRA, for short) in connection with the manpower recruitment. They are getting commission from the principal MRA. The case of the Department is that the appellant's activity falls under the service of MRA and therefore all the proceeds received by them was considered as the consideration towards MRA service and accordingly the demand on such proceeds was confirmed. In an appeal filed by the appellant, the learned Commissioner(Appeals) upheld the Order-in-Original and dismissed the appeal. Therefore, the present appeal has been filed by the appellant.

2. Shri N. Subramanian, learned counsel appearing on behalf of the appellant submits that on the last occasion of the hearing, this Tribunal vide order dt. 16/02/2022 directed to file affidavit to the effect that the requisite documents like paper book of the agreement, letter from the principals, copy of bills etc. are not available. Accordingly, he submitted an affidavit from the appellant that the documents are not available with them. He further submitted that there is no dispute that the Cochin Branch of the appellant is exclusively acting as a sub-agent for the principal MRA and all the proceeds towards MRA service is sent directly to the principal recruitment agency or through the appellant. Therefore, as regards the MRA service, it is the principal MRA who is providing such service but the appellant is acting only as a sub-agent; therefore their service cannot be classified as MRA service. He submits that as per books of accounts, all the receipts made is on behalf of the principal recruitment agency except small portion of the commission; the remaining sum was remitted back to the main MRA; therefore merely because the appellant is acting as sub-agent between the service provider and the ultimate service recipient, they cannot be

treated as MRA; at the most their service can be classified under Business Auxiliary Service (BAS).

3. Shri P. Rama Holla, learned Superintendent(AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both sides and perusal of the records, we find that it is the submission of the appellant that they are acting only as a sub-agent between the principal MRA who are finally conducting the recruitment of the candidates for overseas job. In this case, the service provider of MRA service is the principal MRA and the service recipients are the candidates for whom the overseas job is arranged. In this fact, the appellant is merely a sub-agent working on commission of a small amount. All the transactions made in the appellant's books are on behalf of their principal MRA and the same were remitted to them except retention of small amount as commission. As regards the documents are concerned, the Department is not able to produce relied upon document. In this case, the benefit of doubt goes to the appellant. Even as per the statement of the concerned person of the appellant, they have not admitted as they are MRA and providing services directly to the client candidates who are considered for overseas job. From the facts, it reveals that the principal MRAs are providing the service of MRA. Therefore, the appellant cannot be fastened with the service tax

liability under the head of Manpower Recruitment Agency. At the most, their service can be classified under BAS that too only on the net amount of commission which is paid by the principal MRA or student as the case may be. Accordingly, we are of the view that the appellant since acted as sub-agent between the principal MRAs and their clients, the service of the appellant can at the most be treated as commission agency service. Therefore, the service tax demand on the entire transacted amount cannot be sustainable under the head of MRA service. Accordingly, the impugned order is not sustainable and hence, the same is set aside and appeal is allowed.

(Order pronounced in open
court on 29/03/2022)

(RAMESH NAIR)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...