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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76192 of 2014

(Arising out of Order-in-Appeal No. 693/Pat/S.Tax/Appeal/2014 dated 12.05.2014 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, 2nd Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

M/s. Kamaleswari Yadav **: Appellant**
(Proprietor: Ms. Kamaleswari Yadav)
Vill. Jagarnathpur Mal, P.O.: Lakshmipur Babhaniya,
Via: Ekchari, P.S.: Kahalgaon,
District: Bhagalpur, PIN – 813 204

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Patna Commissionerate
Central Revenue Building, Birchand Patel Path,
Patna – 800 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate for the Appellant

Shri S.K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)
HON'BLE SHRI ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO. 75791 / 2025

DATE OF HEARING / DECISION: 25.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Kamaleswari Yadav, Vill. Jagarnathpur Mal, P.O.: Lakshmipur Babhaniya, Via: Ekchari, P.S.: Kahalgaon, District: Bhagalpur, PIN – 813 204(hereinafter referred to as the "appellant") is a proprietorship concern providing service to M/s. National Thermal Power Corporation (NTPC), Kahalgaon under different letters of award. The appellant was basically a land oustee of Kahalgaon, Bihar whose land was acquired for installation of a thermal power station of NTPC and for that reason, the appellant was awarded with small contracts of service. The appellant had undertaken provision of services to M/s. NTPC, Kahalgaon during the Financial Year 2004-05 and received payments from M/s. NTPC, Kahalgaon.

2. A Show Cause Notice dated 17.02.2010 was issued to the appellant wherein it was inter alia alleged that the appellant had rendered taxable services falling under the categories of 'management, maintenance or repair service' as per Section 65(105)(zzg) of the Finance Act, 1994 and 'manpower recruitment or supply agency service' as per Section 65(105)(k) of the Finance Act, 1994. Since the appellant had not paid Service Tax under the above said categories, the Show Cause Notice demanded Service Tax amounting to Rs.1,71,039/- (inclusive of cesses) for the period from October, 2004 to December, 2007.

3. After due process, the said Notice was adjudicated by the ld. adjudicating authority confirmed the demand of Service Tax of Rs.1,71,039/- (inclusive of cesses), along with interest and imposed a penalty equal to the amount of tax demanded under Section 78 of the Act. A penalty under Section 76 of the Act, a penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994 for failure to obtain registration and a penalty of Rs.7,000/- for failure to file periodical returns were also imposed.

4. On appeal, the Ld. Commissioner (Appeals), vide the Order-in-Appeal No. 693/Pat/S.Tax/Appeal/2014 dated 12.05.2014 (hereinafter referred to as the "impugned order"), upheld the demands confirmed in the Order-in-Original.

5. Aggrieved by the confirmation of the demands, the appellant has filed the present appeal before this Tribunal.

6. The Ld. Counsel appearing on behalf of the appellant submits that the activity undertaken by them is not liable to Service Tax under the categories of 'management, maintenance or repair service' or 'manpower recruitment or supply agency service'. He contends that it is evident from the works orders received by the appellant from M/s. NTPC, Kahalgaon that they had undertaken the services along with supply of materials and accordingly, the appropriate classification of the said services would be 'works contract service', which came into the Service Tax net only with effect from 01.06.2007. Accordingly, the appellant submits that the demand of Service Tax under the category of 'management, maintenance or repair service' and 'manpower recruitment or supply agency service' confirmed in the impugned order is not sustainable.

7. On the other hand, the Ld. Authorized Representative of the Revenue submitted that the appellant has rendered the services of "Monsoon Patrolling for MGR Track, Extension of FQA Lab., work of Filling of Ash at different low lying area and widening of cess along MGR Track of railway private siding, work of stone pitching on both side slope portion of existing road from railway crossing to Ambedkar Chottal at Ogri Village and work of Pre-monsoon cleaning of drain in and around labour colony near Bhagalpur gate; for this, the appellant provided manpower which is liable to Service Tax under the category of 'manpower recruitment or supply agency service'; further, the appellant also provided the services of 'management, maintenance

or repair'. Accordingly, the Ld. Authorized Representative of the Revenue supported the impugned order confirming the demands against the appellant.

8. Heard both sides and perused the appeal records.

9. We observe that the appellant has questioned the classification of the services rendered by them. The Department has considered the said services rendered by the appellant to be classifiable under the categories of 'management, maintenance or repair service' and 'manpower recruitment or supply agency service' which are taxable under Section 65(105)(zzg) and 65(105)(k) of the Finance Act, 1994 respectively. In this regard, the appellant has contended that they have rendered the services along with materials; that they purchased the raw materials from the open market and paid VAT at the rate of 4% for the raw materials purchased. Accordingly, it is the case of the appellant that the services rendered are rightly classifiable under the category of 'works contract service' which came into the Service Tax net with effect from 01.06.2007 only. The appellant submitted that the demand in the present case pertains to the period from October 2004 to December 2007, which is prior to the introduction of 'works contract service' and thus, the services rendered by the appellant are not at all liable to Service Tax during the period under dispute.

9.1. We find that the appellant has produced various work orders received from M/s. NTPC, Kahalgaon wherein the scope of work has been clearly explained. For the sake of ready reference, the scope of the work as per Work Order No. CS: 5276/(B-7)/844 dated

17.02.2005 pertaining to "Filling of ash at different low lying area and widening of cess along MGR track of Rly." is scanned and reproduced below: -

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एनटीपीसी NTPC कहलगाँव - 27 -

एम जी आर / एफ एम/ प्रचालन एवं अनुरक्षण

Annex-1

SCOPE OF WORK: Filling of ash at different low lying area and widening of cess along MGR track of Rly.

CS: 5276/(B-7)/844, Dt.17.02.2005

1. Working Area: - Outside of plant area like loading point area; Junction Cabir (Dehri Cabin), Chagraha cabin (Belbadda Cabin) and any where along MGR track & inside of plant area like MGR workshop area . Track hopper control room; Exchange yard cabin etc.
2. Contractor has to draw the cement, reinforcement, barbed wire, structura steel from NTPC store at his own cost & as per requirement the same materials will be transported to Junction cabin, chagraha cabin, loading point etc. at his own cost as directed by EIC.
3. All consumables materials like snowcem, point, sanitary items & fittings etc to be brought inside the plant through gate No.1 vide challan & entry recorc to be handed over to EIC.
4. Old / scrap sanitary materials to be handed over to site Incharge for record purpose.

Kamleshwari Pd. Yadav
Proprietor

9.1.1. From the above, it is clear that the appellant has used materials such as cement, barbed wire, structural steel, etc., while rendering the service. Thus, it is evident that the appellant has utilized materials in the provision of the service of filling of ash at different low lying areas and widening of MGR track of railways. We find that services rendered along with materials are appropriately classifiable under the category of 'works contract service' as held by the Hon'ble Supreme Court in the case of *Commissioner of Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)].* In these circumstances, we hold that the impugned demand pertaining to the period prior to the introduction of 'works contract service', is not sustainable.

9.2. We also find that the services rendered by the appellant in respect of Monsoon Patrolling during monsoon at MG track area has been classified under the category of 'manpower recruitment or supply agency service'. For the sake of ready reference, the work order in respect of Monsoon Patrolling in terms of LOA Ref. No. KhS:092:CS:5582/302 dated 19.06.2006 is reproduced below: -

NTPC LIMITED

KAHALGAON SUPER THERMAL POWER PROJECT.

-55-

PRICE SCHEDULE FOR MANSOON PETROLLING FOR MGR TRACK FOR THE YEAR 2006.

Sl.No.	Description	Unit	Qty.	Rate	Amount
01)	Mansoon petrolling during monsoon at entire MGR track of KhSTPP (From Narayanpur gate to Farakka meeting point) and Private siding (From Maheshamunda gate to Kahalgaon meeting point) with all necessary tools, plants, safety provision for patrolling such as flags (Red & Green) petrol book, whistle etc. with engaging minimum 02 nos. patrolman per shift as per scope of work, terms and conditions and direction of Engineer-in-charge.	Shift	1476	212.00	312,912.00
	TOTAL AWARDED AMOUNT				312,912.00

(Rupees three lacs twelve thousand nine hundred twelve only).

DY.MANAGER(CONTRACTS)

Kamleshwari Pd. Yadav

Proprietor

0038206

9.2.1. From the above, we find that the appellant had hired manpower for rendering the service to themselves. The service rendered by them is thus not liable to be categorized under the category of 'manpower recruitment or supply agency service' as manpower has not been recruited to M/s. NTPC. Thus, we hold that classification of the said service under the category of 'manpower recruitment or supply agency service' to demand Service Tax in the impugned order, is not legally sustainable.

10. In view of the above, we hold that the demand of Service Tax confirmed under the categories of management, maintenance or repair service' and 'manpower recruitment or supply agency service' in the impugned order is not sustainable.

10.1. Since the demand itself is not sustainable, the question of demanding interest or imposing penalties does not arise.

11. In the result, we set aside the impugned order and allow the appeal filed by the appellant.

(Operative part of the order was pronounced in open court)

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

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Sdd