IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. ST/526/2011 and ST/40938/2013

(Arising out of Order-in-Original No. 7/2011 dated 29.7.2011 and Order-in-Original No.1/2013-ST dated 4.2.2013 both passed by the Commissioner of Central Excise, Trichy)

M/s. Arignar Anna Sugar Mills   Appellant

Vs.

Commissioner of GST & Central Excise
Trichy   Respondent

Appearance

Shri T. Ramesh, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **23.08.2018**

Final Order Nos. **42303-42304 / 2018**

Per Bench

The appellants are engaged in the manufacture of sugar and molasses. They are holding registration for payment of service tax on the services of transport of goods by road in goods carriage. On the basis of intelligence received that the appellants are providing taxable services on manpower recruitment or supply agency service, but not taken registration and are not paying service tax, investigations were conducted. It was revealed that the appellants have allotted certain agricultural areas for the purpose of procurement of sugarcane cultivated by farmers within their area. These farmers who intend to cultivate sugarcane sell their produce to the appellant's factory. For this purpose, the farmers are required to get registered with the appellant's factory. As per the said agreement executed by the farmers, they cannot deal or sell their sugarcane in any manner other than without the written order of the appellant factory. It is also the responsibility of the farmers to harvest and deliver the sugarcane at the factory gate of the appellant. In the case of harvesting, labourers (manpower) will be arranged by the appellant factory and the cane cutting charges will be recovered by the appellant from the cost of the sugarcane. It appeared to the department that the appellants were thus providing manpower recruitment and supply service for engaging labourers for harvesting sugarcane. Show cause notices were issued proposing to demand service tax along with interest and for imposing penalty under the category of manpower recruitment or supply agency service. After due process of law, the adjudicating authority confirmed the demand of Rs.3,54,57,555/- for the period from November 2005 to September 2010 and Rs.56,37,264/- for the period from October 2010 to March 2011 along with interest and also imposed penalties under Sections 77 and 78 of the Finance Act. Hence these appeals.

2. On behalf of the appellant, ld. Counsel Shri T. Ramesh submitted that the appellant is a public sector undertaking under the Government of Tamilnadu engaged in the manufacture of sugar. The sugar factory is totally controlled by the Government of Tamilnadu and the price of the goods manufactured by the factory is also controlled by the Government. Further, the price of sugarcane procured is also periodically fixed by the Government. The employees of the sugar mill in the muster roll of the mill which in turn is controlled by the Government of Tamilnadu. The only object of the mill is to manufacture sugar and sell such sugar at the price fixed by the State Government for the public distribution system. As per the policy of the Government, the sugar mill cannot involve in an activity other than those activity fixed by the Government.

2.1 The appellant manufactures sugar by crushing sugarcane grown by the farmers / agriculturists who own lands. The State Government has also earmarked the area or places or jurisdiction from where the sugarcane can be procured from the growers / farmers thereby encouraging the cultivation activities. The crushing of sugarcane for manufacture is a seasonal one and totally dependent on the timely and uninterrupted supply of sugarcane by the growers to the factory. The growing of sugarcane is also a seasonal one and can be grown and supplied only during specified period. To ensure consistent supply of sugarcane during the specified period, the farmers are encouraged to cultivate and they are also provided necessary facilities. One of the said facility is to get the farmers registered themselves with the appellant's factory / sugar mill. Though it has become duty bound to supply the sugarcane at the doorsteps of the appellant-factory and appellant agrees to pay the price for such supply as per the price fixed by the Government of Tamilnadu, it is to ensure that there is consistent supply of sugarcane at the time of seasonal period. On receipt of the sugarcane in the factory, the total quantity supplied by such grower would be quantified and the price is paid to them after deducting the labour charges for harvesting the sugarcane. The cutting charges are negotiated by the farmers with the cutting labourers and the appellant has no say whatever in fixing the cutting price of the sugarcane. The farmer alone is liable to pay cutting charges to the labourers and not the sugar mill. To ensure that the sugarcane is harvested and there is regular supply during the period of crush of sugarcane, the mill merely identifies the availability of the labourer for cutting the sugarcane, keep track and maintain some records about the availability of such labourers. The amount so deducted from the price of the sugarcane is paid as wages for the cutting labourers on weekly basis. The payment for the supply of sugarcane is not given in advance and paid only after such completion of supply sugarcane by the farmers. However, the wages for harvesters / labourers is paid on weekly basis as these labourers will not wait till the payment for the sugar supplied is made to the appellant factory. The facility is only for identifying the sugarcane growers as well as harvesters and it does not have anything to do with the arrangement for manpower supply service. He submitted that in a similar issue, the Tribunal after considering the facts and evidences had held the same to be outside the scope of manpower supply service. He relied upon the Final Order No. 41991/2018 dated 5.7.2018 in the case of M/s. The Amaravathi Cooperative Sugar Mills Ltd. It is also submitted by him that for the subsequent period for the same assessee, Commissioner (Appeals) had dropped the demand on similar set of facts.

4. The ld. AR Shri K. Veerabhadra Reddy supported the findings in the impugned order.

5. Heard both sides.

6. The demand has been made on manpower supply service alleging that the appellant have supplied manpower to the

sugarcane farmers for sugarcane harvesting. The contention of the department that the charges towards supply of cane harvesting labourers are recovered from the farmers at the rate accepted by the farmers and therefore the said activity would be covered within the definition of manpower recruitment or supply agency service under Section 65(68) of the Finance Act, 1994. The appellant has replied to the show cause notice dated 5.4.2011. It is explained by the appellant that there is no employer and employee relationship between the cutting labourers and the appellant. The appellant company has no say in the rate for cutting demanded by the labourers and the labourers have got every right to deny to cut for a particular sugarcane grower. The mill simply manufactures the sugar with regard to the availability of the cutting labourers only. Being a Government undertaking, it can be seen that all appointments are to be made in the muster roll of the sugar mill. From the facts on record, it cannot be said that the appellants have provided harvesting labourers to the sugarcane growers for harvesting the sugarcane. The Tribunal on identical set of facts had considered the issue and held that the sugarcane growers themselves are encouraging the harvesting labourers and as a mere facilitation, the amount to be paid to these harvesters are deducted from the price of the sugarcane that is to be paid to the farmers. The Commissioner

(Appeals) in a similar set of facts, in the appellant's own case, has set aside the demand.

6. From the discussions made above as well as the decisions in the identical matter, we are of the considered view that the demand cannot sustain and requires to be set aside, which we hereby do. The impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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