

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Service Tax Appeal No. 30510 of 2018

(Arising out of OIO No.VSP-EXCUS-001-COM-022-17-18 dt.08.02.2018 passed by Pr.
Commissioner of Customs & Central Tax, Visakhapatnam)

RKEC Projects Pvt Ltd

Rednam Alcazar, Rednam Gardens,
Visakhapatnam, AP – 530 002

.....Appellant

VERSUS

**Commissioner of Central Tax
Visakhapatnam - GST**

Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

.....Respondent

Appearance

Shri K. Nagaraja Rao, Advocate for the Appellant.

Shri B. Sangameshwar Rao, AR for the Respondent.

Coram:

HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30182/2023

Date of Hearing: 12.07.2023

Date of Decision: 12.07.2023

[Order per: ANIL CHOUDHARY]

The Appellant is a company engaged in various types of civil constructions. The issue in dispute in this Appeal is that in certain works/sub-contracts awarded by the Appellant company for execution of works contract whether the service received by the Appellant from the sub-contractors is in the nature of Manpower Supply Service or Works Contract Service.

2. The Appellant is registered with the Department for providing various services viz., Construction Service, Commercial or Industrial Building and Civil Structure Service, Works Contract Service, Supply of Tangible Goods Service, Manpower Recruitment Agency Service, Transport of Goods by Road Service, etc. They have been registered since 25.04.2006. The Anti-Evasion officers of the Department, upon inspection of the records of the Appellant, observed that the Appellant has booked certain expenditure under the head 'Labour Charges' and 'Construction expenses' in the Profit & Loss Account for the period 2012-13 to 2015-16. It appeared to the Revenue that these are in the nature of Manpower Supply services attracting service charge under Reverse Charge Mechanism. As the Appellant have not discharged Service Tax liability towards

Manpower Supply service received by them, it appeared that they have contravened the provisions of the Act read with Rules read with Notification. In the course of enquiry, prior to the issue of SCN, the Appellant had taken the stand that they have awarded work to their sub-contractors for execution of certain work which is in the nature of construction activity involving goods or material to be supplied by them (Principal) and as such by no stretch of imagination, the same can be categorised under the head - Manpower Supply service. However, the Revenue, not being satisfied, issued SCN dated 07.09.2017 for the period under dispute 2012-13 to 2015-16 invoking extended period of limitation, proposing to demand an amount of Rs.9,37,38,467/- under the proviso to Sec.73(1) of the Act along with interest. Further penalty was also proposed to be imposed under Sec 76, 78 & 77(2) of the Act. The SCN was adjudicated vide impugned OIO dated 08.02.2018 on contest by the Principal Commissioner and the proposed demand was confirmed with interest and equal amount of penalty was imposed under Sec 78 of the Act. Further penalty of Rs.10,000/- under Sec 77(2) was imposed for contravening various provisions of the Act and Rules made thereunder.

3. Being aggrieved, the Appellant is before this Tribunal, *inter alia*, on the grounds that the sub-contractors were awarded work packages there being no element of supply of manpower. From the copy of the Work Orders which are annexed and forming part of the OIO, description of work mentions (i) 'Piling Work', quantity - 200 @ Rs.49,000/- totalling Rs.98,00,000/-, (ii) 'Concrete Works', quantity - 6000 @ Rs.1700/- amounting to Rs.1,02,00,000/-, thus grand total of work being Rs.2,00,00,000/-. Learned Counsel pointed out that from the plain reading of the Work Order, there is no element of supply of any certain quantity of manpower, rather it is awarded construction work on rate basis. It is the sub-contractors outlook to employ the number of workmen, tools and tackles deemed fit for execution of work. Learned Counsel also places reliance in their own matter in similar SCN for the subsequent period, wherein, similar demand under Manpower Supply service was raised for the period 01.04.2016 to 30.06.2017. The SCN in that case is adjudicated by the Principal Commissioner vide OIO dated 08.06.2023 whereby, under similar facts and circumstances, the learned Commissioner has been pleased to observe as follows:-

"(C) A perusal of above details reflect that the job to be executed involved goods for execution of the works and the transfer thereof and the Contractor i.e., the Assesseees have to procure & supply the required goods for construction of Liquid Berth & the Jetty. Said factual matrix reflects that

the Contract is a composite one involving components of both the material/goods & services and the property in goods involved in the execution of the works gets transferred from the Contractor to the Contractee and sales tax is payable on the material/goods involved in executing the contract and thus, a works contract between the RKEC- the Contractor & Mumbai Port, satisfying the criterion as per definition of Works Contract, as detailed under Para 5.2A above.

(D) Whereas, coming to the subject matter, the notice is issued on the ground that the supplied manpower to the Contractor, who in turn is responsible for payment of service tax, under reverse charge mechanism. Whereas, as detailed and discussed under Para 5.4 above, as per the general terms & conditions of a Work Order, the works are to be executed by the sub-contractor on their own by engaging the skilled manpower apart from bringing the (i) tools (i.e., both Power & Hand tools) viz., knives, saws, hammers, shovels, rakes etc., used to form, shape, fasten, add to, take away from, or otherwise change something by cutting, hitting, digging, rubbing and (ii) tackles viz., Lifting tackles, gear/appliance, fiber/wire rope sling, chain slings, hooks, rings, sheaves (grooved pulleys), swivel, shackles & similar gears used in hoisting, lowering and handling the operations & the required machinery, wherein the Sub-Contractor only will exercise control & supervision over the workmen & machines employed/engaged on his own, by utilising the goods/free issue material issued by the Assessee Contractor. In the light of these facts, the work order issued to the sub-contractor requires examination, for arriving at the appropriate classification as well as the taxability of such work order.

(E) Apart from the above detailed legal matrix of the Construction service rendered by the sub-contractors to the Assessee Contractor, further legal matrix is that the original works pertaining to Government are exempted from levy of service tax under Entry No.14A of Para 1 of the Notification No.25/2012-ST, which states that "Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date", subject to the condition that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015. Whereas, the subject contract has been entered in the year 2012 and hence, the exemption is applicable.

(F) In-spite of said ensuing factual matrix, the notice has been issued by categorizing the services provided by the Sub-Contractor to the Assessee Contractor, as manpower supply, demanding service tax from the Assessee Contractor, under Reverse Charge Mechanism, considering the expenses on account of construction & labour as liable to service tax, instead of the income generated/earned by virtue of provision of Services, However, in view of the ensuing legal matrix discussed in detail in preceding Paras, the demand is not sustainable on merits per se and liable to be dropped summarily."

4. On the basis of aforementioned findings recorded by the Principal Commissioner, he was pleased to drop the demand and recall the proceedings initiated vide the aforementioned SCN. Learned Commissioner categorically recorded finding, that the services in question are construction service and works contract service, as material is involved.

5. Learned Counsel relies on the findings of the learned Commissioner for the subsequent period and prays for allowing the Appeal with consequential benefits.

6. Learned AR for the Revenue relies on the Impugned Order.

7. Having considered the rival contentions and upon perusal of records, we find that from a plain reading of the Work Order, it is evident that the Work Order is not for supply of manpower service, but it is work awarded for construction activity specifying the rate payable for particular quantum of work to be executed. Further, we find that it is not disputed that the sub-contractor has got full liberty to employ such number of workmen and use such quantum and variety of tools and tackles as may be required. Further, the Appellant company as the Principal is not obligated, though Appellant supervised the work of the sub-contractor from time to time. Further, we find that there is no rate specified per workmen to be provided by the sub-contractor. We also hold that as the main contract is for construction activity, undisputedly in the nature of Works Contract service, the sub-contractor having been awarded the part of such work, is also classifiable rightly under Works Contract service.

8. In view of the aforementioned findings and observations, we hold that the service in question received by the Appellant is in the nature of Construction service and/or Works Contract service and not Manpower Supply service, under any stretch of imagination. Accordingly, we allow the Appeal and set aside the Impugned Order. The Appellant shall be entitled to consequential benefits in accordance with law.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)