CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40248 of 2016

(Arising out of Order-in-Appeal No. 356/2015(CXA-II) dated 27.10.2015 passed by Commissioner of Central Excise (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. MRK Co-Operative Sugar Mills Ltd. **...Appellant**
Sethiathope,
Chidambaram Taluk,
Cuddalore – 608 702.

Versus

Commissioner of GST and Central Excise **...Respondent**
Cuddalore Division,
No. 1, Vallalar Nagar,
Manjakuppam,
Cuddalore – 608 702.

<u>APPEARANCE:</u>

For the Appellant : Ms. Vishnupriya, Advocate
For the Respondent : Mr. M. Selvakumar, Authorised Representative

<u>CORAM:</u>
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

<u>FINAL ORDER No.40538/ 2025</u>

DATE OF HEARING : 02.05.2025
DATE OF DECISION : 27.05.2025

Per Mr. VASA SESHAGIRI RAO

M/s. MRK Co-Operative Sugar Mills Ltd., Cuddalore (hereinafter referred to as 'Appellants') has filed this appeal No. ST/40248/2016 assailing the Order-in-Appeal No. 356/2015(CXA-II) dated 27.10.2015 passed by the

Commissioner of Central Excise (Appeals-II), Chennai upholding the Order-in-Original No. 24/2014-ST dated 12.08.2014 passed by the Assistant Commissioner of Central Excise, Cuddalore Division demanding service tax along with interest and also imposing penalties.

2.1 The Appellants are engaged in the manufacture of Sugar and Molasses and are also catering to the needs of registered cane growers in their Cane area towards supply of seeds and arranging gangs. The gangs are groups of workers specialized in identifying the cane ripe for cutting and also cutting sugarcane and assisting in transportation to the sugar mill. The gangs are paid by the appellants, and the charges are adjusted in the final bill of the cane growers.

2.2 The Department was of the view that the activities undertaken by the Appellants are taxable under the category of 'Manpower Recruitment or Supply Agency Service'. Therefore, a Show Cause Notice dated 21.02.2013 was issued which got adjudicated by demanding service tax of Rs.33,325/- along with interest and also penalty was imposed under Section 78 of the Finance Act, 1994.

3. When the case was posted for hearing before this Tribunal, the Ld. Advocate Ms. S. Vishnupriya has

argued for the Appellants. She has relied upon the decisions rendered by the Tribunal in the following cases in support of her contention that no tax is demandable: -

i. *M/s. Arignar Anna Sugar Mills Vs. Commissioner of GST and Central Excise, Trichy [2018 (9) TMI 387-Tri.-Chennai]*
ii. *M/s. Kallakuruchi Co-Operative Sugar Mills Ltd. Vs. Commissioner of GST and Central Excise, Puducherry [2020 (1) TMI 1643-Tri.-Chennai]*
iii. *M/s. Nadippisai Pulavar K.R. Ramasamy Co-Op. Sugar Mill Vs. Commissioner of Central Excise and Service Tax, Trichy [2023 (6) TMI 1080-Tri.-Chennai]*

3.2 Further, she has submitted that as there is no supply of Manpower Recruitment or Supply Agency Service involved and the demand raised is not sustainable.

4. The Ld. Authorized Representative Mr. M. Selvakumar representing the Department has reiterated the findings in the impugned Order-in-Appeal No. 356/2015(CXA-II) dated 27.10.2015.

5. We have heard both sides and perused the decisions rendered by this Tribunal as relied upon.

6. The only issue that is required to be decided in this appeal is whether the Appellants are involved in

providing the service of Manpower Recruitment or Supply Agency Service under Section 65(68) of the Finance Act, 1994.

7. The Ld. Advocate has further put forth that they had not rendered any service and had not raised any invoice for the service charges and did not receive any payment for alleged services. From the appellate records, it is revealed that the farmers themselves arranged for cutting and harvesting sugarcane and in cases where the farmers / growers are not able to get persons for cutting and harvesting sugarcane, they used to approach the cane offices of the appellants who would give the name and addresses of the laborers also called as gang leaders. These gang leaders / laborers are not the 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 these laborers / gang leaders. They are independent contractors or entities who are only identified by the mill for the convenience of the farmers. The farmers alone would fix the cutting charges through negotiations and the cane cutting charges incurred are first paid by the appellants and recovered from the farmers / cane growers.

8. The issue involved in this appeal is no more *res integra* as there are catena of decisions rendered by the Tribunal Chennai in favor of the Appellants holding that the supply of cane harvesters, the laborers 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) GSTL 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.*
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> *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."*

8. In view of the above, we find that the services of the Appellants would not be classifiable under 'Manpower Recruitment or Supply Agency Service' and consequently, the demand raised cannot sustain and so, requires to be set aside. Penalties imposed are also set aside. Ordered accordingly.

9. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 27.05.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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