CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51459 of 2014

(Arising out of Order-in-Original No. JAI-EXCUS-001-COM-089/13-14 dated 29.11.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur)

DATE OF HEARING : 29.01.2018
DATE OF DECISION : 29.01.2018

M/s Sakata Inx (India) Ltd. ..... **Appellants**
(Rep. by Sh. S.C. Kamara, Adv.)

VERSUS

CCE, Jaipur-I ..... **Respondent**
(Rep by Sh. Sajay Jain, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50700/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Original No. JAI-EXCUS-001-COM-089/13-14 dated 29.11.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur. The period in dispute is 2008-09 to December, 2011.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the manufacture of Printing Inks. With a view to obtain technical support required for

manufacturing, quality control, research and development of technical issues, they have entered into an agreement with their parent company, M/s Sakata Inx Corporation (M/s SIC), Japan, who agreed to depute their technical experts on employment basis. The assessee-Appellants have agreed to issue appointment letters to the Japanese experts and also pay monthly salaries in rupee to the technical experts. While obtaining the residential permit from the Foreigner Registration Office, Gurgaon, the Japanese experts reported their purpose of visit of India for employment to work with the assessee-Appellants as Technical Head etc. The TDS was deducted on the basis of the salary. During the audit of records, it was viewed that the parent company, M/s SIC, supplied manpower from abroad to the assessee-Appellants in India and the same is taxable under the heading 'Manpower Recruitment and Supply Agency Services' as defined under Section 65(68) of the Finance Act, 1994. After issuance of the show cause notice, the Service Tax was demanded and penalties were also imposed. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri S.C. Kamra, learned counsel for the assessee-Appellants and Shri Sanjay Jain, learned DR for the Department.

4. After hearing both sides and on perusal of the material available on record, it appears that an identical issue has come up for consideration before the Tribunal in the case of **Airbus Group India Pvt. Ltd. vs CST, Delhi,** 2016 (45) STR 120 (T-Del.), wherein it was observed that :

"6. The second point of dispute regarding service tax liability of the appellant, again on reverse charge basis, under the category of 'manpower recruitment and supply agency service', we find that the other parties of the agreement located abroad are not falling under the category of 'Manpower Recruitment and Supply Agency'. The impugned order nowhere established that the foreign entities are involved in such business of manpower supply. The appellant have a strong case of this ground alone. Further, on perusal of the agreement, we find that the employees are under the control and supervision of the appellants and their salary is disbursed by the appellant. All the statutory obligations as an employer, like payment of PF, TDS for income tax are all fulfilled by the appellant. It is not shown in the proceedings before the lower Authority that any consideration is being paid for obtaining manpower supply service from the foreign companies. The reimbursement amount paid by the appellant to the foreign companies is relating to the cost of salaries and wages of the employees working under the appellant. In CCE v. Computer Sciences Corporation India Pvt. Ltd. (supra) the Tribunal held that for tax purposes the service provided must be by a 'manpower recruitment agency' and such a service has to be in relation to supply of manpower. In CCE v. Arvind Mills Ltd. (supra), the Hon'ble Gujarat High Court held that deputation of employees from one company to another does not involve profit or finance benefit there is no relationship of agency and client involved in such deputation. In Volkswagen India Pvt. Ltd. v. CCE (supra) the Tribunal held when the global employees working under the Indian company are working as their employees and having employee-employer relationship there is no supply of manpower service and no tax liability arises."

5. By following our earlier order (supra), we find no merit in the impugned order and the same is hereby set aside.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

Golay