

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.40926 of 2014

(Arising out of Order-in-Appeal No.45/2014 (M-III) ST dt. 17.03.2014 passed by
Commissioner of Central Excise & Service Tax (Appeals), Chennai]

M/s.ABI Showatech India Ltd.

(Formerly known as M/s.Light Alloy Products Ltd.)
Pulivalam Village & Post,
Via Banavaram – 632 505.
Vellore District.

Appellant

VERSUS

Commissioner of GST & Central Excise

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai 600 040.

Respondent

APPEARANCE :

Ms. K. Nancy, Advocate
For the Appellant

Ms. K. Komathi, ADC (AR)
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER(TECHNICAL)**

DATE OF HEARING : 20.09.2021
DATE OF DECISION : 20.09.2021

FINAL ORDER No. 42328 / 2021

PER : P. ANJANI KUMAR

The appellants are engaged in the manufacture of motor vehicle parts. It was alleged by the department that during the period April

2006 to March 2007, the appellants have sent / received employees on deputation and have rendered the services of 'Man Power Recruitment & Supply Service'; a show cause notice was issued and the same was confirmed along with penalties vide OIO No.52/2012 dt. 22.08.2012. On an appeal by the appellants, the Commissioner (Appeals) vide impugned order No.45/2014 dt. 17.03.2014 upheld the OIO.

2. The Ld. Counsel for the appellant submits that the issue is no longer *res judicata*. This Tribunal in the case of their own group company has settled the issue in favour of the appellant. He relies upon *M/s.ABI Showatech India Ltd. Vs CGST & CE reported in 2018 (12) TMI 1037-CESTAT CHENNAI*.

3. Ld. A.R. for the department reiterates the findings of the OIO and the OIA.

4. Heard both sides and perused the records of the case.

5. The appellants (formerly known as M/s.Light Alloy Products Ltd.) have deputed their employees for the business contingencies arising in their own group companies such as, M/s.LAP Ross Engineering Ltd; payments for which were made by debit notes or book adjustments. They have not raised any invoice as such and did not collect the service tax. We find that understandably, the relation between the appellants and the group companies to which their employees have been deputed

is not one of an agency and the client. This issue was discussed at length by the Hon'ble High Court of Gujarat in the case of *CST Vs Arvind Mills Ltd. – 2014 (35) STR 496 (Guj.)*. The Hon'ble High Court held as follows :

“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. We also find that as submitted by the appellant this Bench in their own case have decided the issue in their favour by relying upon the above cited case and in the case of *Turbo Energy Ltd. Vs CGST & CE Chennai Outer (Vice-Versa) reported in 2018 (9) TMI 1729-CESTAT CHENNAI*.

7. In view of the above, we find that the issue is no longer *res integra* and stands unequivocally decided in favour of the appellant. Hence the impugned order is set aside and the appeal is allowed, with consequential relief, if any, as per law.

(Operative part of the order pronounced in court on 20.09.2021)

**(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)
MEMBER (TECHNICAL)**

