IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:08.05.2017

Service Tax Appeal No.50403/2014-SM

[Arising out of Order-in-Appeal No.218/ST/DLH/2013 dated 30.09.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax,New Delhi]

M/s.Ganesh Dutt Appellant

Vs.

CST, Delhi Respondent

Appearance

Rep. by Shri Naveen Mullick, Advocate for the appellant.
Rep. by Shri U. R. Sharma, DR for the respondent.

Coram: Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.53195/2017

Per B. Ravichandran:

The appellant is aggrieved by the order dated 30.09.2013 of Commissioner (Appeals), Delhi-I.

2. A service tax demand of Rs.5,37,841/- was confirmed against the appellant by the Original Authority, for providing "Manpower Recruitment or Supply Agency Services" in terms of Section 65 (68) of the Finance Act, 1994. The appellants claimed that they are doing job work of cutting footwear in the premises of M/s. Kabeer Textile Pvt. Ltd. , for which they raised bill periodically and received job charges. The dispute in the present appeal is relating to the liability of the appellant as "Manpower Recruitment or Supply Agency".

3. I have heard both the sides and perused the appeal records.

4. The "Manpower Supply Agency" is defined under Section 65 (68) of Finance Act, 1994 as under:-

> "Section 65[(68) "Manpower recruitment or Supply Agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise to any other person. Prior to its substitution, clause 68 read "manpower recruitment agency means any commercial concern engaged in providing any service directly on indirectly, in any manner for recruitment of manpower, to a client".

5. It is seen that the appellants have been contesting the demand, from the beginning, on the ground that they are not a manpower supply agency. They have undertaken job of cutting or packing of footwear, in the premises of the client, as per the instructions of the client. There is no written agreement in the arrangement. Both the Lower Authorities held against the appellant only on the ground that they have failed to substantiate their claim that they are not a " Manpower Supply Agency". It was held that the appellants did not produce supporting documents to the effect that they are only doing job work or supporting the manufacture of the footwear by the clients. No other discussion regarding the scope of the tax entry, as well as the various documents submitted by the appellant, were recorded by the lower authorities.

6. I have perused the bills raised by the appellant to the clients. The bills mentioning "cutting of footwear components"; " job charges" are mostly for periodical payment, at fortnightly interval. Further, the appellant, vide their letter dated 10.02.2009 and the client vide their letter dated 9.2.2009, stated that there was no contract for labour supply between them. The arrangement is to pay at the labour rates for completion of job undertaken towards packing of finished goods and cutting of footwear components. The documents submitted by the appellant indicate a lump sum charge for the work undertaken by them. There is no evidence

of supply of manpower with details of number and nature of manpower, duration and other conditionalties for such supply. In absence of such evidence, the simple allegation that the appellant received some amount from the clients for job work and such amount should be taxed under “Manpower Recruitment and Supply Agency Service” is not sustainable. In fact, the Original Authority confirmed service tax liability on the ground that the appellant did not produce any certificate, documentary proof from their clients, proving that they have provided job work. It is noted that their client have submitted a letter dated 9.2.2009 categorically stating that they have no arrangement for supply of labour with the appellant. Further, it is noticed that the Original Authority recorded that the client had admitted to availing of service of Manpower Recruitment and Supply Agency Service from the appellant. I find no evidence to support such assertion, in the records of the appeal. In absence of any supporting evidence, it is not feasible to contend that the appellants provided taxable service under the category of “Manpower Recruitment and Supply Agency Service”. In fact, evidences submitted by the appellant indicate to the contrary. As such, I find no merit in the impugned order. Accordingly, the same is set aside. The appeal is allowed.

[Order dictated & pronounced in open court]

(B. Ravichandran)
Member (Technical)

Ckp.