IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]

Appeal No.: ST/42132/2015

[Arising out of Order-in-Appeal No. 198/2015 (CXA-I) dated 26.08.2015 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

M/s. ABI Showatech India Ltd., **: Appellant**
Pulivalam Village & Post,
via Banavaram,
Vellore Dist. – 632 505

Versus

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai North Commissionerate

Appearance:-
Ms. K. Nancy, Advocate
for the Appellant
Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: **06.12.2018**

Final Order No. 43105 / 2018

Per P. Dinesha :

The appellant is a holder of Service Tax Registration under the category of Business Auxiliary Services, Manpower Recruitment and Supply Service, Transport of Goods by Road Service, Consulting Engineering Service, etc.

2.1 During verification of records of M/s. LAP Ross Engineering Ltd., a subsidiary of the appellant, it was noticed by the Officers of the Department that the appellant had rendered Manpower Supply Service to them and collected Deputation Charges for the above said service during the period from 16.06.2005 to 31.03.2007, however without payment of service tax thereon; that they had only started paying service tax for 01.04.2007 from March 2009.

2.2 A Show Cause Notice dated 02.09.2010 was issued to the appellant proposing to demand service tax to the tune of Rs. 16,47,551/- along with applicable interest and penalty. The above proposals came to be confirmed by the adjudicating authority vide Order-in-Original dated 23.09.2011. Thereafter, the appellant preferred an appeal before the first appellate authority who vide impugned Order-in-Appeal No. 198/2015 (CXA-I) dated 26.08.2015 upheld the Order-in-Original *in toto* while rejecting the appeal as devoid of merits. Aggrieved by the same, the appellant is in appeal before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Ms. K. Nancy appeared for the assessee-appellant while Ld. DC (AR) Ms. T. Usha Devi represented the Revenue.

4. During the course of hearing, Ld. Advocate for the appellant submitted that the issue involved in this case is no more *res integra* as the same has already been considered and laid to rest by the decision of this very Bench of the Tribunal in the case of ***M/s. Turbo Energy Ltd. Vs. C.G.S.T. & C.Ex., Chennai Outer & vice versa in Final Order Nos. 42478-42479/2018 dated 26.09.2018*** wherein, this Bench after considering the rival contentions had allowed the assessee's appeal with consequential reliefs.

5. *Per contra*, Ld. AR supported the findings of the authorities below.

6. We have heard the rival contentions, perused the documents placed on record and have also gone through the Order of this Bench *(supra)* relied upon by the Ld. Advocate.

7.1 On a careful consideration of the judgement in the case of *M/s. Turbo Energy Ltd. (supra),* we find that on an identical set of facts, this Bench had ruled as under :

> *" 6.1 The scope of service tax liability in respect of the activity of staff to subsidiary / group companies is no longer res integra. The Hon'ble High Court in the case of CST Vs Arvind Mills Ltd. - 2014 (350) STR 496 (Guj.), has held that subsidiary companies cannot be said to be client of holding company and the deputation of employees was only for and in the interest of the company; there is no relation of agency and client. The relevant portion of the said judgment is reproduced as under :*
>
> > *"5. It is true that in the present form, the definition of Manpower Supply Recruitment Agency is wide and would cover within its sweep range of activities provided therein. However, in the present case, such definition would not cover the activity of the respondent as rightly held by the*

Tribunal. To recall, the respondent in order to reduce his cost of manufacturing, deputed some of its staff to its subsidiaries or group companies for stipulated work or limited period. All throughout the control and supervision remained with the respondent. As pointed out by the respondent, company is not in the business of providing recruitment or supply of manpower. Actual cost incurred by the company in terms of salary, remuneration and perquisites is only reimbursed by the group companies. There is no element of profit or finance benefit. The subsidiary companies cannot be said to be their clients. Deputation of the employees was only for and in the interest of the company. There was no relation of agency and client. It was pointed out that the employee deputed did not exclusively work under the direction of supervision or control of subsidiary company. All throughout he would be under the continuous control and direction of the company.

6. We have to examine the definition of Manpower Supply Recruitment Agency in background of such undisputable facts. The definition though provides that Manpower Recruitment Supply Agency means any commercial concern engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client, in the present case, the respondent cannot be said to be a commercial concern engaged in providing such specified services to a client. It is true that the definition is wide and would include any such activity where it is carried out either directly or indirectly supplying recruitment or manpower temporarily or otherwise. However, fundamentally recruitment of the agency being a commercial concern engaged in providing any such service to client would have to be satisfied. In the present case, facts are to the contrary."

6.2 Respectfully following the ratio already laid down, we hold that in respect of employees deputed by the assessee to their group companies we do not find any infirmity in the decision of the Commissioner (Appeals) setting aside the demand in respect of employees deputed by the assessee to the group companies.

6.3 In the event, no merit is found in respect of the grievance of the Department regarding setting aside by LAA of the demand under MRSA in respect of services provided by assessee to group companies. In any case, the disputed amount that was before the LAA is only to the tune of Rs.18,23,910/- and hence department's appeal against such order will not be in keeping with the litigation policy vide Board's instruction being F.No.390/Misc./1116/2017-JC dt. 11-07-2018. which prescribes monetary limit of Rs.20 lakhs for filing of appeal before this forum. For all these reasons, the Appeal ST/228/2012, filed by the department is dismissed.

6.4 Coming to the assessee appeal ST/244/2012, Commissioner (Appeals) has held that service tax is liable to be paid in respect of employees deputed to Laprоss Engineering Ltd., however, he has set aside the demand on time-bar.

We find it intriguing that having taken the decision to set aside the demand in respect of Laprоss Engineering on time-bar, nonetheless, the lower appellate authority has opined that payment of service tax with interest could be settled under Section 73 (3) of the Act. In our opinion, the option to pay up the service tax under Section 73 (3) of the Finance Act, 1994 is made only at the initial stage when the escaped liability is brought to the notice of the assessee by the department or by the assessee on their own accord. In such a situation, once the assessee pays up the tax liability with interest thereon, no further SCN is required to be issued. However, in the present case, a SCN has very much been issued and the adjudication thereof has culminated in confirmation of the demand. At such a later stage, if the LAA finds that demand is time-barred, he should only set aside the demand on that ground but cannot advise assessee concerned to discharge the disputed amount through Section 73 (3) ibid. While are not able to find any fault with the finding of Commissioner (Appeals) that the said demand is time-barred as the assessee had been audited on more than one occasion earlier, we set aside that portion of the order which opines that the disputed demand could be settled under Section 73 (3) ibid. So ordered. Impugned order to this extent is set aside and assessee's appeal ST/244/2012 is allowed with consequential benefits, if any, as per law."

7.2 We find that the facts being identical, the above ruling squarely applies to the case on hand. Moreover, the Revenue was unable to offer any contrary decisions in response to the same. Hence, following the above ratio we are of the considered opinion that the impugned Order is unsustainable and requires to be set aside, which we hereby do.

8. The appeal is allowed with consequential benefits, if any, as per law.

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

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd