IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal Nos. 42456 of 2014

(Arising out of Order in Appeal No. 180/2014 (M-III) ST dated 06.08.2014 passed by the Commissioner of Central Excise & Service Tax (Appeals), Chennai)

M/s. Diamond Flush Doors (P) Ltd **Appellant**
D-6, Industrial Complex,
Maraimalai Nagar,
Kancheepuram - 603 209.

Vs.

Commissioner of GST & Central Excise **Respondent**
Newry Towers, No.2054, I Block,
II Avenue,12th Main Road,
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
Shri Harendra Singh Pal, (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40674/2024

Date of Hearing : 07.02.2024
Date of Decision: 19.06.2024

Per M. Ajit Kumar,

The above appeal filed against Order in Appeal No.180/2014 (M-III) ST dated 06.08.2014 passed by the Commissioner of Central Excise and Service Tax (Appeals), Chennai, (impugned order).

2. Brief facts of the case are that the Appellant is a small-scale unit, manufacturing flush doors. On scrutiny of their records, it was found that they had raised labour charge invoices for door fixing & alteration, designing & carpentry work at customer's site. A Show Cause Notice was issued to the appellant as the activity appeared to fall under the category of 'Manpower Recruitment of Supply Agency

Service' as per the definition under Section65(68) of the Finance Act, 1994 since the Appellant had failed to register, file statutory ST-3 Returns and pay service tax for the amount received towards such service rendered by them. After due process of law, the Adjudicating Authority confirmed the demand of an amount of Rs 5,62,192/- for the period from April 2005 to March 2009 and Rs.1,01,77/- for the period from April 2009 to May 2010 under Section/3(1) along with appropriate interest under Section 75 and imposed penalty under Sections 76,77 and 78 of the Act. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) and the same was rejected. Hence the appellant is now before the Tribunal.

3. Shri N. Viswanathan, learned Counsel appeared the appellant and Shri Harendra Singh Pal, learned AR appeared for the respondent.

4. The Ld. Counsel for the appellant stated that they are a small-scale manufacturer engaged in the manufacture and sale of flush doors. Upon request of their customers, they arrange to engage carpenters to be sent to the required premises for fixing the door or for altering it. The carpenter/s so engaged are not their employees nor do they come under their control or directions but are independent contractors who were engaged on a principal-to-principal basis by them. The said carpenters will be charging fixed piece rates depending upon the nature of work performed and by raising their bills on the appellant. Some doors may need alternation and/or additional carpentry work. Accordingly based on the nature of the carpentry work done and based on the bills raised by the carpenters the appellant in turn was raising invoices on their customers charging labour charges for fixing of doors. The fixing of doors is incidental and ancillary to the

sale and supply of doors by them and is a bundled activity. They are in the nature of reimbursable charges which are not subject to service tax as per the Judgment of the Hon'ble Supreme Court in **Inter-Continental Consultants and technocrats** 2018 (10) G.S.T.L. 401 (S.C.). There was no evidence before the respondent authorities showing that they are a manpower agency supplying man power/ labourers. The service recipient was also not charged on man hour or per day wages basis but only the labour charges for the work carried out. The carpenters are their own masters and they were not working under the control or direction of any other persons. The subsequent **Board's circular dated 15.12.2015** clarifying the nature of the services that fall under man power supply service provider also fully supports their case. In addition, the decision of the Mumbai Bench of the Tribunal in the case of **Tiwari Services** reported in [2020 [37] GSTL 57] supports their case. He stated that there was no suppression of any fact to invoke the extended time limit for issue of SCN. Nor was there any violation on their part to impose a penalty. He prayed that the impugned order be set aside by allowing their appeal with consequential relief and render justice.

5. The learned AR Shri Harendra Singh Pal, appeared and argued for the department. He reiterated the findings in the impugned order. He stated that the department on scrutiny of the records of the appellant noticed that they had raised labour charges invoices for door fixing and alteration, designing and carpentry work at the customer site as labour contractor. The activity falls under the purview of manpower recruitment or supply agency service as per the definition of manpower recruitment or supply agency as per section 65(68) of

the Finance Act, 1994. They have not filed the statutory ST-3 Returns in this regard, hence the extended period for issue of SCN was rightly invoked. He also referred to Boards circular dated 27/07/2005 cited in the impugned order in favour of Revenue's stand. He prayed that the appeal may be dismissed.

6. Heard both sides.

7. The question before us is whether there is a relationship of employer and an employee between the appellant, who is the manufacturer of flush doors and the persons who fix the doors at the buyers' premises. The issue involves a mixed question of fact and law. This question has come up before Constitutional courts in the past on how to determine whether a person is an employee or not. The Supreme Court in various cases have stated that no one test of universal application can be depended upon to give the correct result. Some of the judgments the Supreme Court that which laid out the different tests are listed below;

> i) the employer's level of control over the persons engaged should be high and the persons could be directed about not only what work to do, but also how to do it. (<u>Control and Supervision Test</u>) [See **Shivnandan Sharma v. Punjab National Bank Ltd.** [1955 AIR 404, 1955 SCR (1)1427]
>
> ii) whether the persons were integrated within the employer's business during the course of their engagement. This test (organisation test) looks at the degree of integration in work committed in the employer's primary business with the understanding that the higher the level of integration, the more likely the worker is to be an employee. (<u>Organisation Integration Test</u>) [See **Silver Jubilee Tailoring House vs Chief Inspector of Shops & Establishments** (1974) 3 SCC 498]
>
> iii) whether the employer had the power to select, appoint and dismiss the persons without restriction. The persons, like any typical employee enjoyed benefits such as leave/paid time off, holidays, bonus, perquisites, social security, insurance coverage etc (<u>Mutual Obligation Test</u>) **[See Ram Singh vs U.T. of Chandigarh** (2004) 1 SCC 126 (Supreme Court)]
>
> iv) whether the workers are provided with and use company equipment during their engagement. (<u>Provision of Equipment Test</u>)

> [See **Silver Jubilee Tailoring House vs Chief Inspector of Shops & Establishments** (1974) 3 SCC 498]
>
> v) whether the workers were bound to provide their services in any place as directed by the employer, and do not have the flexibility to provide the services from any remote location not approved by the employer. They are required to adhere to the same specified times of work and rules that apply to the employers' permanent employees. (Control and Supervision Test) [See **Shivnandan Sharma vs Punjab National Bank Ltd.**[955 AIR 404, 1955 SCR (1)1427]

8. This is not an exhaustive list of tests to discern the relationship between the parties. For example, from the textbook scenario of 'complete control' to 'complete independence' lies a variety of circumstances involving a wide range of initiative and discretion being enjoyed by the worker. In fact, Courts and Tribunals in different cases, have used 'multiple sets of factors' test while deciding these relationships. What is critical is that it is essential to examine and test the nature of relationship between the parties before arriving at a conclusion. Mere reference to invoices raised or payments made, without reference to the specific provisions of a contract or working arrangement, will not be indicative of employer-employee relationship.

9. Para 14 and 15 of the order of the Original Authority contains the reasoning for demanding duty;

> "14. In the present situation as reflected in the reply of the noticee, they act as an interface between the buyer and themselves. It is there on record that fixing and alteration work involves designing and carpentry work at the customer's site.
>
> 15. The noticee themselves have admitted that they are raising invoices for engaging the services of carpenters. In such a situation, the service rendered by M/s. Diamond Flush Doors Pvt. Ltd. fits exactly in the category of "Manpower Supply Service". It could be true that the noticee is not recruiting but the supply of manpower is an admitted position even according to the reply furnished by the noticee. Hence, I am inclined to hold that the demand of service tax of Rs.5,62,192/- and Rs.10,177/0 is liable to be confirmed."

The impugned order on the other hand merely cites Boards circular dated 27/07/2005 to conclude that the appellant has supplied carpenters on a temporary basis and collected labour charges for the same. Both orders are cryptic and are not speaking in nature.

10. We are handicapped in as much as the impugned order has not referred to any contract or terms of engagement of the workers nor has it applied any test for determining the relationship, neither does it contain information which could be used by us to run any of these tests. While the appellant has not alluded to the above-mentioned judgments in their appeal, we have felt it necessary to examine the same in the furtherance of interest of justice.

11. In the light of the non-examination of the true nature of relationship between the parties a conclusion of the appellant being the employer of the workers cannot be fastened by assumptions and presumptions. Revenue has not proved its case regarding the true nature of the disputed activity provided by workmen to the appellants customers. Hence the question of examining the correctness of the extended period invoked or imposition of penalty does not arise.

12. In the circumstance we have no hesitation in setting aside the impugned order and allowing the appeal. The appellant will be eligible for consequential relief if any, as per law. The appeal is disposed of accordingly.

(Pronounced in open court on 19.06.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA)**
Member (Judicial)

Rex