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

ST/230/2008

(Arising out of Order-in-Appeal No.72/2008 (SLM) ST dated 29.07.2008 passed by the Commissioner of Customs and Central Excise (Appeals), Salem.

M/s.P.S.Murugesan, M/s.SKM Animal Feeds and Foods (I) Ltd — Appellant

Vs

Commissioner of Central Excise, Salem — Respondent

Appearance

For the Appellant : Shri. Manoj, Advocate

For the Respondent : Shri.K.P.Muralidharan, AC (AR)

CORAM :

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

Date of hearing / decision : **03.08.2017**

FINAL ORDER No. 41513/2017

Per Bench

The short issue for consideration is whether appellant is liable to pay service tax under the category of 'Man Power Recruitment or Supply Agency Service' on the reimbursable expenses namely Wages, Bonus, ESI, Provident Fund etc.

2. The appellant was engaged in providing Manpower to their clients and the said services became taxable with effect from 16.6.2005. On scrutiny of records as well as the contracts it was noticed that wages, Bonus, Incentives, Contribution to Provident Fund etc was to be paid by their clients directly to the employees and it was the liability of their clients. Department

was of the view that appellants being service providers are liable to pay service tax on such reimbursable expenses also. The show cause notice issued, after adjudication confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

3. On behalf of appellant the Ld.Counsel Shri.V.S.Manoj referred to the C.B.EC. Circular No.B/43/5/97-TRU dt.2.7.1997 (para 1.3) and argued that Board has clarified that such expenses are not includable in arriving at the taxable value. He relied upon the judgement in the case of *'Sangamitra Services Agency Vs Commissioner of Central Excise (2007) 8 STR 233 (Mad)'.* The 2nd contention put forward by him is that the period involved is 16.6.2005 to 30.9.2005. The definition of MPR & S.A. services as it stood during the relevant period was not applicable to an individual engaged in providing such service as the definition used the word 'Commercial Concern'. To canvass this arguement he relied upon the judgement in the case of *'Mehraj Khan Vs Commissioner of Central Excise, Jaipur 2014 (33) STR 691 (Tri-Del)'.*

4. Against this, the Ld. AR Shri.K.P.Muralidharan reiterated the findings in the impugned order.

5. Heard both sides. The fact that appellant is an individual and not commercial concern, engaged in providing services is not disputed. The definition of 'Manpower Recruitment and Supply Services' during the relevant period used the words 'Commercial Concern' which was amended with effect from 1.5.2006. The disputed period is from 16.6.2005 to 30.9.2005 and therefore the argument of the appellant counsel is not without force. The word 'Commercial Concern' in the definition was

Customs, Excise & Service Tax Appellate Tribunal substituted by the word 'any person' only with effect from 1.5.2006. The period involved being prior to 1.5.2006 the appellant succeeds on this ground. The second contention whether reimbursable expenses are includable in taxable value is settled by the judgement in the case of Sangamitra Services Agency (supra). From the above discussions the demand is unsustainable. The impugned order is set aside. Appeal is allowed with consequential reliefs, if any.

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

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

V Sundararaman

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Customs, Excise & Service Tax Appellate Tribunal