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

Date of Hearing/Decision:23.01.2017

ST/60084 to 60096/2013, 60136, 60657,60658, 60660, 60664, 60665, 60667, 60669/2013

Appeals Nos.ST/60084 to 60096/2013 and ST/60136/2013

[Arising out of common Order-in-Appeal No.09-22(ST)/RPR-II/2013 dated 22.07.2013 and Order-in-Appeal No.123-127(ST)/RPR-I/2013 dated 22.07.2013 in Appeal No.ST/60657/2013 passed by the Commissioner, Customs, Central Excise & Service Tax, Raipur (CG)]

Kantilal Patel and Co. …Appellants
Ranu Sons and Co.
Milan Upadhyay
T.M. Patel and Co.
Shiv Kumar Singh
R.K. Engg. And Co.
Ramkrippal Singh and Co.
Waghmare and Co.
Subhash Waghe and Co.
Santosh Tiwari
Ramdeo and Co.
Kailash Mourya
C.K.Pratapan and Co.
Sanjeet Enterprises

Vs.

CCE & ST, Raipur …Respondent

Appeals Nos. ST/60657,60658, 60660, 60664, 60665, 60667 & 60669/2013

CCE & ST, Raipur …Appellants

Vs.

Waghmare and Co. …Respondent
Milan Upadhyay
Ranu Sons and Co.
T.M. Patel and Co.
C.K. Pratapan and Co.
Kantilal Patel and Co.
Ramdeo and Co.

Appearance:
Rep. by Shri Manish Saharan, Advocate for the parties.
Rep. by Shri Sanjay Jain, DR for the Department.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.50751-50771/2017

Per S.K. Mohanty:

The issue involved in all these appeals are identical and as such, the same are taken up together for disposal and a common order is being passed.

2. In this case, the department has confirmed the service tax demand under taxable category of "Manpower Recruitment or Supply Agency Services" provided by the assessees to M/s.Simplex Engg. Foundry Works Pvt. Ltd. , Bhillai. In response to adjudication order, the submission of the assessees are that the contract entered into between M/s.Simplex Engg. & Foundary Works Pvt. Ltd. and the assessees relates to fabrication, machining and assembly etc. and the same cannot fall under the taxable category of "Manpower Recruitment or Supply Agency Service"

3. Ld. Advocate appearing for the assessees submits that the issue involved in this case is no more res integra and is covered by the decision of this Tribunal in the case of **M/s.A.K. Nandi & Co. & Ors. Vs. CCE, Raipur – Final Order No.54661-54665/2014 dated 27.11.2014.**

4. On the other hand, ld. AR reiterates the findings of the lower authorities.

5. Heard both the sides and perused the appeal records.

6. We find that the issue involved in the present appeal is squarely covered by the decision of this Tribunal in the case of **M/s. A.K. Nandi & Co. (supra).** The relevant paragraph in the said order is reproduced below:-

"3. We have considered the facts and submissions. We find from the job order perused by us that the payment is based upon the amount and nature of job completed and has no reference to the number of persons engaged for doing the same. Merely because the supervision to ensure proper job work was done by M/s.Simplex Engineering & Foundry Works does not mean that they had administrative control over the persons engaged by the appellants. In the case of **Divya Enterprises Vs.CCE, Mangalore – 2010 (19) STR 370 (CESTAT)** in effect held that the contract was for execution of work of loading, unloading, bagging, stacking and destacking records and was silent on supply of manpower; and so the same is not covered under Manpower Recruitment or Supply Agency Service. Similar view was held by CESTAT in the case of **Ritesh Enterprises Vs. CCE, Bangalore – 2010 (18) STR 17 (Tribunal- Bang.)** and **S.S. Associates Vs. CCE, Bangalore – 2010 (19)STR 438 (Tribunal-Bang.)."**

7. In view of the above, we do not find any merits in the impugned order insofar as confirming the demand of service tax on the assessees are concerned. Accordingly, the appeals filed by the assessees are allowed and the appeals of the Revenue are dismissed.

[order dictated and pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.