CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal Nos. 60652, 60654 & 60655 of 2013

(Arising out of order-in-appeal No. 51(ST)/2013, 52(ST)/2013, 53(ST)/2013, 54(ST)/2013 and 55(ST)/2013 dated 22.07.2013 passed by the Commissioner of Central Excise & Customs (Appeals-I), Raipur)

DATE OF HEARING : 03.03.2017
DATE OF DECISION : 03.03.2017

CCE, Raipur …. **Appellant**
(Rep by Dr. Neha Garg, DR)

VERSUS

M/s R.N.V. & Co. …. **Respondents**
M/s H.N. Pandey (Rep. by NONE)
M/s A.K. Nandi & Co.

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52160-52162/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeals are filed by the Department against the order-in-appeal no. 51-55(ST)/2013 dated 22.07.2013 passed by the Commissioner of Central Excise & Customs (Appeals-I), Raipur.

2. The brief facts of the case are that, during the period under consideration (April 2006 to March, 2011), the assessee-

Respondents were engaged by M/s Simplex Engineering & Foundry Works Pvt. Ltd., Bhilai, for execution of work related to fabrication, machining and assembly etc. The Department was of the view that the assessee-Respondents have provided the services of "Manpower Recruitment or Supply Agency Service" to M/s Simplex Engineering & Foundry Works Pvt. Ltd., so they brought the said services under Section 68(1) of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994. The original authority has dropped the proposed demand by mentioning that the assessee-Respondents were providing the services of 'Job Work'. The Department filed the appeals before the Commissioner (Appeals) who has observed that the assessee-Respondents were providing the services for "Manpower Recruitment or Supply Agency Service" and just to escape the Service Tax liability, they took the plea of the job work. Finally, by the impugned order the Commissioner (Appeals) had levied the Service Tax along with interest. However, no penalties were imposed for the reason that the matter of interpretation of law is involved in the instant cases. Being aggrieved, the Department has filed the present appeals.

3. The appeals filed by the Department against M/s Chhabilal Meshram and M/s Patel Structural being Appeal No. ST/60653 & 60674 of 2013 were dismissed as withdrawn by the Tribunal vide order dated 25.07.2016 as the tax effect was below the prescribed limit, as per the national policy of litigation. However, the remaining three appeals have come up before us today.

4. List revised. None appeared on behalf of the assessee-Respondents. We have heard Dr. Neha Garg, learned DR for the Department and perused the record.

5. Needless to mention that, in the present appeals, the issue is: Whether the services provided by the assessee-Respondents to M/s Simplex Engineering & Foundry Works Pvt. Ltd. are covered under the taxable category of "Manpower Recruitment or Supply Agency Service"? It is pertinent to mention that the provisions of Section 65(68) of the Finance Act, 1994 have been amended w.e.f. 16.06.2005 to include within its scope "Manpower Recruitment or Supply Agency Service" as a taxable service. In terms of the amended Section 65(68) of the Finance Act, 1994 "Manpower Recruitment or Supply Agency Service" means: *Any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client. Section 65(105)(k) further defines manpower supply service as a taxable service in terms of which, taxable service means "any service provided or to be provided to any person by a "Manpower Recruitment or Supply Agency Service" in relation to recruitment or supply of manpower temporarily or otherwise, in any manner.* This definition was further amended on 16.05.2008 and with this words 'to any other person' were substituted for the words 'to a client'.

6. In the light of the above discussion, it appears that the contract of the assessee-Respondents with M/s Simplex Engineering & Foundry Works Pvt. Ltd. was disputed. In the order-in-original it

was considered as 'Job Work', but the Commissioner (Appeals) has considered the same as "Manpower Recruitment or Supply Agency Service". During the relevant time, the position was not clear as there was conflicting decisions. Moreover, in the instant case, when question of interpretation is involved, certainly penalty is not leviable. Hence, we are of the view that for the reasons mentioned in the impugned order, the penalty was rightly not levied.

7. In view of the above, we find no reason to interfere with the impugned order. Hence, the order passed by the Commissioner (Appeals) is hereby sustained along with the reasons mentioned therein.

8. In the result, the appeals filed by the Department are dismissed.

(Pronounced in the open court on 02.03.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay