IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.70307 of 2013

(Arising out of Order-in-Appeal No.274/JSR/2012 dated 07.12.2012 passed by Commissioner(Appeals), Central Excise & Service Tax, Ranchi.)

M/s. D.P. Bodhanwala
(Bodhanwala Garage, Kharkai Link Road, Bistupur, Jamshedpur-831001.)

...Appellant

VERSUS

Commissioner of Service Tax, Ranchi

.....Respondent

(5A, Main Road, Ranchi, Jharkhand.)

<u>APPEARANCE</u>

Shri S.B.Sharma, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

<u>FINAL ORDER NO. 77704/2023</u>

DATE OF HEARING : 11 December 2023
DATE OF DECISION : 11 December 2023

Per : K. ANPAZHAKAN :

The present appeal has been filed against the impugned Order-in-Appeal No.274/JSR/2012 dated 07.12.2012 passed by Commissioner(Appeals), Central Excise & Service Tax, Ranchi, wherein he has upheld the demand of Rs. 2,74,797/-confirmed along with interest and penalty in the Order-in Original dated 19.10.2010.

2. Briefly stated facts of the case are that the Appellant is a transport and handling agent engaged in providing services of Loading, Unloading, Transportation etc. for their clients. During the period under dispute i.e. **<u>July,2005 to December,2009</u>**, the Appellant provided the services of **<u>'Loading of Scrap into Trucks"</u>** for onward transportation to their client M/s Singh Associates,

Kolkata and charged **@ Rs. 429/- per trip** . The loading was done by engaging "**Crane"** and helpers/operator thereof. The Appellant has not collected service tax from the client under the *bonafide* belief that the service recipient was liable to pay the tax. Audit conducted on the records of the Appellant alleged that the Appellant has to pay Service Tax of Rs. 2,74,797/- on the amount received against "Loading of Trucks" from M/s Singh Associates, Kolkata under the category of 'Manpower Recruitment or Supply Agency'. On the basis of the audit objection, a Show Cause Notice dated 19-10-2010 was issued to the Appellant demanding Service Tax of Rs. 2,74,797/- and the demand was confirmed by the adjudicating authority vide OIO dated 19.10.2010. On appeal, the demands confirmed in the OIO has been upheld in the impugned order by the Ld. Commissioner (Appeals). Aggrieved against the impugned order, the Appellant has filed this appeal.

3. The Appellant submits that in the instant case they were never obliged to supply labour or manpower. they were only required to perform a 'specific job of loading'. Further, they were paid against the loading of truck which is at the rate of 'per trip' and not on the basis of 'number of manpower' deployed.

4. In support of their contention they relied on the following case laws:-

(i) Hemant V Deshmukh Vs CCE [2014 (35) STR 602 (Tri.-Mum.)]
(ii) Divya Enterprises Vs CCE [2010(19) STR 370(Tri.-Bang)];
(iii) Dhanashree Entreprises Vs CCE, [2017 (5)GSTL 212 (Tri. Mum.)];
(iv) Shivshakti Enterprises Vs CCE., [2016 (41) STR 648 (Tri- Mum.)];
(v) S. S. Associates Vs CCE [2010(19) STR 438(Tri Bang.)]
(vi) Samarth Sevabhavi Trust Vs CCE [2014 (36) STR 83 (Tri.-Mum.)];
(vii) CCE Vs Samarth Sevabhavi Trust. [2016(41) STR 806(Bom)];

(viii) CCE Vs Anmol Biscuits Ltd [(2022(62) GSTL 171(Tri.-Kol);
(ix) Ganesh Dutt Vs CCE [2017(4) GSTL 323(Tri.-Del.)].

5. The Appellant also relied on the Board Circular No. 190/9/2015-ST dated 15-12-2015, wherein it has been clarified that the essential characteristics of manpower supply service is that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service providers accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, the manpower supplier will charge for supply of manpower even if manpower remains idle. In the present case, they were paid against the loading of truck which is at the rate of 'per trip' and not on the basis of 'number of manpower' deployed. Hence, they contended that the demand of service tax confirmed under the category of 'Manpower Recruitment Service' is not sustainable.

6. The Ld. D.R. reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal documents.

8. We observe that the issue to be decided in this appeal is whether the services of **'Loading of Scrap into Trucks"** for onward transportation rendered by the Appellant to their client are liable to service tax under the category of 'Manpower Recruitment Service' or not. We find that the Appellant has collected the charges **@ Rs. 429/- per trip**. The loading was done by engaging "**Crane"** and helpers/operator. The Appellant was never obliged to supply labour or manpower. They were only required to perform a 'specific job of loading'. Further, they were paid against the loading of truck which is at the rate of 'per trip' and not on the basis of 'number of manpower' deployed. Thus, we find that the service rendered by the Appellant cannot be categorized as 'Manpower Recruitment Service'.

We find that this view has been supported by various decisions cited by the Appellant.

9. In the case of Hemant V. Deshmukh Vs Commissioner of Central Excise, Goa, reported in 2014(35)STR 602 (Tri - Mumbai), it has been held as under:

> ***6.*** *We have examined the agreement between the parties and as per the agreement the appellant are to do certain activity at the premises of their principals and remuneration towards their services are to be paid as per the work executed and as not per the labour supplied. Therefore, as per the decision of Ritesh Enterprises (supra) wherein this Tribunal has held that contracts for execution of work of loading, unloading, bagging, stacking and destacking in terms of the agreement, the payment is to be made for lump sum work not as per the labour supplied. In these circumstances, the demand under the Manpower Recruitment Service is not sustainable. As observed by us, in this case also the remuneration of the work done by the appellant are to be paid as per the work done in lump sum and not as per labour supplied. In these circumstances, the demand under the category of Manpower Recruitment and Supply Agency Service does not sustain.*

10. In the case of Divya Enterprises Vs Commissioner of Central Excise, Mangalore, reported in 2010(19) STR 370 (Tri - Bang), it has been held as under:

> ***10.*** *On perusal of the records and the submissions of learned SDR on the Master Circular dated 23-8-2007, we find that the issue raised at clause 010.02 is as under :*

Business or industrial organizations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether Service tax is liable on such services under manpower recruitment or supply agency's ser ices	In the case of supply of manpower individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use for the services of an individual, employed by him to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable

	service (Section 65 (105)(k) since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" (section 65(68) and are liable to Service tax

11. It can be seen from the above reproduced portion of the Master Circular that it is in respect of supply of manpower which is engaged for specified period or for completion of particular projects or tasks. The clarification, is in case of supply of man power, it can be seen that the clarification specifically needs that the agency agrees for use of services of an individual to another person for a consideration as supply of manpower. In the cases in hand, there is no agreement for utilization of services of an individual but a job/lump-sum work given to the appellants for execution. The said clarification issued by the Board would be appropriate in the case where services of man power recruitment & supply agency, had been temporarily taken by the Business or the industrial association for supplying of manpower and may not be for execution of a specific work. We are of the considered view that the reliance placed by the learned SDR and the learned Commissioner on the circular will not carry the case of the Revenue any further.

11. in the case of Anmol Biscuits Ltd. Vs Commissioner of Service Tax, Kolkata, reported in 2022(62)GSTL 171 (Tri - Kol), it has been held as under:

12.*We also find that the C.B.I. & C. Circular No. 190/9/2015-Service Tax, dated 15-12-2015 has also explained the conditions when one service can be interpreted as manpower supply or job work. In the given case since the contractors are being paid on the basis of quantity packed and not on the basis of number of persons deployed, the same cannot partake the nature of 'Manpower Supply Service'.*

13.*Reliance is also placed on the Tribunal's decision in the case of M/s. Dhanashree Enterprises v. CCE, Pune in Appeal No. ST/565 & 566/12, wherein vide Final Order dated 10-7-2017 it was held that the department could not establish that the service provided by the Appellant are of supply of manpower. In the instant case also we find that the department has not brought any evidence in contrary to prove that the services provided by the contractors to the Respondent are in the nature of Manpower Supply.*

12. By relying on the decisions cited above, we hold that the services of **'Loading of Scrap into Trucks"** for onward transportation rendered by the Appellant to their client are not liable to service tax

under the category of 'Manpower Recruitment Service'. Hence, we hold that the demand confirmed in the impugned order is not sustainable. Since, the demand itself is not sustainable, the question of demanding interest and imposing penalty does not arise.

13. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Operative part of the order was pronounced in the open Court.)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Pooja