IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
<u>REGIONAL BENCH - COURT NO.2</u>
Service Tax Appeal No.70533 of 2013
(Arising out of Order-in-Original No.01-06/S.Tax/Commr (JSR)/RAN/2013 dated 20.03.2013 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

M/s. Naya Sarai SSS Limited
(Vill. Naya Sarai, Saparom, Ranchi-835303.)

...Appellant

VERSUS

Commissioner of Service Tax, Ranchi

.....Respondent

(5, Main Road, Ranchi-834001, Jharkhand.)

WITH

Service Tax Appeal No.70534 of 2013

(Arising out of Order-in-Original No.01-06/S.Tax/Commr (JSR)/RAN/2013 dated 20.03.2013 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

M/s. Jan Jagriti SSS Limited
(Qr.No.B-101/T, Dhurwa, Ranchi-834004.)

...Appellant

VERSUS

Commissioner of Service Tax, Ranchi

.....Respondent

(5, Main Road, Ranchi-834001, Jharkhand.)

AND

Service Tax Appeal No.70539 of 2013

(Arising out of Order-in-Original No.01-06/S.Tax/Commr (JSR)/RAN/2013 dated 20.03.2013 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

M/s. Dhurwa Takniki SSS Limited
(C/o Shri Suresh Singh (Secretary), DT-2563, Dhurwa, Ranchi-834004.)

...Appellant

VERSUS

Commissioner of Service Tax, Ranchi

.....Respondent

(5, Main Road, Ranchi-834001, Jharkhand.)

APPEARANCE
Shri S.P. Majumdar, 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)

FINAL ORDER NO 77548-77550/2023

DATE OF HEARING : 23 November 2023
DATE OF DECISION : 23 November 2023

Per : K. ANPAZHAKAN :

The following three appeals all arising out of the common Order-in-Original dated 20.03.2013 has been filed by the Appellants.

(i) Appeal No ST/70533/2013-M/s. Naya Sarai SSS Ltd. vs. CCE &ST,Jamshedpur.

(ii) Appeal No ST/70534/2013-M/s Jan Jagriti SSS Ltd. vs. CCE &ST,Jamshedpur.

(iii)Appeal No ST/70535/2013-M/s DhuruaTakniki SSS Ltd. vs. CCE &ST,Jamshedpur.

2. The services provided by all the three Appellant societies are similar and were provided to M/s. Heavy Engineering Corporation Limited, Ranchi ('HEC', in short) and the impugned common Order-in-Original has been passed in respect of all the three Appellant societies. Hence, all the three appeals are taken up together for decision by a common order.

3. Briefly stated facts of the case are that all the three Appellant societies during the material period executed various jobs entrusted to them in the plants of HEC, as per the Work Orders issued by HEC, on principal to principal basis. The Department claimed that the services rendered by the Appellants were in the nature of 'Manpower Recruitment or Supply Agency's services, as defined under Section 65 (68) of the Finance Act, 1994 (hereafter referred to as the 'Act', in short) read with Section 65(105) (k) ibid, and demanded service tax. The Appellants submits that as per the relevant work orders such services were not Manpower Recruitment or Supply Agency's service and hence they are not liable to pay service tax.

4. All the three appellant societies were issued two SCNs each and all the six SCNs have been adjudicated by the Ld. Commissioner, Central Excise & Service Tax, Jamshedpur, by passing the **common Order-in-Original No. 01-06/S.Tax/Commr.(JSR)/Ran/2013 dated 20-03-2012**, wherein the following demands have been confirmed.

Name	**Period**	**ST confirmed**	**Penalty imposed**
M/s. Naya Sarai SSS Ltd. **Appeal No ST/70533/2013**	2005-06 to 2009-10	Rs. 96,91,774/-	Rs.1,36,68,229/- u/s 78 Rs.9,000/-u/s 77
	2010-11	Rs. 39,76,455/-	
	Total Rs.1,36,68,229/-		
M/s Jan Jagriti SSS Ltd. **Appeal No ST/70534/2013**	2005-06 to 2009-10	Rs. 97,24,050/-	Rs.1,33,92,912/- u/s 78 Rs.9,000/-u/s 77
	2010-11	Rs. 36,68,862/-	
	Total Rs.1,33,92,912/-		
M/s DhuruaTakniki SSS Ltd. **Appeal No ST/70535/2013**	2005-06 to 2009-10	Rs. 53,47,679/-	Rs.75,59,823/- u/s 78 Rs.9,000/-u/s 77
	2010-11	Rs. 22,12,144/-	
	Total Rs.75,59,823/-		

Aggrieved against the impugned order, the Appellants have filed these appeals.

5. The Appellant submits that the Ld. Commissioner has referred to the terms and conditions of the Work Order No. 21/2007 as a specimen, which was issued by HEC to M/s. Jan Jagriti SSS Ltd. By referring to the Conditions 3, 11 and 12 of the Work Order, he has

concluded that the Appellant societies provided 'Manpower Recruitment and Supply Agencies Service' and they were liable to pay service tax with effect from 16-06-2005. He has held that the Appellant societies deployed required number of contract workers to their client i.e. HEC for performing specific work for specified period and received amount as per contract from HEC for payment of wages to the deployed workmen, which included wages to the workmen as well as CPF contribution @ 10%, Administrative charges @ 1.28%, ESI provision @ 4.75%, Safety @ 0.5% and Society Profit @ 1% of the wages of contract workmen. He has further observed that the Appellant as the society had to ensure coverage of their workmen under comprehensive insurance policy to meet the liability under Workmen Compensation Act 1923. Accordingly, he held that the Appellant societies acted as supply agencies and they fall within the definition of "Manpower Recruitment & Supply Agency" as per Section 65(68) of the Act read with Section 65(105) (k) ibid and were liable to pay Service Tax.

6. The Appellants submits that the Work Orders clearly reveals that the Appellant societies executed the jobs as the contractors by engaging the workers from their roll and it further reveals that the job was mentioned in terms of quantity and not based on number of workmen supplied or engaged. The rate was fixed per Ton basis. The agreements as per the Work Orders did not require or specify the number of workers to be employed and the number of days for which the workers would be engaged. It is for the respective Appellant societies to execute the jobs, specified in the Work Orders by deploying as many numbers of workers as per its convenience and discretion. As the Principal Company, HEC was interested only in the execution of the job entrusted to the Appellant societies at the agreed rates and also within the specified time frame. HEC as a responsible Public Sector Company, apart from making profit has the social obligation to ensure that the workers employed by the contractors in their factory are not subjected to any exploitation

and they are paid their legitimate dues which they are entitled to appropriately and also in time. The Principal Company in discharge of its social commitment and obligation has ensured that the workers, working for them, although were in the roll of the Appellant societies, are not exploited and the provisions of the Contract Labour (Regulations and Abolition) Act, 1970 are complied with. The wage bills of the workers are not only properly prepared as per Minimum Wages Act, but also paid and their CPF, ESI etc. are properly deducted and deposited to the respective authorities.

7. The Appellant submits that the Ld. Commissioner has failed to understand the scope and ambit of the Work Orders issued by HEC. The Work Orders clearly specify the description of the intermittent works to be undertaken and executed by the appellant societies. It clearly shows that the unit of work and also payment therefor on tonnage basis. The Work Orders does not specify anywhere the number of workers to be deployed by the appellant societies to execute the work awarded to them. The Work Orders only provide that the appellant societies as per the contract were under obligation to accomplish the work by deploying their own manpower. The number of workers to be deployed by them to complete the execution of the works within the specified period was as per the discretion and convenience of the contractors' societies. In this context reliance is placed on the following precedent decisions, where it has been held that execution of works by deploying manpower does not fall within the ambit of "Manpower Recruitment & Supply Agency" as defied under Section 65(68) of the Act read with Section 65(105) (k) . In view of the above, the appellant society states that the services provided by them do not fall under the definition of 'Manpower Recruitment or Supply Agency'. In support of this contention the appellant would like to place reliance on the following reported decisions:-

(i) 2016 (41) S.T.R. 806 (Bom.)-CC, CEX & ST, Aurangabad vs. Shri Samarth Sevabhavi Trust,

(ii) 2023 (73) GSTL 363 (Tri.-Chennai)-S. Selvam vs. CCE & ST, Tiruchirapally,

(iii) 2014 (36) S.T.R. 1123 (Tri.-Mumbai)-SataraSahkariSetuAudyogik OOS TodaniVahtookSociety vs CCE, Kolkhapur.

(iv) 2010 (19) S.T.R. 438 (Tri.-Bang.)-S.S. Associates vs. CCE, Bangalore,

(v) 2010 (18) S.T.R. 17 (Tri.-Bang.)-Ritesh Enterprises vs CCE, Bangalore.

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

9. Heard both sides and perused the appeal documents.

10. We observe that the issue to be decided in the present appeals is whether the Appellant societies acted as manpower supply agencies and the services rendered by them fall within the definition of "Manpower Recruitment & Supply Agency" as per Section 65(68) of the Act read with Section 65(105) (k) ibid and liable to pay Service Tax or not.

11. The definition of the term 'Manpower Recruitment or Supply Agency' is provided under Section 65(68) that read as under:-

" *"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*;"

The 'taxable service' liable for service tax is also defined under Section 65(105) (k) which is as under:-

"65(105) "taxable service" means any service provided or to be provided, -

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> *(k)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*;"

12. A plain reading of the definitions mentioned above clearly reveals in order to fall within the above definition, the activity should be for providing any service directly or indirectly in any manner for recruitment or supply of man-power temporarily or otherwise to a client. A perusal of the Work Orders issued by HEC clearly reveals that the Appellant societies executed the jobs as the contractors by engaging the workers from their roll and it further reveals that the job was mentioned in terms of quantity and not based on number of workmen supplied or engaged. The rate was fixed per Ton basis. The agreements as per the Work Orders did not require or specify the number of workers to be employed and the number of days for which the workers would be engaged. It is for the respective appellant societies to execute the jobs, specified in the Work Orders by deploying as many numbers of workers as per its convenience and discretion. The Principal Company HEC was interested only in the execution of the job entrusted to the Appellant societies at the agreed rates and also within the specified time frame. HEC as a responsible Public Sector Company, apart from making profit has the social obligation to ensure that the workers employed by the contractors in their factory are not subjected to any exploitation and they are paid their legitimate dues which they are entitled to appropriately and also in time. The Principal Company in discharge of its social commitment and obligation has ensured that the workers, working for them, although were in the roll of the

appellant societies, are not exploited and the provisions of the Contract Labour (Regulations and Abolition) Act, 1970 are complied with. The wage bills of the workers are not only properly prepared as per Minimum Wages Act, but also paid and their CPF, ESI etc. are properly deducted and deposited to the respective authorities. This does not means that the man power supplied were under the rolls of HEC. Thus, we observe that the service rendered by the Appellant would not fall within the ambit of "Manpower Recruitment & Supply Agency" as defined under Section 65(68) of the Act read with Section 65(105) (k).

13. The Appellant cited various decisions in support of their contention. In the case of, CC,CEX & ST, Aurangabad Vs Shri Samarth Sevabhavi Trust, reported in 2016(41) STR 806 (Bom), it has been held that. The relevant portion of the decision is reproduced below:

> ***5.*** *The question between the parties is whether the services would fall within the definition of "Manpower Recruitment or Supply Agency Services". The definition of this term is mentioned in clause (105)(k) r.w. Section 65(68) of the Finance Act, 1994, which read as under :-*
>
> *"(105)(k) "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"*
>
> *"65(68) "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."*
>
> ***6.*** *In view of provisions of Section 65(68) the "Manpower Recruitment or Supply Agency Services" means any person providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person, and Section 65(105)(k) defines the taxable services for providing such services. From the above definitions, it is rather clear that it envisages supply of labour which can be classified as "Manpower Recruitment or Supply Agency Services". In the case in hand, there is no supply of labour to the sugar factory concerned. The respondents have undertaken the activities of harvesting of sugarcane and transporting the same to the sugar factory for which labour is employed.*
>
> ***7.*** *Having regard to the nature of contract between the respondents and sugar factory and the scope of definitions mentioned above, it*

appears that the Appellate Tribunal has rightly come to the conclusion that the respondent's work, though provided services to the sugar factory, did not come within the mischief of the term "Manpower Recruitment or Supply Agency".

8. *This interpretation of agreement between respondents and its principal is in tune with the judgment of Supreme Court in the case of Super Poly Fab-riks Ltd. v. Commissioner of Central Excise, Punjab reported in 2008 (10) S.T.R. 545 (S.C.). Paragraph No. 8 of the said judgment can be relied upon to drag the point at home, which reads as under :-*

"8. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive."

9. *In view of the above, it is clear that no manpower has been supplied by the respondents to the sugar factory to constitute supply of manpower. This Court had an occasion to deal with the similar issue, as is involved in these appeals, in Central Excise Appeal No. 19 of 2014, and this Court by order dated 27-1-2015 [2015 (38) S.T.R. 468 (Bom.)] has dismissed the said appeal.*

14. By following the decisions cited above, we hold that the impugned order confirming the demands under Manpower Recruitment & Supply Agency service is not sustainable and hence we set aside the same. Since the demand itself is not sustainable, the question of charging interest or imposing penalty does not arise.

15. In view of the above discussion, we set aside the impugned order and allow the appeals filed by the Appellants.

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

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

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

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