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

<u>COURT –II</u>

Date of hearing/ Decision: 04.07.2018

Appeal No. ST/59315/2013-DB
[Arising out of Order-in-Appeal No. 30-VC-ST-JPR-I-2013 dated 20/05/2013 passed by Commissioner of Central Excise-JAIPUR-I(Appeal)

Nexus Security Services Pvt Ltd Appellant

Vs.

C.C.E. & S.T.-Jaipur-i Respondent

Appearance:
Ms Priyanka Goel, Advocate for the appellant
Sh. G.R. Singh, DR for the Respondent

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

<u>Final Order No. 52526/2018</u>

<u>Per: V. Padmanabhan</u>

1. The present appeal is directed against Order-in-Appeal No. 30/2013 dated 20/05/2013. The departmental officers noticed during the course of audit of the record of the appellant that the appellant was engaged in rendering Man Power Supply Service for cutting, packing, stitching, loading and unloading major textile articles. It was further noticed that the appellant, for such temporary supply of man power, received amounts which were accounted in the balance sheet. Further it was noticed that certain amounts were also received by the appellant by way of reimbursement of the expenses on account of travelling etc. The Department came to the conclusion that the appellant is liable to pay Service Tax on such consideration received under the category of 'Man Power Recruitment and Supply Agency Service'. Accordingly, Show Cause Notice was issued and the

concurrent finding of the both the authorities below are that Service Tax is liable to be paid along with interest and penalties. Aggrieved by the Order-in-Appeal present appeal has been filed.

2. With the above background, we heard Ms. Priyanka Goel, Ld. Counsel for the appellant and Shri G.R. Singh, Ld. DR for the Revenue.

3. The Ld. Advocate submitted that the appellant has supplied man power to various agencies for carrying out certain activities and the payment for such activities was recovered on lump sum basis. She further submitted that from the invoices issued by the appellant to M/s Relogistic India Pvt. Ltd., Jaipur it can be seen that the amounts received were by way of service charges for storage, warehouse and handling of agricultural produce. Since these activities are outside the purview of man power supply, she submitted that Service Tax demand is not sustainable. Further she argued that there is no justification for demand of Service Tax on the reimbursible expenses since the matter stands decided by the Hon'ble Apex Court in the case of Intercontinental Pvt. Ltd. reported as 2018-TIOL-76-SC-ST.

4. Ld. DR justified the impugned order. He submitted that the appellant has admitted on record, through their reply to Show Cause Notice dated 18/08/2010, that they have been supplying labour to their clients on temporary basis as and when required. Accordingly, he justified the demand of Service Tax under the category of 'Manpower Recruitment and Supply Agency Service'. These facts also stands reiterated before the Commissioner (Appeals) as can be seen from the findings recorded by him in the impugned order.

5. After hearing both sides and perusal of record we note that the appellant has been supplying temporary labour to various companies such as ***M/s Relogistic India Pvt. Ltd***. The consideration

accounted in the balance sheet is towards supply of said temporary man power

6. The definition of taxable Service under Section 65(105)(k) and the definition of "Manpower Recruitment of Supply Agency" under Section 65(68) are extracted as under.

> *Section 65(68) of the Finance Act, 1994 "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;*
>
> *Section 65(105)(k) of the Finance Act, 1994"Taxable Service" means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;*
>
> *Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate.*

7. Since the supply of temporary man power is covered by the above definition, we are of the view that the appellant is liable to discharge the Service Tax under the category. In this connection the Ld. Advocate has placed reliance on the following decisions.

1. ***Commissioner, Jaipur V/s Nanuram Saini 2018 (6) TMI 586 -CESTAT New Delhi***
2. ***S. S. Associates V/s Commissioner, Bangalore 2010 (19) STR 438 (Tri.- Bang.)***
3. **Adhikrut Jabti Evam Vasuli Versus CCE & ST- Indore 2017 (9) TMI 90 – CESTAT New Delhi.**

8. But after perusal of the various decisions it is noticed that in these decisions, the demand for Service Tax under the category of 'Manpower Recruitment or Supply Agency Service' has been set aside

in cases where the supply of manpower was in the form of lumpsum work and such fact is evident from the contract for execution of such work. In the facts of the present case we find no such evidence on record. It stands admitted by the appellant that the supply of man power has been made on a temporary basis. It has been claimed by appellant by submission of copies of some invoices that it was towards provision of cold storage facility for agricultural produce, But, we note that the appellant is not engaged in the activity of storage of agricultural produce. Consequently, we are unable to give the benefit of the above decisions or the benefit as storage of agricultural produce.

9. A part of the demand has also been made against amounts which were reimbursed to the appellant towards expenses incurred. The demand of service Tax on such reimbursible expenses cannot be sustained particularly in view of the decision of the Hon'ble Supreme Court in the case of Intercontinental Pvt. Ltd. (supra).

10. In the result, we set aside the demand for Service Tax made on the reimbursible expenses but the rest of the Service Tax demand for supply of man power is upheld.

11. Appeal is partly allowed. Penalties will be chargeable proportionately.

(Order Dictated & pronounced in the open Court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha