CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi,

COURT –II

Date of hearing/decision: 20.06.2018

Appeal No. ST/53474/2015-DB
[Arising out of Order-in-Appeal No. 214-SLM-ST-JPR-2015 dated 13/05/2015 passed by the Commissioner of Service Tax-Alwar]

C.G.ST C & C.E-Alwar Appellant

Vs.

Tarun Fabricators Respondent

Appearance:
Shri G.R. Singh, DR for the appellant
Shri Saurabh Dixit, Advocate for the Respondent

Coram:
Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 52290/2018

Per: V. Padmanabhan:

1. The appeal is filed by Revenue against the Order-in-Appeal No. 214/2015 dated 13/05/2015. The Department noticed while auditing the records of M/s Alpha Services, Bhiwadi that the respondent had been engaged by M/s Alpha for in house fabrication work during the period 01/04/2011 to 05/09/2011, for which consideration was received by the respondent. The Department was of the view that the respondent was liable to pay Service Tax under the category of 'Manpower Recruitment and Supply Agency Service', defined under Section 65 (68) of the Finance Act, 1994. After issue of show cause notice, the Original Adjudicating Authority ordered payment of Service Tax amounting to Rs. 15,25,635/- along with interest and penalties. But the Commissioner (Appeal) in the impugned order set aside such demand. Hence, the present appeal is filed by Revenue.

2. We heard Shri G.R. Singh, Ld. DR for Revenue and Suarabh Dixit, Ld. Advocate for the respondent.

3. The Ld. DR submitted that the respondent had supplied manpower to M/s Alpha Services and same is not in dispute. The details of consideration received by the respondent were obtained from M/s Alpha Services. He submitted that the Commissioner (Appeals) has erred in taking the view that no Service Tax is payable.

4. The Ld. Advocate justified the impugned order passed by the Commissioner (Appeals). He submitted that the respondent was receiving payments from M/s Alpha on the basis of per Kilogram of the goods manufactured. There was no written contract between the respondent and M/s Alpha. He drew our attention to the Certificate issued by M/s Alpha Services in connection with work carried out by the respondent. In this said document, it has been certified that the respondent was engaged for manufacture of their goods i.e. E.O.T. Cranes and their sub-assemblies. He also brought to our notice the CBEC Circular dated 15/12/2015 in which it has been clarified that when the service provider is assigned a job of fabrication etc and the value of service is a function of the quantum of job work undertaken, the same is not to be considered as supply of manpower. In this connection, he also relied on several case laws:-

   i. ***Shivshakti Enterprises V/s Commissioner of Central Excise, Pune 2016 (41) STR 648 (Tri.-Mumbai)***

   ii. ***D.S. Chavan Engineering Works V/s Commissioner of Central Excise & Customs, Nasik 2015 (40) STR 1150 (Tri.- Mumbai).***

5. Heard both sides and perused the record.

6. In the absence of any written contract between M/s Alpha Services and the respondent, we have perused the Certificate of Work issued by the service receiver i.e. M/s Alpha Services. It has been certified that the respondent was engaged for manufacture of cranes and their sub-assemblies. Further, it has been certified that M/s Alpha is paying excise duty on such goods manufactured in their premises by respondent as a job worker. Further, from perusal of some of the payment bills, it is seen that payment to the respondent is on the basis of weight of the finished goods.

7. It is observed that the employees of the respondent are required to work as per the directions of M/s Alpha who supply the required drawing, raw materials and machines. These employees are carrying out fabrication work in the premises of M/s Alpha and are paid for such work on the basis of the quantum of goods fabricated.

8. We find that in the case of ***Shivashakti Enterprises (Supra)*** Tribunal had occasion to consider the identical issue. The observations of Tribunal are reproduced below:-

> ***"5.*** *We find that facts are not much in dispute. Appellant had deployed his employees in the factory premises of Tata Motors for doing specific job work in accordance with the purchase order placed by Tata Motors. We perused the sample/specimen of purchase orders of Tata Motors Ltd. We find that Tata Motors Ltd. had agreed to pay consideration to the appellant based upon the number of pieces that would be manufactured by appellant in the factory premises of Tata Motors. We find that the issue is no more res integra inasmuch as, in case of Divya Enterprises Ltd. - 2010 (19) S.T.R. 370. Tribunal based on laser of contract purchase orders indicated execution of lump sum work as understood by appellant and service recipients. The case is in hand, the appellant as well as the service recipients understood the agreement between them as the lump sum agreement and not for supply of manpower. We find that this Bench in the case of Shriram Sao TVS Ltd. - 2015 (39) S.T.R. 75, in a similar kind of service of lump sum contract for harvesting, loading and unloading of sugarcane held as under :*
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> *"4. We find that the issue is no more res integra inasmuch as this Bench has held in the case of Bhogavati Janseva Trust v. CCE, Kolhapur - 2014 (34) S.T.R. 410 (Tri.-Mum.) on an identical issue has held in favour of the assessee. The same view was expressed by the Bench in Satara Sahakari Shetu Audyogik Oos*

Todani Vahtook Society v. CCE, Kolhapur - 2014 (36) S.T.R. 123 (Tri.-Mum.). It was brought to our notice that identical view was expressed by the Bench in the case of Godavari Khore Cane Transport Company Pvt. Ltd. Central Excise Appeal No. 19 of 2014. The judgment of the Godavari Khore Cane Transport Company Pvt. Ltd. was taken in appeal by the Revenue before the Hon'ble High Court of Bombay at Aurangabad. Their Lordships has upheld the order of the Tribunal reported as in Appeal Nos. ST/256/2008, S.T./68, 7/2009-Mum. [2012 (26) S.T.R. 310 (Tri.-Mum.)]. The ratio of the judgment of the Hon'ble High Court at Paras 6 & 7; we with utmost respect reproduce the same.

6. *In view in the facts of circumstances of this case, and various judicial pronouncements, we find that the impugned order challenged by the appellant before us, is liable to be set aside and the appeal needs to be allowed to that extent. The impugned order is set aside, to the extent challenged before us and the appeal is allowed with consequential relief, if any."*

9. By following the said decision of the Tribunal we find no reason to interfere with the impugned order which is sustained.

10. In the result, appeal filed by Revenue is rejected.

(Dictated and pronounced in the open Court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha