CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Service Tax Appeal No.42793 of 2014

(Arising out of Order-in-Appeal No.091/2014 dated 16.09.2014 passed by Commissioner of Central Excise (Appeals), Madurai)

Sivaraman S **..... Appellant**
No.5, Kamarajar 1st Street,
Bibikulam,
Madurai 625 002

VERSUS

Commissioner of CGST & Central Excise, **.... Respondent**
Central Revenue Building,
Bibikulam,
Madurai – 625 002.

APPEARANCE :

Shri M.N. Bharathi, Advocate, for the Appellant
Shri M.Ambe Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40421/2024

DATE OF HEARING : 15.04.2024
DATE OF DECISION : 15.04.2024

Per Ms. Sulekha Beevi. C.S

During the audit of accounts of the appellant by the internal audit, it was noted that the appellant is providing manpower supply to M/s. Bharat Sanchar Nigam Limited (hereinafter referred as M/s. BSNL) and received consideration for providing services. On scrutiny of the work orders issued by BSNL, it appeared that the appellant is responsible to provide labour at required destination to assist M/s. BSNL staff for attending cable faults and other related works on agreed rates. It appeared to the department that the said service falls under the category of 'Manpower, Recruitment or Supply Agency Services'. The financial accounts of the appellant revealed that the appellant has received an amount of Rs.1,51,73,250/- towards the above activity of supply of manpower to M/s. BSNL and had accounted the same under the head 'civil contract receipts' in their financial statements for the period 2007-2008. The appellant had not registered under the category of 'Manpower, Recruitment or Supply Agency Service' and had not discharged appropriate service tax under this category. Accordingly show cause notice was issued proposing to demand service tax for the said period 2007-2008 and 2009-2010 along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand, interest and imposed penalty. Aggrieved by such order the appellant is now before the Tribunal.

2. The Ld. Counsel Shri. M.N. Bharathi appeared and argued for the appellant. It is submitted that the appellants have registered under the category of "Erection, commissioning and Installation service" and the same has been wrongly classified by the lower authorities under the "Manpower recruitment or supply of agency service". From the contract entered into between the appellants and the BSNL will prove that the appellants do not only supply only man power assistance the wording of the contract is worded as providing assistance to the BSNL Staff. The work undertaken by the appellants relates to the laying of the cables and the related works, in course of the works the assistance is also been given, both manually as well as through automation. But the essential

work under taken by the appellants will be classified under the category of Erection, Commissioning and Installation service only.

2.1 Further it is also submitted that, it is clear from the rate for tender for supply of assistance to BSNL staff in cable joining and laying of cable, where in it is evidencing that the rates mentioned are for lump sum basis. The tender awarded copy clearly worded as "Tender for underground cable construction and maintenance works". The rates quoted by the BSNL also proves that the amount is for lump sum work under taken by the appellants and not based on man power deployed in execution of the work contracted. It is a settled principle that the lump sum work would not fall under the category of providing of service or supply of man power and reliance is placed on the decision of S.S Associates v. Commissioner of Central Excise, 2010 (19) STR 438.

2.2 It is submitted that the appellants are rendering the service of "laying up of cables alongside roads" and as per the circular no 123/5/2010 –TRU dated 24.05.2010 laying of the cables under or alongside roads is not a taxable service under any clause of sub section (105) of section 65 of the Finance Act 1994.

2.3 It is further submitted that the appellants were under the bonafide belief that the they were not liable to tax as per the circular and they had no intention to evade Tax.

The Ld. Counsel prayed that the appeal may be allowed.

3. The Ld. AR Shri. M. Ambe, appeared and argued for the department and the findings in the impugned order was reiterated.

4. Heard both sides.

5. The issue that arises for consideration is whether the appellant is liable to pay service tax under Manpower Recruitment or Supply Agency Service.

6. The allegation of the department is that the appellant has provided labour to assist BSNL staff for attending cable faults and other related works and that the said activity would fall under the category of Manpower Recruitment or Supply Agency Service. On perusal of the tender document it is seen that the work undertaken by the appellant is in the nature of cable laying work alongside the road. It does not involve Manpower Recruitment or Supply Agency Service to M/s. BSNL. The relevant part of the tender document reads as under: -

> *3. The tenderers should quote separate rates for each item for providing the jointing in each Zone along with separate EMD. The work should be carried out promptly as per the standard. The contractors can quote their rates in the enclosed schedule of rates in figures and in words. Ambiguity in rates of items will make the tender invalid.*
>
> *<u>4. Evaluation of Tender:</u>*
>
> *The tender will be evaluated based on the rates quoted in Annexure – C by the contractor for 5 pairs, 10 pairs, 50 pairs, 100 pairs, and 200 pairs joints only. If the rate quoted for 5 prs in **Rs.'p'**, 10 prs in **Rs.'q'** 20 prs is **Rs.'r'** and 50 prs is **Rs.'s'** 100*

> *prs is* ***Rs.'t'*** *and 200 prs is* ***Rs.'u'*** *is respectively, then the evaluation for* ***L-1*** *will be done as per the formula:* ***2p+q+4r+3s+2t+u****. However the rates quoted for other items should be logical and reasonable.*

7. The above document would show that the appellant is not required to supply manpower and is also not paid on basis of number of persons engaged in the work. Instead the consideration is fixed on the basis of the work executed. In other words the consideration is paid on rate basis which includes the work of laying cable. The appellant is providing the work of making trenches and also laying the cable work. Such work is done as per the direction of the BSNL staff and the appellant is not providing any labour to assist the BSNL staff. The department has confused themselves with the words used in the tender document where it is stated that appellant has to provide "assistance to BSNL staff in cable fault work". The appellant is undertaking work of trenching and laying cable for the areas allotted to them. There is no supply of labour by the appellant. The wages to the labourers is paid by appellant. The amount received from BSNL is for trenching and laying of cable alongside road.

8. The Board vide Circular No. 123/5/2010 – TRU dated 24.06.2010 has clarified that the laying of cables under or alongside roads is not a taxable service. The relevant portion of the Board's Circular is reproduced as under :

Circular No.123/5/2010-TRU

F.No.332/5/2010-TRU
Government of India: Ministry of Finance
Department of Revenue : Central Board of Excise & Customs
(Tax Research Unit)
…..
New Delhi dated the 24th May 2010.

Subject: Applicability of service tax on laying of cables under or alongside roads and similar activities – clarification regarding.

Disputes have arisen in some parts of the country regarding applicability of service tax on certain activities such as shifting of overhead cables to underground on account of renovation/widening of roads; laying of electrical cables under or alongside roads/railway tracks; between grids/sub-stations/transformers the distribution points of residential or commercial complexes and such activities as electrification of railways, installation of street-lights, traffic lights, flood-lights. This clarification takes into account the taxability of different activities taking into account the scope of all services (such as site formation/excavation/ earth moving service, commercial or industrial construction services; erection, commissioning or installation services; or works-contract service) that are presently taxable as well as those which are covered under the Finance Act, 2010.

3. The taxable status of various activities, on which disputes have arisen

Based on the foregoing, the following would be the tax status of some of the activities in respect of which disputes have arisen,-

S.No.	Activity	Status
1.	Shifting of overhead cables/wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
2.	**Laying of cables under or alongside roads**	**Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994**
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service, namely Erection, commissioning or installation services [section 65 (105] (zzd].
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994

6.	*Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.*	*Taxable service, namely commercial or industrial construction' or 'construction of complex' service [section 65(105) (zzq)/(zzzh)], as the case may be.*

9. After appreciating the facts and on the basis of the Board's Circular as noticed above we are convinced that the appellant has not provided 'Manpower, Recruitment or Supply Agency Services'. The demand raised therefore cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief if any.

(Order dictated in the open court)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI. C.S.)
Member (Judicial)

psd