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

ST/Misc./40968/2017 and ST/40563/2013

(Arising out of Order-in-Original No. 14/ST/COMMR/2012-13 dated 11.12.2012 passed by the Commissioner of Central Excise, Tirunelveli)

M/s. Vedanta Ltd.
(formerly known as Sterlite
Industries India Ltd.) Appellant

Vs.

Commissioner of Central Excise, Tirunelveli Respondent

Appearance

Shri Vishal Agarwal Advocate and
Shri G. Krishnamoorthy, 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: **12.10.2017**

Final Order No. 42351/2017

Per Bench

The appellant has filed a miscellaneous application seeking amendment of the cause title from M/s. Sterlite Industries India Ltd. to M/s. Vedanta Ltd.

2. After hearing both sides, we allow the miscellaneous application and amend the cause title indicating the name of the appellant as M/s. Vedanta Limited instead of M/s. Sterlite Industries (India Ltd. Registry is directed to amend the cause title.

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3. The brief facts are that during the course of audit department noticed that the appellant had placed services of well qualified engineers and professional to cater to their operational needs of their associated groups like BALCO, MALCO, HEZ etc. and in consideration they had recovered remuneration payable to such deputed employees. Department took the view that such activity would come within the ambit of manpower recruitment or supply agency services. Accordingly, taking the total remuneration of the deputed employees for the period 2005 – 06 to 2008 – 09 of Rs.3,31,39,00,000/-, service tax liability of Rs.30,88,38,172/- was proposed to be recovered in a show cause notice dated 20.10.2010 along with interest liability thereon and penalties under various provisions of the Finance Act, 1994 was also proposed. After due process of law, the adjudicating authority vide the impugned order dated 11.12.2012, confirmed the demand of tax liability proposed in the show cause notice and also imposed penalties under sections 77 and 78 of the Finance Act. Hence this appeal.

4. Today, when the matter came up for hearing, ld. counsel Shri Vishal Agarwal, assisted by Shri G. Krishnamoorthy, takes us through the definition of the manpower recruitment or supply agency service prior to 1.5.2006 and subsequent to that period. He submits that they were not a manpower recruitment or supply agency service but were only deputing some of their own personnel to group companies. He submits that the matter

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is no res integra and has been decided in their favour in the following case laws:-

(a) Krohne Marshall Pvt. Ltd. Vs. Commissioner of Central Excise reported in 2015-TIOL-CESTAT-MUM

(b) Spirax Marshall P. Ltd. Vs. Commissioner of Central Excise reported in 2016 (44) STR 310 (Tri. Mum)

(c) Vidarbha Iron & Steel Co. Ltd. Vs. Commissioner of Central Excise reported in 2016 (44) STR 310 (Tri. Mum.),

(d) Arvind Mills Ltd. Vs. CST reported in 2014 (34) STR 610

(e) CST Vs. Arvind Mills Ltd. – 2014 (35) STR 496 (Guj.)

5. ld. Counsel further informs that in respect of the Tribunal's decisions in Krohne Marshall Pvt. Ltd. Vs. Commissioner of Central Excise (supra), Spirax Marshall P. Ltd. Vs. Commissioner of Central Excise (supra) and Vidarbha Iron & Steel Co. Ltd. Vs. Commissioner of Central Excise (supra), the department had preferred appeals to the Hon'ble Supreme Court, however, these appeals have been dismissed. In the circumstances, he prays that the impugned order be set aside.

6. On the other hand, ld. AR Shri B. Balamurugan supports the adjudication.

7. Heard both sides and perused the records.

8. Discernably, the issue in dispute is indeed covered in favour of the appellants as per the decisions/judgments relied upon by the ld. counsel cited supra. We find that the issue has been analyzed in detail by the Tribunal in the case of Spirax

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Marshall P. Ltd. (supra). Paragraphs 6 and 7 of the decision are worthy of reproduction:-

> "6. After considering the submissions made by both sides and perused the record, we do find the issue involved is regarding the demand of service tax under the category of Manpower Recruitment Service or Supply Agency Service. We find that the identical issue has been decided by this very bench in vide Order No. A/2503/2015, dated 22-7-2015 in respect of the group companies of the very same appellant.
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> *"6. We have considered the submissions made at length by both the sides and perused the records. The undisputed fact is that the appellant is one of the group companies of Forbes Marshall. It is also undisputed that there is an arrangement of deputing the employees of the appellant to various group companies. The various group companies, where the employees are deputed, make salary payment to the appellant on actual basis is also undisputed. Based upon such factual matrix, we find that the claim of the Revenue as to the said activity of deputing employees to various group companies would fall under the category of 'Manpower Recruitment and Supply Agency Services' is incorrect. The very identical issue was before the Hon'ble High Court of Gujarat in the case of Arvind Mills Ltd. (supra). The Hon'ble High Court, after considering all the submissions, held that such deputation of employees would not amount to Manpower Recruitment and Supply Agency Services. We reproduce the entire judgment below :*
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> *"1. Revenue is in appeal against the judgment of the Customs, Excise & Service Tax Appellate Tribunal ("the Tribunal" for short) dated 26-7-2013 raising following questions for our consideration :-*
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> *"(a) Whether in the fact and the circumstances of the case the Hon'ble CESTAT has erred in applying the ratio of a case decided by CESTAT Delhi in case of Aramount Communication Ltd. reported in 2013-TIOL-37-CESTAT-DEL. : 2013 (29) S.T.R. 317 without narrating and applying the same to the facts of the present case?*
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> *(b) Whether in the facts and the circumstances the activity of the respondent is covered under the definition of 'Manpower Recruitment Agency' as contemplated in C168 of S. 65 of the Finance Act, 1994 R/w. Cl. (105)(k), thus, the respondent is liable for the Service Tax?*
>
> *(c) Whether in the facts and circumstances of the case whether the service rendered by the respondent is a taxable activity attracting Service Tax?"*
>
> *2. Issue in brief is whether the respondent is a Manpower Supply Recruitment Agency. Definition of the said term applicable at the relevant time reads as under :-*
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> *"Manpower recruitment or supply agency means any commercial concern engaged in providing any service directly or indirectly, in any manner for recruitment or supply of manpower, temporary or otherwise to a client".*

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3. Brief facts are that respondent had a composite textile mill and was engaged in manufacturing of fabrics and ready-made garments. In order to reduce its cost the respondent deputed some of its employees to its group company, who were also engaged in similar businesses. Reason for such deputation was also on certain occasions stipulated work arising for a limited period. The Tribunal recorded that there was no allegation of finding that the respondent had deputed employees to any other concerns outside its own subsidiary companies. The Tribunal also recorded that undisputedly the employees deputed do not work exclusively under the direction or supervision of the subsidiary company and upon completion of the work they were repatriated to the respondent company. On such basis, the Tribunal held that the respondent cannot be said to be Manpower Supply Recruitment Agency and, therefore, not exigible to service tax.

4. Counsel for the Revenue vehemently contended that the definition of Manpower Supply Recruitment Agency is very wide and would include range of activities of supply of manpower either temporarily or permanently. He submitted that sizable manpower was required for the respondent from the group companies for deputation of the staff. He drew our attention to the amendment of such definition to contend that after the amendment, the definition was widened.

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.

7. In the result, no question of law arises. Tax Appeal is dismissed."

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Since the issue of 'Manpower Recruitment and Supply Agency Services' is now squarely settled in identical set of facts, we hold that the impugned order to that extent is incorrect and needs to be set aside and we do so."

7. It can be seen that now the issue is settled in favour of the appellant. Accordingly, we find that the impugned orders before us are unsustainable and liable to be set aside and we do so. The impugned orders are set aside. Appeals are allowed with consequential relief, if any."

9. This decision in the Spirax Marshall case had been appealed by the department to the Hon'ble Supreme Court, however, the civil appeal was dismissed by the Hon'ble Supreme Court as reported in 2016 (44) ELT J153 (SC).

10. In the circumstances, respectfully following the ratio laid down in the case laws cited supra, we hold in favour of the appellants.

11. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law. Miscellaneous application is also disposed.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

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

Rex

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चेन्नै/CHENNAI