CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No.51167 of 2014 –CU(DB)

[Arising out of Order-in-Original No.04/Comm./M-II/2013 dated 29.11.2013 passed by the Commissioner, Customs & Central Excise Commissionerate, Delhi Road, Bhainsali Park, Meerut (Uttar Pradesh)]

M/s.Aditya Enterprises
(Proprietor:Jitendra Kumar Sahni) **Appellant**
Sahni Chambers, Near Degree College,
Civil Lines, Haldwani,
Distt.:Nainital (Uttarakhand)

VERSUS

Commissioner of Customs and **Respondent**
Central Excise Commissionerate,
Meerut-II, Bhainsali Park, Delhi Road
Meerut (Uttar Pradesh).

APPEARANCE:

Shri R.M. Saxena, Advocate for the appellant.
Shri Amresh Jain, Authorised Representative for the respondent.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.50937/2019

DATE OF HEARING: 23.01.2019
DATE OF DECISION: 24.07.2019

ANIL CHOUDHARY:

The appellant, M/s. Aditya Enterprises - Proprietor, Shri Jitendra Kumar Sahni was doing various jobs since 2006-2007 in the factory premises of Century Pulp and Paper, a unit of Century Textiles and Industries Ltd.("CPP" in short) mainly in the nature of handling of wood and maintaining cleanliness in specific parts of the factory, maintenance of Hydra Pick and carry crane, etc. Such jobs were executed by deploying labour by the appellant, for which they raised periodical invoices based on the quantum of work handled and not based on the number of workers or labourers involved in the particular work. The appellant was advised that no service tax is leviable on such works and accordingly, they neither took registration under the provisions of Service Tax nor they charged service tax in their bills. The principal – CPP issued a letter to the appellant in December, 2009 stating that on the nature of work being done by them for CPP, it appears that service tax is leviable and accordingly, directed the appellant to obtain service tax registration, in absence of which, their bills for work done will not be entertained from Jan., 2010. Under the circumstances, the proprietor, Mr. Jitendra Kumar Sahani obtained service tax registration number under the new name and style of 'R.J.S. Enterprises' as proprietor. Thereafter, the same business or work was undertaken under the name and style of R.J.S. Enterprises for the principal- CPP, and the appellant started paying service tax w.e.f. 1.4.2010 under the category of "Manpower Supply Service".

2. By letter dated 7.9.2010, the Range Superintendent, Haldwani asked for details of turnover and copy of the documents for the period 2005-2006 till 31.03.2010 with intent to examine the service tax liability for the past period. By reply dated 30.09.2010, the appellant submitted the requisite documents. The appellant by letter dated 14.12.2010 requested the Asstt. Commissioner, Central Excise Division, Haldwani to intimate outcome of the inquiry undertaken by the Department. In reply, by letter C.No.V(17)51/RST/Aditya/HLD/2010 dated 16.12.2010, the Asstt. Commissioner replied as follows:-

> ***" Please refer to your letter dated 14.12.2010 regarding the outcome of the investigation in respect of records of your firm.***

In this context, it is to intimate that on the basis of the records and documents submitted, and the work done by you as per your contract agreements with M/s.Century Pulp and Papers, Lalkuan of Distt. Nainital, it has been revealed that the most of the services provided do not appear to be covered in any of the taxable services except the work of yard cleaning which is covered under Cleaning Service and the work of Maintenance of hydraulic crane which is covered under the Management. Maintenance and Repair Services but the aggregate value of the same has been found too below the exemption limit of the small service provider to attract service tax liability under the provisions of the Notification No.06/2005-ST dated 01.03.2005 as amended. "

3. Subsequently,, the appellant received summons from the Superintendent (Preventive) requiring the appellant to produce documents/information for the period 2006-07 to 2010-2011. In compliance, the proprietor appeared and again submitted the requisite documents/information on 27.09.2011, on which date the statement of the proprietor was also recorded. Thereafter, show cause notice dated 5.6.2012 was issued relying on the copy of the agreements entered by the appellant with the CPP during the years 2006-2007 to 2008, and master order dated 14.3.2008 and 7.7.2009. It appeared to Revenue as alleged in the show cause notice, that under the various agreements, for jobs, under which appellant was actually engaged for supply of manpower, and were so worded to avoid the service tax liability. Under the circumstances, the agreements were in fact, for providing manpower. The principal - CPP were supervising the workers supplied by the appellant for the various jobs like pith feeding, wood shifting, cleaning, etc. As per the agreement, the

appellant was required to maintain steady supply of workers for the jobs. As per the agreement, the appellant was entitled to get payment only to the extent of job done. But in reality, over and above, the contracted rate, CPP was also paying towards ESI, bonus & P.F. Further, as per the agreements between the parties, the liability to comply with the Labour Laws was on the appellant, but in actual practice, the same was complied by the principal – CPP, ESI and PF contribution were required to be deposited by the appellant for its employees, but the same were deposited by the principal – CPP, which also supports the allegation that the appellant supplied manpower. The agreements entered between the parties were not genuine and appeared to be colourable device to avoid tax. Further, Mr. Jitendra Kumar Sahani created a new concern and got himself registered with the Department under the category of "Service of Manpower Supply Agency" for the very same jobs as were being done in the past. From the attendance register (RUD-15), copy of which was recovered from CPP, it appeared that the appellant was maintaining a register wherein the name of the workers and the respective work place/section was shown.

4. The show cause notice was adjudicated on contest and vide impugned order-in-original dated 27.11.2013, the proposed demand of Rs.72,50,883/- was confirmed along with interest and further penalty was imposed under Sections 76, 77 and equal penalty under Section 78 of the Act. Being aggrieved, the appellant is before this Tribunal.

5. Heard the parties and perused the records.

6. The issues in this appeal arising are as follows:-

(i) Whether the appellant is liable to pay service tax under the classification "supply of manpower" for the period prior to 31.03.2010, and

(ii) Whether the show cause notice is bad for invocation of extended period of limitation.

7. From the perusal of the copy of the agreement and copy of the bills on record, I find that the appellant has entered into an agreement for execution of various works for the principal – CPP. The payment for such work is based on the volume of the work executed and not according to the number of workman deployed by the appellant.

8. I further find that such facts have been recorded in the impugned order-in-original wherein the ld. Commissioner has taken notice of the agreement and the rates for various works e.g. lifting of wood from yard and supply to R.G.P. Chipper, is at the rate of Rs.20 per M.T. Similarly, for other work also like debarking of stacks of green wood, splitting of pulp wood, stacking of UPFC logs of all sizes and stacking of bamboo of all sizes, etc. have been provided P.M.T. basis. These facts are also confirmed from the bills raised by the appellant for the relevant period, which are on the basis of quantum of work executed and not based on the number of workman deployed or allegedly supplied. The Adjudicating Authority has misconstrued the contract between the parties and has heavily relied on the payment of ESI and PF by the principal-CPP, in respect of workmen deployed by the appellant. Under the relevant Labour Laws being the Employees Provident Fund Act, 1952 read with the Scheme and the Employees State Insurance Act, 1948, the liability for workers employed in a factory towards payment of P.F. and ESI contribution is on the principal employer ultimately. The principal–employer is the owner or occupier of the factory. Thus the

principal-CPP has discharged their obligation under the provisions of ESI Act and EPF Act. The same does not lead to the inevitable conclusion that the appellant has supplied labourers but has entered into colourable contracts to avoid the liability of service tax. Accordingly, I hold that show cause notice is not maintainable as the same is based on the presumption, having no sanctity of law.

9. Further, no liability can be fastened on an assessee for the same work, done in the past only for the reason that in the present or future point of time, the assessee under compulsion by the principal, started paying service tax. Under the facts and circumstances, I find that there is no case of any contumacious conduct, suppression or falsification of records on the part of the appellant. Further, whatever service tax the appellant would have paid was available to the principal – CPP as the cenvat credit, as they have discharged central excise liability for their manufactured goods – paper/paper pulp. Thus, we hold that extended period is not invokable.

10. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefit in accordance with law.

[Order pronounced on 24.07.2019]

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

ckp