CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

<u>BENCH-DB</u>

<u>COURT –III</u>

<u>Service Tax/CROSS/09/2012</u>
<u>Serivce Tax Appeal No. ST/531/2011 -CU[DB]</u>
[Arising out of Order-in-Appeal No. 3(ST)RPR-I 2010 dated 27.01.2011 passed by the Dy. Commissioner (Appeals-), Central Excise Commissionerate, Raipur.]

M/s. Shri Ramadhar Singh …Respondent
Vs.

C.C.E., Raipur ...Appellant

Appearance:

None for the Appellant
Mr. Sanjay Jain, DR for the Respondent

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

Date of Hearing/ Decision.24.05.2017

<u>Final Order No. 56430 /2017</u>

<u>Per S.K. Mohanty</u>:

This appeal is directed against the impugned order dated 25.01.2011 passed by the Ld. Commissioner (Appeals-I), Customs and Central Excise, Raipur.

2. None appeared for the appellant, despite notice. Heard the ld. DR for Revenue.

3. Classification of taxable service under the category of "Man Power Recruitment and Supply Agency Service" is the subject matter of present dispute. The authorities below have confirmed the demand for the services provided by the appellant during the period 4/2004 to 10/2007 to M/s. Super Iron and Steel Pvt. Ltd, Raipur under such category of service.

4. On perusal of the impugned order, we find that the ld. Commissioners (Appeals) has recorded the findings that for executing various jobs relating to production and maintenance of furnace, the appellant had supplied/deployed the manpower in the factory premises of its client. Further, the bill no. 94-95/04 dated 30.06.2004 referred to in the impugned order were towards the charges of handling, finishing activities of mill and production against dispatch quantity of 162.5 mt @ Rs. 135 mt. The appellant has stated the nature of activities under taken by it, which *inter-alia* includes unloading of raw material, movement of raw material to various machines/ storage tank as per the requirement of manufacturer process, sorting of raw material/ finished goods, cutting of material to required sizes etc.

5. Since the essence of contract is execution of the assigned work and control over the workman and supervision was always with the appellant, it cannot be said that the activities undertaken by the appellant falls under the category of "Manpower Recruitment and Supply Agency Service", for levy of service tax. Further, the documents available on records show that the service receiver M/s. Super Iron and Steel Ltd. has paid for the lump sum

amount for the contract executed by the appellant. Thus, in our considered view the appellant cannot be considered as Manpower Recruitment or Supply Agency inasmuch as the deployment of the labour/workforce was for the execution of the job by itself and not by its client.

6. Therefore, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant. Cross appeal is disposed of.

(Operative Portion pronounced in open court)

(**V. Padmanabhan**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi