

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

Appeal Nos. ST/337 to 339/2012

(Arising out of Order-in-Appeal No. 9/2012-S. Tax (SLM) dated 24.2.2012; Order-in-Appeal No. 10/2012-S. Tax (SLM) dated 24.2.2012 and Order-in-Appeal No. 11/2012-S. Tax (SLM) dated 24.2.2012 all passed by the Commissioner of Central Excise (Appeals), Salem)

A. Bharathi Priyan
A. Sagayaraj
K.P. Venkatesh

Appellants

Vs.

Commissioner of GST & Central Excise
Salem

Respondent

Appearance

Shri S. Kannappan, Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **19.12.2018**

Final Order Nos. **43137-43139 / 2018**

Per Bench

The appellants were issued show cause notices alleging that they are providing manpower supply to M/s. Narasus Coffee Company for the work of grinding roasted coffee beans, blending coffee powder with chicory and packing of coffee powder. They had not discharged service tax on the said

services. The show cause notices proposed demand of service tax for the period from 2005 – 06, 2006 – 07 and 2008 – 09. After due process of law, the original authority confirmed the demand along with interest and also imposed penalties. Aggrieved, the appellants preferred appeals before Commissioner (Appeals) who upheld the demand, interest and penalties. Hence the present appeals.

2. On behalf of the appellants, Id. counsel Shri S. Kannappan appeared and argued the matter. He submitted that the appellants were undertaking work on specified rates for doing such activities and was a job worker for Narasus Coffee Company. The appellants were paid labour charges on weekly basis depending upon the nature and quantity of activities such as grinding, blending and packing. The charges were based on per kilogram of the goods and the charges were not on the basis of the manpower or on hourly basis. Thus the allegation that appellant supplied manpower to Narasus Coffee Company is factually wrong. It is also submitted by him that the appellants are proprietors and will not fit into the category of manpower recruitment or supply agency service. He relied upon the decision in the case of Rameshchandra C Patel Vs. Commissioner of Service Tax, Ahmedabad – 2012 (25) STR 471 as well as S.S. Associates Vs. Commissioner of Central Excise, Bangalore – 2010 (19) STR 438 (Tri. Bang.).

3. The Id. AR Shri B. Balamurugan supported the findings in the impugned order. It is submitted by him that the appellants were providing labour work to Narasus Coffee Company for doing the activities of blending, grinding, mixing and packing of coffee powder. The work was undertaken at the premises of Narasus Coffee Company and the appellant had received charges for such activities. This is very much clear that the appellant were providing manpower to Narasus Coffee Company.

4. Heard both sides.

5. The issue is whether the activity of the appellants amounted to manpower recruitment or supply agency. It is seen from the invoices as well as from the records that the appellant was receiving charges on the basis of kilogram of coffee powder which is subjected to various activities of grinding, mixing, blending etc. The payment is not in respect of number of persons engaged or work done on daily basis or hourly basis. It can be seen from the invoices that amounts are to be paid on the basis of amount of coffee powder that is subjected to the various process. The Tribunal in the case of Divya Enterprises Vs. Commissioner of Central Excise, Mangalore – 2010 (19) STR 370 had occasion to analyse a similar issue and held that when lumpsum work is agreed upon to be rendered on rate contract payment, the same would not

amount to manpower recruitment or supply agency service. For these reasons, we hold 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)

Rex