CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 56795 of 2013 with
Service Tax RoA No. 50074 of 2018

(Arising out of Order-in-Appeal No. 19/BPL/2012 dated 24.09.2012 passed by the Commissioner (Appeals) Central Excise, Bhopal)

DATE OF HEARING : 12.04.2018
DATE OF DECISION : 12.04.2018

Birendra Pratap Singh …. **Appellants**
(Rep by Sh. Akshat Srivastava, Adv.)

VERSUS

CCE, Bhopal …. **Respondent**
(Rep. by Sh. Sanjay Jain, DR)

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

FINAL ORDER NO. 51382/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

After hearing both sides, we recall our earlier Final Order No. 50013/2018 dated 02.01.2018 where the appeal was dismissed for non-prosecution, for the reasons mentioned in the RoA Application. The appeal is restored to its original number.

2. With the consent of both sides, we proceed to decide the appeal on merits.

3. The present appeal is filed by the assessee-Appellant against the Order-in-Appeal No. 19/BPL/2012 dated 24.09.2012 passed by the Commissioner (Appeals) Central Excise, Bhopal. The period in dispute is 16.06.2005 to 31.03.2006.

4. The brief facts of the case are that, during the period under consideration, the assessee-Appellant was engaged in providing services of supply of labour to M/s Orient Paper Mills. The assessee-Appellant, a proprietary concern, was not registered with the Central Excise Department. The registration was obtained only on 03.08.2006. Therefore, during the period under dispute, the assessee-Appellant has not filed any return or paid any tax. After looking into the quantum of labour supplied, the Department has worked out the Service Tax. The benefit of Section 80 of the Finance Act, 1994 was provided to the assessee-Appellant, so no penalty was imposed. Being aggrieved, the assessee-Appellant has filed the present appeal.

5. With this background, we have heard Sh. Akshat Srivastava, learned counsel for the assessee-Appellant and Sh. Sanjay Jain, learned DR for the Revenue.

6. After hearing both sides and on perusal of the material available on record, we find that the issue of extended period was already discussed by the lower authorities and we agree with it. Regarding the quantum, it is evident that the assessee-Appellant is claiming that the services of "Manpower Recruitment or supply Agency" by any person after 01.05.2006 were brought under the clutches of Section 65(68) of the Finance Act, 2006 and prior to it **only** commercial concern were taxable. From the record, we find

that an identical issue has come up for consideration before the Tribunal in the case of **Charanjeet Singh Khanuja vs CST, Indore,** 2016 (41) STR 213 (T-Del.), wherein it was observed that:

> "**14. ....the assessees are individuals and during the period till 30-4-2006, Service tax was chargeable only on the services provided to a client by a commercial concern in relation to Business Auxiliary Service and the individual persons cannot be treated as Business concern. We do not accept this plea as a business concern can be a proprietary firm also which is owned by an individual and there is no difference between proprietary firm owned by a person and that person. 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. 1-5-2006 the term, 'commercial concern' in Section 65(105)(zzb) was replaced by 'any person', we are of the view that even during the period prior to 1-5-2006, the Business Auxiliary Service, even if provided by an individual to a client, was taxable...."**

7. By following our earlier order (supra), we find no reason to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned therein.

8. In the result, the appeal filed by the assessee-Appellant is dismissed. RoA application also stands disposed of accordingly.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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