IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 1667 of 2011

[Arising out of Order in Appeal No. 328/ 2011 dated 4.8.2011 passed by Commissioner (Appeals). Customs and Central Excise, Indore (MP)]

M/s. Manish Contractor **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Indore

Appearance:

Ms. Rinki Arora, Advocate for the Appellants
Shri R K Manjhi, AR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 22.12.2017

FINAL ORDER NO.58705 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against Order-in-Appeal No. 328/ 2011 dated 4.8.2011.

2. Heard Ms Rink Arora and Shri R K Manjhi, learned Counsels for the parties and perused the material available on record.

3. The first issue to be decided in the instant case is demand of service tax of Rs. 6,60,859/- pertaining to EPF and ESI. The appellant

is providing manpower recruitment agency services and deposited the said amount to EPF and ESI. The department demanded service tax on it.

4. After hearing both sides and on perusal of material available on record, it appears that issue has came up before the Tribunal in the case of ***Young Brothers Transporters and Contractors, Transporters and Contractors and others vs. CCE, Meerut I [2017-TIOL-2983-CESTAT-DEL]*** wherein it was observed that :

> ***"6. The Employees Provident Fund & Miscellaneous Provisions Act, 1952 and the Employees State Insurance Act, 1948 created the liability upon the principal employer to contribute to the respective funds, an amount equal to employees contribution. Thus, in compliance of the said provisions, the service receiver M/s HNGIL had contributed to such funds, the amount towards the workmen deployed by the appellant. The fact is not under dispute that such contributed amount was never given by such service receiver to the appellant. Thus, the gross value for the computation of service tax liability in the hands of the appellant will not take into consideration the amount of contribution made by the service receiver M/s HNGIL directly into the respective heads of account. Therefore, in our considered view, service tax demand cannot be confirmed on the employer's contributed amount towards P.F., E.P.F. and E.S.I."***

5. By following our earlier order (supra), we modify the impugned order and delete the service tax demand of Rs. 6,60,859/- pertaining to EPF and ESI.

6. Second grievance of the appellant is pertaining to demand of Rs.60,000/- of service tax. The appellant is undertaking the job of packing / branding of toilet soap in the factory of M/s. Godrej Consumer Products. The appellant is providing the services of packing. During the course of arguments, learned Counsel has relied on the ratio laid down in the case of ITW India Ltd. vs. CCE, Hyderabad [2009 (14) STR 826 (Tri-Bang)] where it was observed that

> ***"they are a part of the manufacturing process and the value of the packaging is included in the assessable value of the goods and excise duty is paid on the entire value taking into account the charges incurred by the manufacturers for the package. Therefore, once the Excise duty is paid on the charges, again the service tax cannot be levied."***

7. She also relied on the Board Circular F No. B1/6/2005 –TRU dated 27.7.2005 , where it was mentioned that packing activity which amounts to manufacture within the definition of section 2(f) of Central Excise Act, 1944 would not be liable to service tax.

8. On the other hand, learned representative of the department has relied upon the impugned order.

9. By considering the totality of the facts and circumstances, it appears that packing cost included in the final product and excise duty was paid by M/s. Godrej. But no duty was paid by the appellant. Appellant is providing the services of packing of soap cake which is essentially a labour supply contract and not a packaging service as contended by the appellant. The appellant has not paid the service tax on the final product. When it is so, we find no reason to interfere in the impugned order. Same is sustained . On this ground, appeal is dismissed.

10. Regarding the third contention, of demand of Rs. 60,728/- pertaining stitching and washing charges which has been received from clients. During the course of arguments, learned Counsel has submitted that she is not contesting this demand. Same is dismissed as not contested.

11. In the result, the appeal filed by the appellant is partially allowed as stated above.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

ss