

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No.40043 of 2013**

(Arising out of Order-in-Appeal No. 342/2012 dated 29.11.2012 passed by the Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli – 620 001)

**M/s. Nadippisai Pulavar K.R. Ramasamy** : **Appellant**  
**Co-op. Sugar Mill,**  
Thalainayar,  
Ilanthope Post, Mayiladuthurai Taluk,  
Nagapatinam – 609 201.

**VERSUS**

**Commissioner of Central Excise & Service Tax,** : **Respondent**  
Trichy Commissionerate,  
No. 1, Williams Road,  
Cantonment,  
Tiruchirapalli – 620 001.

**APPEARANCE:**

Shri K. Mani, Consultant  
For the Appellant

Smt. K. Komathi, Additional Commissioner  
For the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**  
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.40475/2023**

DATE OF HEARING : 04.05.2023

DATE OF DECISION: 23.06.2023

**Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]**

This is an appeal filed by M/s. Nadippisai Pulavar K.R. Ramasamy Co-operative Sugar Mills Ltd., Thalainayar, Mayiladuthurai, against the Order-in-Original No. 342/2012 dated 29.11.2012 passed by the

Commissioner of Customs & Central Excise (Appeals),  
Tiruchirapalli.

2. The brief facts that are culled out from the orders of the lower authorities and other appeal papers reveal that the appellant is a manufacturer of Sugar and Molasses and are also holding Service Tax Registration for payment of Service Tax on GTA Services. The main allegation against the appellant is that it was engaged in supplying man-power required by the farmers viz. Agriculturists registered with them. The activity of the appellant is summarized below:

- (i) The appellant was allotted certain agricultural areas for procurement of sugar cane cultivated by the agriculturists within the said jurisdiction;
- (ii) The farmers within the earmarked areas who intend to cultivate sugar cane shall sell their sugar cane to the above factory only.
- (iii) Wherever harvesting labourers were arranged by the factory, the cane cutting charges will be recovered from the cost of the sugar cane supplied.

3.1 The process of registration of both farmers and cane harvesting labourers and execution of the agreement and other related work is undertaken by the Divisional Offices of the factory. The man-power required for harvesting the sugar cane are procured by the Cane Officer belonging to the factory, who enroll these labourers and make payment of advance to them. The details of these labourers such as their bank account number, the name of the bank are recorded in the records of the Divisional Offices of the factory and thereafter a Harvester Code No., is allotted. As and when the sugar cane cultivated becomes ripe for cutting as per the requirement of the farmers, cane cutting labourers are deployed by the officials of the sugar factory. A

consent letter is also obtained from the farmer by the Cane Officer of the appellant, for the engagement of the cane harvest labourers for cane cutting. The consent letter contains the details of the total area to be cut, the name of the sugar cane farmer, code numbers of the cane harvesting labourers, the rates fixed as cutting charge etc. These letters are forwarded to the Accounts Department of the appellant for deduction of the charges for the services of the labourers. From the above, it appears to the Revenue that the agriculturists / farmers have no control over the above cane cutting labourers and they function under the control and supervision of the Cane Officers of the appellant and the labourers enrolled and deployed work under the overall control of the factory. The employer-employee relationship exists between the factory and the cane cutting labourers.

3.2 The charges for cutting of sugar cane are charged by the factory from the farmers by way of recovery in the 'cane bill' raised in respect of each farmer / agriculturist who has sold sugar cane to the factory as per the agreement and engaged the labourers supplied by the factory. It was further noticed that some farmers had not engaged the labourers supplied by the factory.

4.1 It was the contention of the Revenue that above services would be classifiable under the category of manpower recruitment or supply agency service and is liable to tax with effect from 16.05.2008, in terms of Section 65(68) of Chapter V of the Finance Act, 1994, which reads as under:

*"manpower recruitment or supply agency' means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise to any other person"*

4.2 In the Show Cause Notice No.36/2011-ST dated 29.09.2011, treating the appellant as a provider of 'manpower recruitment or supply agency services', it was proposed to demand a total sum of Rs.40,90,147/-

towards Service Tax inclusive of Education Cesses under Section 73(1) of Chapter V of Finance Act, 1994, for the period from 2006 to 2011, besides interest under Section 75 of Finance Act, 1994 and also to impose penalties under Sections 76, 77 and 78 of Finance Act, 1994. After due process of law, on adjudication, the Joint Commissioner of Central Excise and Service Tax, Tiruchirappalli has confirmed the demand of Service Tax of Rs.40,90,147/- under proviso to Section 73(1) of Finance Act, 1994, along with interest under Section 75 of the Finance Act, 1994 and also imposed penalties under Sections 77 and 78 of Finance Act, 1994. Aggrieved, the appellant filed an appeal before the Commissioner of the Customs and Central Excise (Appeals), Tiruchirappalli, who rejected their appeal *vide* Order-in-Appeal No. 342/2012 dated 29.11.2012. Hence, the factory came in appeal before this forum.

5.1 In the grounds of the appeal, the appellant has submitted that the farmers themselves arrange for cutting / harvesting sugar cane and in cases where the farmers / growers are not able to get persons for cutting / harvesting sugar cane, they used to approach the Cane Officer of the Divisional Office of the factory who would give the names and addresses of the labourers also called as 'Kankhanis' or 'Gang Leaders'. It is submitted that the Kankhanis or Gang Leaders are not employees of the Sugar Mill or Agents of the Sugar Mill, but independent service providers on their own and there is no Master and Servant relationship between the Mill and Kankhanis. They are independent contractors or entities, who are only identified by the Mill for the convenience of the farmers. Farmers alone would fix the cutting charges with the Kankhanis / Gang Leaders through bi-lateral negotiations and the cane cutting charges to be recovered and given to the Kankhanis / Gang Leaders would be informed to the factory.

5.2 It has been submitted by the appellant further that they had not rendered any service; not raised any invoice for any service charges and not received any payment for alleged services. It is also their contention that there was no suppression of facts and the demand is time-barred in the absence of any *mens rea*, since, there is no master and servant relationship between the Mill and the Kankhanis.

6. During the hearing before the Tribunal, the appellant has submitted that they have not rendered any man-power supply to anyone to attract Service Tax liability and there is no evidence to establish that they received any monetary consideration for the services.

7.1 It was argued that it was the farmers who employed these gangs for cutting / harvesting the sugar cane. Whenever farmers could not get cutting / harvesting persons and whenever such farmers approached the appellant for availability of harvesting persons, the appellants have given information as to the Kankhanis. The amount paid to the gangs for cutting / harvesting sugar cane is adjusted from the dues payable to the farmers for supply of sugar cane.

7.2 It has also been put forth by the appellant that it is the responsibility of the farmers to harvest and to deliver the sugar cane up to the factory gate; it is the duty of the farmers to deliver the sugar cane by incurring cutting / harvest charges and transportation charges, only for operational convenience the appellant-Mill pays the Gang Leader the cutting and harvesting charges on behalf of the farmers from the amounts due to farmers.

8. The appellant have submitted that the issue is no more *res integra* and is squarely covered by the decisions rendered by the Hon'ble High Court, the Chennai Bench of the CESTAT and other Benches of the Tribunal. They have placed reliance on the following decisions:

- Decisions rendered by the Hon'ble High Court of Bombay:

- (i) *CC, CE & ST, Aurangabad vs. Shri Samarth Sevabhavi Trust 2016 (41) STR 806 (Bom.); On appeal from Samarth Sevabhavi Trust vs. CCE, Aurangabad 2014 (36) STR 83 (Tri. Mum.);*
- (ii) *CC, CE & ST vs. Godavari Khore Cane Transport Co. (P) Ltd 2015 (38) STR 468 (Bom);*

- Decisions rendered by CESTAT, Chennai:

- (i) *M/s. Kallakurichi Co-operative Sugar Mills Ltd. vs. Commissioner of GST & CE, Final Order No.40217/2020 dated 31.01.2020.*
- (ii) *Thiru Arooran Sugars Ltd. vs. CCE, Tiruchirapalli 2019 (2) TMI 493 – (Tri. Chennai).*
- (iii) *Arignar Anna Sugar Mills vs. CC, CCE, Trichy 2019 (26) GSTL 54 – (Tri. Chennai).*
- (iv) *The Amaravathi Co-op. Sugar Mills Ltd. vs. CCE & ST, Coimbatore 2018 (7) TMI 1837 – (Tri. Chennai).*
- (v) *CCE, Tirunelveli vs. M/s. Dharani Sugars and Chemicals Ltd 2018 (1) TMI 1171 – (Tri. Chennai).*

9. The appellant also put forth that when the payment was made for cutting / harvesting charges, on tonnage basis, the said transaction could not be treated as supply of man-power. Reliance in this regard is placed on the Board's Circular No.190/9/2015-ST dated 15.12.2015 and the relevant paragraph is extracted below:

"1: ...

*2. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed*

*multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle. ..."*

10. The learned Authorised Representative Smt. K. Komathi (Additional Commissioner) has supported the findings of the lower adjudicating authorities. She has argued that the labourers are registered by the sugar cane factory and are supplied to the farmers for cutting the sugar cane and even the charges are recovered from the cost of the sugar cane supplied to the factory and thus, the ingredients of supply of man-power having been satisfied, she contended that the demand raised is justified.

11. Heard both sides and perused the records.

12. The only issue that is required to be decided in this appeal is whether the appellant has rendered the service of 'manpower recruitment or supply agency' under Section 65(68) of the Finance Act, 1994?

13. The facts indicate that Kankhanis / Gang Leaders who supervise the work of cane harvesting labourers are registered with the appellant and it is seen that as per the requirements of the farmers, the services were made available for cane harvesting. However, utilisation of these services of the Kankhanis / Gang Leaders is optional as all the sugar cane farmers though registered with the factory for supply of sugar cane, have not utilized the services of the Kankhanis / Gang Leaders for cane harvesting. Even the service charges that are payable to these cane harvesting labourers is determined by the farmers in negotiation with the Kankhanis / Gang Leaders. We find that by registering these Kankhanis / Gang Leaders and giving advance to them and making available the services of these cane harvesting labourers and recovering cane cutting charges from the dues payable to the farmers for supply of sugar cane, would not make the appellant a manpower supplier. We find that cane cutting charges are decided by the farmers in

consultation with the Kankhanis / Gang Leaders and are generally paid on per tonne basis. There is nothing on record to suggest that the cane cutting labourers are the employees of the appellant. No employer and employee relationship exists between the appellants and the Kankhanis / Gang Leaders. The labourers are not supplied on per hour or per day basis. Cane harvesting charges are reportedly negotiated with the Kankhanis / Gang Leaders by the farmers themselves. Reportedly, some farmers are not utilizing the services of the appellant for obtaining the labourers. As such, the demand raised on the appellant under manpower supply is not maintainable.

14. In a *catena* of decisions rendered by the Tribunal Chennai, the issue was decided in favour of the appellants holding that the supply of cane harvesting labourers, in similar facts, would not be falling under the manpower recruitment or supply agency service. The decision rendered in the case of *Arignar Anna Sugar Mills vs. Commissioner of GST & Central Excise, Trichy [2019 (26) G.S.T.L. 54 (Tri. Chennai)]* is relevant which is extracted below:

**"6.** *The demand has been made on manpower supply service alleging that the appellant have supplied manpower to the sugarcane farmers for sugarcane harvesting. The contention of the department that the charges towards supply of cane harvesting labourers are recovered from the farmers at the rate accepted by the farmers and therefore the said activity would be covered within the definition of manpower recruitment or supply agency service under Section 65(68) of the Finance Act, 1994. The appellant has replied to the show cause notice dated 5-4-2011. It is explained by the appellant that there is no employer and employee relationship between the cutting labourers and the appellant. The appellant company has no say in the rate for cutting demanded by the labourers and the labourers have got every right to deny to cut for a particular sugarcane grower. The mill simply manufactures the sugar with regard to the availability of the cutting labourers only. Being a Government undertaking, it can be seen that all appointments are to be made in the muster roll of the sugar mill. From the facts*

*on record, it cannot be said that the appellants have provided harvesting labourers to the sugarcane growers for harvesting the sugarcane. The Tribunal on identical set of facts had considered the issue and held that the sugarcane growers themselves are encouraging the harvesting labourers and as a mere facilitation, the amount to be paid to these harvesters are deducted from the price of the sugarcane that is to be paid to the farmers. The Commissioner (Appeals) in a similar set of facts, in the appellant's own case, has set aside the demand.*

*7. From the discussions made above as well as the decisions in the identical matter, we are of the considered view 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."*

15. In view of the above discussion, we find that the services of the appellant would not be classifiable under 'manpower recruitment or supply agency' service. Consequently, the demand raised cannot sustain and requires to be set aside.

16. The appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 23.06.2023)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

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