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/56674/2013 –CU [DB]

[Arising out of Order-in-Original No.205/ST/PKJ/ADJ/2012 dated 31.12.2012 passed by the Commissioner (Adj.), Central Excise, New Delhi]

M/s.Indiabulls Securities Limited …Appellant

Vs.

C.C.E., New Delhi … Respondent

Present for the Appellant : Mr.Tarun Gulati, Mr. Kishore Kumar, Mr. Pranav Bansal, Mr. Prashant Tahilani, Advocates.

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

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

Date of Hearing/Decision: 07/07/2017

FINAL ORDER NO. __58359/2017______

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 31.12.2012 passed by the Commissioner (Adjudication), Central Excise, New Delhi, wherein the following demands were confirmed against the appellant:-

Sl. No.	**Demand Head**	**Tax Amount**	**Penalty**
a.	Manpower Recruitment Supply provided to Group	2,23,13,596/-	2,23,13,596/-

	Companies – sharing of cost of employees.		
b.	Considering 'own trading' as exempted service, violation of Rule 6 (3) – for non-maintenance of separate accounts	18,00,256/-	18,00,256/-
c.	Penalty on Cenvat Credit of Input Services reversed during adjudication	Appropriated	38,43,470/-

2.1 With regard to service tax demand against manpower recruitment or supply agency service, ld. Advocate appearing for the appellant submits that the staff deputed by the appellant to its associated enterprises are employees of the appellant and the appellant is receiving consideration towards such services in the form of reimbursement for the out sourced personal. He submits that mere sharing of the staff amongst group companies and reimbursement of costs does not amount to rendering of any taxable service. He further submits that there is no relationship of a client and a service provider between the appellant and its associated enterprises, and thus, such activities provided by the appellant will not be subjected to levy of Service Tax under the taxable category of manpower recruitment or supply agency service.

2.2 As regards disallowance of cenvat credit in terms of Rule 6 (3) read with Rule 14 of the Cenvat Credit Rules, 2004, the ld. Advocate submits that the appellant is engaged mainly in providing stock broker service, which is a taxable service for the purpose of levy of Service Tax and in addition, the appellant also carries on the activity of trading of securities on its own. He further submits that own trading activity in shares will not be considered as service, in order to fall under the purview of sub-Rule (3) of Rule 6 *ibid*. Thus, the cenvat credit demand cannot be confirmed against the appellant. In this context, he relies on the show cause notice dated 21.04.2011, wherein at para 5.6 in page 14, the Department has accepted that the activities of trading for self do not attract any Central Excise Duty or Service Tax, and thus, does not appear to be covered either under Central Excise Act, 1944 or the Finance Act, 1994.

2.3 Regarding imposition of penalty under sub-rule (3) of Rule 15 *ibid*, the ld. Advocate submits that the amended provisions of the said Rules, w.e.f. 17.02.2010 will not be applicable to the facts of the present case, since the period of dispute is of 2005-06 to 2009-10, which is prior to the date of amendment.

2.4 To support the above submissions, the ld. Advocate has relied on the judgement of Hon'ble Gujarat High Court in the case of Commissioner of Service Tax vs. Arvind Mills Ltd. - 2014 (35) S.T.R. 496 (Guj.), Krohne Marshall Pvt. Ltd. vs. CCE, Pune – 2015-TIOL-2860-(Mum.), CCE vs. Fosroc Chemicals India Pvt. Ltd. – 2016 (42) STR 28 (Tri.).

3. On the other hand, the ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. Section 65 (68) of the Finance Act, 1994, as amended, defines 'Manpower Recruitment or Supply Agency' as follows:-

From 16.06.2005 to 30.04.2006:-

"manpower recruitment or supply agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client."

From 01.05.2006 to 15.05.2008:-

"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 a client.

From 16.05.2008 onwards:-

"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.

6. On perusal of the above statutory definitions, it would reveal that providing of various services relating to the taxable service to a client is subjected to levy of Service Tax under manpower recruitment or supply agency service. The effect of the definition after the amendment w.e.f. 16.05.2008 is that the term 'client' was replaced with 'any other person'. In the case in hand, since the appellant did not provide any service after 16.05.2008, we are only concerned with the definition of manpower recruitment or supply agency service effective from 16.06.2005 to 15.05.2008. The definition provides that in order to fall under such category of taxable service, the taxable service has to be provided to a 'client'. In this case, the fact is not under dispute that the appellant is engaged in the business of providing securities, broking advisory service to its client. It never provides any manpower recruitment or supply agency service in the course of its business or commerce. In the case in hand, the appellant received the consideration towards deputing its staff members to the associate enterprises in the form of re-imbursement of expenses towards its members. Since the appellant is not a professionally manpower supply agency and merely sharing the staff amongst the group companies and got the reimbursement of cost from such associate company, the same should not be considered as rendering of the taxable service for the purpose of levy of service tax. Further, there is no relationship between the appellant and its associated company as 'client' and a 'service

provider'. Thus, in absence of providing of any service to the clients as contemplated in the definition of taxable service, the activities of the appellant will be outside the scope and purview of Service Tax under the category of manpower recruitment or supply agency service. We find that in an identical situation, the Hon'ble Gujarat High Court in the case of Arvind Mills Ltd. (supra) have held that the deputation of some staff to subsidiaries / group companies for stipulated work or for limited period would not fall under the taxable entry of manpower recruitment or supply agency service. The relevant paragraphs in the said judgement are extracted herein below:-

> ***5.*** *It is true that in the present form, the definition of Manpower Supply Recruitment Agency is wide and would cover within its sweep range of activities provided therein. However, in the present case, such definition would not cover the activity of the respondent as rightly held by the Tribunal. To recall, the respondent in order to reduce his cost of manufacturing, deputed some of its staff to its subsidiaries or group companies for stipulated work or limited period. All throughout the control and supervision remained with the respondent. As pointed out by the respondent, company is not in the business of providing recruitment or supply of manpower. Actual cost incurred by the company in terms of salary, remuneration and perquisites is only reimbursed by the group companies. There is no element of profit or finance benefit. The subsidiary companies cannot be said to be their clients. Deputation of the employees was only for and in the interest of the company. There was no relation of agency and client. It was pointed out that the employee deputed did not exclusively work under the direction of supervision or control of subsidiary company. All throughout he would be under the continuous control and direction of the company.*

> ***6.*** *We have to examine the definition of Manpower Supply Recruitment Agency in background of such undisputable facts. The definition though provides that Manpower Recruitment Supply Agency means any commercial concern engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client, in the present case, the respondent cannot be said to be a commercial concern engaged in providing such specified services to a client. It is true that the definition is wide and would include any such activity where it is carried out either directly or indirectly supplying recruitment or manpower temporarily or otherwise. However, fundamentally recruitment of the agency being a commercial concern engaged in providing any such service to client would have to be satisfied. In the present case, facts are to the contrary.*

7. As regards confirmation of adjudged demand for non-maintenance of separate records in terms of Rule 6 (3) *ibid*, we find that the appellant provides stock broker services to its clients and discharges appropriate service tax liability in respect of such service. In addition, appellant is also carries on the activity of trading of securities of its own. In case of trading of securities, there is no involvement of any service provider and receiver and accordingly, there is no question of any provision of service, in order to attract the provisions of the Service Tax statute for payment of the service tax thereon. Further, we also find that the Department in the show cause notice has also accepted the legal provision that trading activities for sale do not attract any Central Excise duty or Service Tax. Therefore, we are of the view that own trading of

securities cannot be termed as exempted service and accordingly, the provisions of rule 6 (3) *ibid* will not applicable for maintenance of separate records/accounts. The present finding is only on this limited aspect of application of Rule b (3). The basic issue as to whether the Cenvat Scheme itself is applicable to such trading has not been a dispute examined in the proceedings.

8. In this case, the impugned order has imposed penalty under sub-rule (3) of Rule 15 ibid. The said sub-rule providing for imposition of penalty on the input service was inserted on 30.12.2006 vide Notification No.31/2006-CE (NT). In the present case, since the dispute relates to the period 2005-06 to 2009-10, which is prior to the date of amendment of Rule 15 *ibid*, the rigour of said amended sub-rule will not have any application for imposition of penalty for irregular availment or utilisation of Cenvat Credit, by reason of fraud, collusion etc. Therefore, penalty imposed in the impugned order cannot be sustained against the appellant.

9. In view of the foregoing discussions and analysis, we are of the considered opinion that there is no merit in the impugned order for sustaining the adjudged demand confirmed against the appellant. Therefore, by setting aside the same, we allow the appeal in favour of the appellant.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita