

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No. ST/50860/2014 - ST [DB]

[Arising out of Order-in-Appeal No.85/S.Tax/D-II/13 dated 19.03.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

M/s.Daifuku India Pvt. Ltd.

...Appellant

Vs.

C.C.E., Delhi-II

... Respondent

Present for the Appellant : Mr.Sumit Wadhwa, Advocate.

Present for the Respondent: Mr.Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 11/04/2017

FINAL ORDER NO. 52954/2017

PER: B.RAVICHANDRAN

The appeal is against the order dated 19.03.2013 of Commissioner of (Appeal), Delhi-I. The appellant is engaged in providing engineering and material handling services to various industries and are discharging service tax under 'erection, commissioning and installation services'. The dispute in the present appeal relates to the tax liability of the appellant

with reference to transfer of certain employees from parent... company to a subsidiary company on the basis of agreement. The Revenue entertained a view that the transaction is covered for tax liability under manpower supply services. Accordingly, for services received by the appellant from their foreign holding company, tax liability of Rs.5,34,188/- was confirmed against the appellant.

2. We have heard both the sides and perused the appeal records.

3. It is submitted by the Id. Counsel for the appellant that in their own case, on similar set of facts, the Tribunal vide Final order No. 56061 – 56062 of 2016 dated 23.12.2016 held that deputation of staff to subsidiary/ group company for stipulated work would not amount to providing service falling under the category of recruitment or supply of manpower. The Tribunal while allowing the appeal observed as below:-

"4. At this stage that the issue is no more res-integra and decided by the Tribunal decision in the case of Arvind Mills Ltd. vs. CST, Ahmedabad reported in 2014 (34) S.T.R. 610 (Tri. - Ahmd.). It was held that the manufacturing unit cannot be considered to be a commercial concern engaged primarily in recruitment or supply of manpower and by following the precedent decision of the Tribunal in the case of Paramount Communication Ltd. vs. CCE, Jaipur reported in 2013 - TIOL - 37 - CESTAT - DEL., the demand of service tax was set aside. The said decision of the Tribunal was appealed against by the

Revenue before the Hon'ble Gujarat High Court. The Hon'ble High Court, rejected the said appeal of the Revenue reported as CST vs. Arvind Mills Ltd. reported in 2014 (35) S.T.R. 496 (Guj.). It was held that deputation of some staff to subsidiary/ group companies for stipulated work would not amount to providing service falling under the category of recruitment or supply of manpower. Reference can also be made to another decision of the Tribunal in the case of Volkswagen India (Pvt.) Ltd. vs. CCE, Pune - I reported in 2014 (34) S.T.R. 135 (Tri. - Mumbai) and also affirmed by Hon'ble Supreme Court reported in 2016 (42) S.T.R. 1145 (S.C.)."

4. Following the ratio of the decision of the Tribunal in appellant's own case covering the same issue, we hold that the impugned order is not sustainable, and accordingly, the same is set aside. The appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita