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

ST/00343,00344/2012

[arising out of Order-in-Appeal No.MAX-CEX-OOO-APP-036 & 037-12, both dated 29.03.2012 passed by the Commissioner of Central Excise (Appeals), Madurai]

S. BALASUBRAMANI
S. CHANDRA SEKAR
APPELLANT/S

Versus

COMMISSIONER OF CENTRAL EXCISE, TRICHY
RESPONDENT

Appearance:

For the Appellant Ms. K. Nancy, Adv.
For the Respondent Shri S. Govindarajan, AC (AR)

CORAM:

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

Date of hearing/decision 24-01-2019

FINAL ORDER NOs. 40292-40293/2019

Per Bench:

As the issue involved in both these appeals is same they are taken up together for disposal.

2. Brief facts are that the department was the view that the appellants rendered Manpower Supply and Agency Services as they were engaged in supply of labourers to M/s. Madras Steel Industries Pvt. Ltd., [hereinafter referred to as "MSIPL"] during the period from 16.06.2005 to Oct.'09. These labourers were employed in factory of the said manufacturers to carry out activities of hot blasting, gas cutting etc., during the course of manufacture of steel castings. The

department observed that the service rendered by the appellant is classifiable under Man-power Recruitment or Supply Agency Services. Show-cause notice was issued proposing to demand service tax along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed equal penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence these appeals.

3. On behalf of the appellant, the learned counsel Ms. K. Nancy appeared and argued the matter. She submitted that the appellant is a job worker engaged in undertaking the job works such as, heat treatment, gas cutting, arc cutting, decoring, rejection cutting etc., carried out for steel castings manufactured by using steel materials. The appellant has done such job work for MSIPL. The appellant was engaged by MSIPL on contract basis for the process of materials such as heat treatment, gas cutting etc. The appellant employed work force for completion of such job work undertaken by him. The appellant paid wages from the amount that he received from MSIPL. The payments received from MSIPL are on piece rate basis and not as salary for the employees. The copies of the bills raised would show that the charges were paid for the works done in the nature of gas cutting, heat treatment, rejection cutting etc. There is no employer recruitment involved in the said activity. It is only the job work carried out by the appellant. The demand of service tax alleging that appellant has provided Man-power Recruitment or Supply Agency Services is factually wrong. She relied upon the following decisions to support her arguments:-

(i) *M/s. Indira Industrial Labour Welfare Association Vs Commissioner of Central Excise & Service Tax, Chennai-III* reported in *2018 (6) TMI 1363 – CESTAT CHENNAI*;

(ii) *Commissioner of Central Excise, Kolhapur Vs M/s. Sharda Industries* reported in *2018 (2) TMI – 1120 – CESTAT – Mumbai*;

(iii) *A. Malathy, Proprietrix of M/s. Arun Enterprises Vs Commissioner of Central Excise, Chennai* reported in *2018 (3) TMI - 1005 – CESAT – Chennai*; and

(iv) *M/s. Raj Enterprises Vs Commissioner of Service Tax, Ahmedabad* reported in *2018 (8) TMI – 1015 – CESTAT – Ahmedabad.*

4. The learned Authorised Representative for the Revenue Shri S. Govindarajan, AC (AR) supported the findings in the impugned order. He argued that the activities undertaken by the appellant does not give rise to final product. The activities are only in the nature of heat treatment, gas cutting etc., which is not in the nature of manufacturing activity. It is, therefore, very much clear that the appellant is engaged in providing Man-power Recruitment or Supply Agency Services. The activities are carried out within the premises of the manufacturer itself. The arguments of the appellant that they have provided job work only is wrong since the activities carried out by them do not amount to manufacture.

6. Heard both sides.

7. Undisputedly, the activities carried out by the appellant are in the nature of hot blasting, heat treatment, gas cutting etc. In the show-cause notice it is alleged by department that these processes do not amount to manufacture and that only if the process undertaken by the job worker amounts to manufacture would the activity fall under

description of job work. This allegation of the department is without substance. There are several processes undertaken by job worker, which may not be in the nature of manufacturing activity. In the present case, the activities undertaken are heat treatment, gas cutting etc. From the invoices it is seen that job work charges are paid on the basis of nature of work carried out. The invoices show heat treatment charges, gas cutting charges etc. Thus, the payment is not based on man hours or as salary towards engagement of a person for doing work. The payment is made on piece rate basis depending upon the work done. The Tribunal in the case of *M/s. Indira Industrial Labour Welfare Association* (supra) had analysed a similar issue and held that job work is done on piece rate, and the same cannot be considered as Man-power Recruitment or Supply Agency Services. Similar view has been taken by the Tribunal in other decisions relied by the learned counsel for the appellant. The facts in the present case also establish that the activity does not attract the levy of service tax under Man-power Recruitment or Supply Agency Services.

8. From the discussions made above, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
12-02-2019

Customs, Excise & Service Tax Appellate Tribunal
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