

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH - 160 017

DIVISION BENCH
COURT NO. I

APPEAL NO. ST/640/2009-[DB]

[Arising out of Order-in-Appeal No. 14/ST/APPEAL/CHD-II/2009 dated 19.05.2009 passed by the Commissioner (Appeals), Chandigarh-II]

Sh. Satpal Sharma, Proprietor : **Appellant(s)**

VS

CCE & ST, Chandigarh-I : **Respondent(s)**

Appearance:

Present for the Appellant(s): Mr. Naveen Bindal, Advocate
Present for the Respondent(s): Mr. Bhasha Ram, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of hearing/decision: 04.12.2018

FINAL ORDER NO. 63565/2018

Per : Bijay Kumar

The present appeal is directed against the impugned order dated 19.05.2009 passed by the Ld. Commissioner (Appeals), Central Excise, Chandigarh-II, wherein he has upheld the order passed by the lower adjudicating authority.

2. The issue involved in this case is regarding classification of service rendered by the appellant as whether under the Manpower Recruitment or Supply Agency Service or otherwise. The period of dispute involved in this appeal is 16.06.2005 to 31.12.2007.

3. After perusal of the impugned order, it is evident that the Ld. Commissioner (Appeals) has held that the service provided by the appellant is classifiable under Manpower Recruitment or Supply Agency Service contrary to what has been submitted before him by the appellant. The contract involved in this case is for the contract of loading of the raw material to M/s Shreyans Industries Ltd. The Ld. Commissioner (Appeals) was submitted with the copy of contract order dt. 20.01.2003 for the aforesaid service provided by the appellant. However, this did not find the favour with the Ld. Commissioner (Appeals).

4. The Ld. Advocate for the appellant would submit that they have not provided the Manpower Recruitment service, but simply performed the job of loading of raw material assigned to them by employing his own manpower and machinery and all the supervision and control over the manpower was always with the appellant. The wages and other charges were paid by the appellant to all the labour and the service recipient had no concern with that. In this case, supply of manpower, supervision and control remains with the appellant. Accordingly, it was prayed that the Ld. Commissioner (Appeals) erred in upholding the order passed by the lower adjudicating authority. In the fact of the case, there is no liability of any tax to the appellant. In support of his contention, Ld. Advocate relied upon the copy of the contract mentioned supra, which is extracted herein below:-

"1. Description of Job:

You will carry out the loading of raw materials such as Wheat Straw after wet wash, Loose/Baled Baggasse after

depithing and sarkanda, kahi grass, Rice Straw, Narha, Bansi etc after cutting and et wash into continuous digester as per requirement of production deppt.

1. Rates:

- a) *Cutting of raw materials such as Sarkanda, Kahi grass, Narha, Rice straw, Bansi etc and loading into continuous digester after wet wash – Rs. 77/- PMT.*
- b) *Loading of wheat straw into continuous digester after wet was - Rs. 47/- PMT.*
- c) *Depiting of Loose/Baled Baggasse and loading into continuous digester - Rs. 47/- PMT.*

Raw Material to be loaded, will be as per the requirement of production department. Your failure to meet the requirement will be liable to impose penalties at the sole discretion of the management and the decision of the management shall be final and binding.”

The Ld. Advocate also relied upon the following case laws:-

- (i) Shailu Traders vs. CCE, Indore – 2018 (10) GSTL 462 (Tri. Delhi)**
- (ii) Santosh P. Deshmukh vs. CCE, Nagpur – 2018 (8) GSTL 224 (Tri. Mumbai)**
- (iii) Shri Ramadhar Singh vs. CCE, Raipur – 2018 (9) GSTL 303 (Tri. Delhi)**

The Ld. Advocate stated that the issue is no longer *res integra* in view of the above mentioned judgments.

5. On perusal of the conditions of contract, it is evident that the manpower/employees deployed for executing the assigned task were under the control and supervision of the appellant and the activities undertaken pursuant to the agreement relate to the work of material handling and shifting. The issue involved in the present dispute is squarely covered by the aforementioned decisions of the Hon’ble

Tribunal. Accordingly, following the precedent decisions (supra), we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order pronounced in the court)

(Ashok Jindal)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

RAS'