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

Appeal No. ST/615/2012

(Arising out of Order-in-Appeal No. 161/2012 dated 30.7.2012 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Sree Mahavishnu Agencies Appellant

Vs.

Commissioner of GST & Central Excise
Trichy Respondent

Appearance

Shri, Advocate for the Appellant
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: **21.03.2019**

Final Order No. **40573 / 2019**

Per Bench

The facts of the case are that the appellant had entered into an agreement dated 6.3.2006 with M/s. SRF Ltd. for Inspection of Greige Fabric and Inspection and Trimming / Fringe cutting of dipped belting chafer fabrics. Department took the view that the appellants had only provided manpower to M/s. SRF, however, have not paid the service tax liability thereon for the period 16.6.2005 to 31.3.2008. Accordingly, Show Cause Notice dated 6.10.2010 was issued to appellant inter alia proposing to demand service tax liability of Rs.13,95,497/- along with interest and also imposed penalties under various provisions of law. The original authority vide order dated 28.4.2011 confirmed the proposals for demand of tax as made in the Show Cause Notice with interest, imposed penalties under sections 77 and 78 of Finance Act, 1994. In appeal, Commissioner (Appeals) vide impugned order dated 30.7.2012 upheld the order of the original authority. Hence this appeal.

2. Today, when the matter came up for hearing, on behalf of the appellant, ld. counsel Shri M. Kannan submitted that in terms of the agreement, the consideration has been paid as per the work executed and not as per the labour supplied. Therefore, the demand under manpower recruitment is not sustainable. Ld.counsel relies upon the ratio of the following decisions:-

a. 2019 (2) TMI 1179 – CESTAT Chennai - A. Perumal & Co. Vs. Commissioner of Central Excise

b. 2013 (31) STR 611 (Tri. Mumbai) – Seven Hills construction Vs. Commissioner of Service Tax, Nagpur

c. 2014 (35) STR 602 (Tri. Mum.) – Hemanth V. Deshmukh Vs. Commissioner of Central Excise, Goa

d. 2016 (42) STR 352 (Tri. Mum.) – Manish Enterprises Vs. Commissioner of Central Excise, Pune

3. On the other hand, ld. AR Shri S. Govindarajan supports the impugned order and opposes the appeal. He submits that the basic nature of the work done by the appellant is only supply of manpower and hence the impugned order upholding the duty liability on such services requires no interference.

4. Heard both sides.

5. On going through the agreement between the appellant and M/s. SRF Ltd in page 99 onwards of the appeal book, we find as under:-

> "WHEREAS the agency has offered its services for Inspection of Greige Fabric and Inspection and Trimming / Fringe cutting of dipped belting chafer fabrics as may be required by the company.
>
> WHEREAS the company has agreed to utilize the services of the agency for the above said purpose under certain terms and conditions and WHEREAS both parties hereto though it fit to reduce the same into writing.
>
> ***** ***** ****** ****
>
> The Agency shall be fully responsible for carrying out the following:-
>
> - Loading the fabric rolls in the Let Off stand of the Inspection Machines from Inspection Area
> - Lasing the rolls on the Inspection Table for Inspection/ Trimming / Fringe /cutting
> - Selection of shell roll as per Customer requirement
> - Weighing the shell roll before winding the roll
> - Inspection of fabric rolls and recording the same as per guidelines provided by the company
> - Trimming and length cutting of rolls as per Internal Production Order / Instructions by the company

- To get good winding at the windup stand of the inspection machine with hardness approved by the company

- Wrapping the wound roll with black polythene and doff the roll

- Weighing the roll and record the net weight and shell roll weight, excess length and trim waste in the documents provided by company

- Delivering the roll to packing area

- Writing the roll details like customer, IPO No., Customer code, plan, length etc. in the documents provided by the company

- Keeping the dipped fabric inspection area clean.

For carrying out the above jobs, the company shall provide the following materials

- Inspection table – 3 Nos.
- Trimming equipment (calemard) – 1 No.
- Trimming equipment (copper cutters) as required
- Proper documents for recording
- Proper tags for identification of rolls
- Scissors for cutting
- Measuring tape for measuring
- Shell rolls
- Leuco plast / cello tape

6. It is also seen as per clause 7, that the payment is made as under:-

- For Inspection / Trimming / Fringe cutting of Greige / dipped belting fabrics the cost is Rs.0.10 per meters, Rs.0.08 per meter from 3 lakh to7 lakh meters and above 7 lakh meters rate is 0.07

- For online inspection/ trimming of greigh / dipped chafer fabrics the cost is Rs.0.06 per meter

- For re-inspection / rewinding of greigh / dipped belting and chafer fabrics the cost is Rs.0.04 per meter

- For online inspection for dipped belting, chafer fabrics, the rate is Rs.0.03 per meter.

7. In the circumstances, it is evident that though they may have well used their own manpower for carrying out the services, the fact remains that the agreement is only to do Inspection of Greige Fabric and Inspection and Trimming / Fringe cutting of dipped belting chafer fabrics. They were also paid only as per the quantum per meter based on the quantum of the work done by them and not on man hours or based on the number of labourers supplied. In the circumstances, we are of the considered opinion that the services carried will not come in the purview of manpower recruitment or supply service. The impugned order holding to the contrary cannot sustain and requires to be set aside, which we hereby do. The appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

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

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

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