CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing: 30.05.2017

Appeal No. ST/1660/2011-ST[DB]

[Arising out of the Order-in-Appeal No. IND/CEX/000/AA/346/2011 dated 30.08.2011, passed by the Commissioner of Central Excise, Indore]

Shri Bheru Singh Baghel … Appellant

Vs.

CCE & ST Indore ... Respondent

Appearance:

Present Ms. Priyanka Goel, Advocate for the appellant
Present Ms. Neha Garg, DR for the respondent

Coram: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**
Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No.53859/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 30.08.2011 passed by the Commissioner (Indore). Brief facts of the case are that the appellant is engaged in the labour supply services to M/s. Kirti Industries India Ltd, Dewas.

2. The Department confirmed the service tax demand against the appellant under the category of man power recruitment and supply agency services under section 65(68) of the Finance Act 1994.

3. The Ld. Advocate appearing for the appellant submits that since the appellant in the capacity of individual has undertaken

the activity of supply of labour to M/s. Kirti Industries, such services provided by the appellant will be taxable under the category of man power recruitment of supply agency services only w.e.f. 01.05.2006. Prior to this date, only "commercial concern" providing such services were liable to payment of tax under that category of services.

4. On the other hand Ld. DR appearing for the respondent submits that any individual providing any services in the course of business should be considered as "commercial concern" and thus the activities undertaken by the appellant herein is to be considered as commercial activity and fall within the purview of taxable services of man power recruitment of supply agency services. To support her stand that the appellant in this case can be considered as commercial concern, the Ld. DR has relied on the decision of this Tribunal in the case of ***Charanjeet Singh Khanuja Vs. CST Indore 2016 (41) STR 213 (Tri-Del).***

5. Heard both the sides and perused the records.

6. It is an admitted fact on record that the appellant has engaged himself in the commercial activity of supply of man power / labour to M/s. Kirti Industries Ltd. Since the appellant is earning his livelihood by providing such service, he should be considered as a "commercial concern" and will be covered under the statutory definition of man power recruitment agency right from 16.06.2005 when such taxable services was brought under the taxable net. We find that this Tribunal in the case of ***Charanjeet Singh Khanuja*** has taken the view that individual

shall be considered as a commercial concern. The relevant portion of the said order is extracted below:

> *"When an individual engages himself in a commercial activity he has to be treated as business or commercial concern. Therefore, notwithstanding the fact that w.e.f. 01.05.2006 the terms, commercial concern in section 65 (105)(zzb) was replaced by 'any person', we are of the view that even during the period prior to 01.05.2006, the Business Auxiliary Service, even if provided by an individual to a client, was taxable. Moreover, in this ground of appeals, the appellants in appeal no. ST/257/2011 and ST/259/2011 are proprietary firms who, without any doubt, are commercial concerns."*

7. In view of the above, the appellant is liable to pay service tax for providing the services during the disputed period. However, since the issue whether 'individual' was a 'commercial concern' was highly contentious, we are of the view, that the benefit of section 80 can be invoked in this case for non imposition of penalties under section 76,77 & 78 of the Finance Act 1994.

8. Therefore, the impugned order is set aside and the appeal is allowed to the extent of setting aside the penalties imposed in the adjudication order. The appeal is disposed of in above terms.

[Order Dictated and Pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

Bhanu