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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 76263 of 2024

(Arising out of Order-in-Appeal No. 35/HWH/ST/2024-25 dated 26.04.2024 passed by the Commissioner of C.G.S.T. and C.X., Kolkata Appeals-II, 3rd& 4th Floor, Bamboo Villa, 169, A.J.C. Bose Road, Kolkata – 700 014)

Sanjay Roy **: Appellant**
4/9, "P" Road, Belgachia,
Howrah – 711 408

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Howrah Commissionerate,
Custom House, M.S. Building, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate, for the Appellant

Shri Argho Mukherjee, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 77404 / 2025

DATE OF HEARING / DECISION: 10.09.2025

ORDER:

The present appeal has been filed against the Order-in-Appeal No. 35/HWH/ST/2024-25 dated 26.04.2024 passed by the Commissioner of C.G.S.T. and C.X., Kolkata Appeals-II, 3rd& 4th Floor, Bamboo Villa, 169, A.J.C. Bose Road, Kolkata – 700 014.

2. The facts of the case are that the appellant is engaged in the business of undertaking electrical works and carries out such works with the help of deployment of labour. The appellant reflected the amount received on account of deployment of labour in their balance sheet under the head of "labour charges". The same was also declared in the Income Tax Returns filed by them.

3. On the basis of the information furnished by the appellant in their Income Tax Returns for the period from 2015-16 to 2017-18 (up to June, 2017), the Revenue was of the view that the appellant is liable to pay Service Tax *inter alia* for the labour charges received by them.

4. Accordingly, a Show Cause Notice dated 12.04.2021 was issued, demanding Service Tax amounting to Rs.8,36,281/- (inclusive of cesses), along with interest and penalties.

5. The said Notice was adjudicated vide the Order-in-Original No. 133/AC/ST/SR/Adjn/Bally-I/22-23 dated 31.03.2023 wherein the ld. adjudicating authority has confirmed the demand of Rs.5,76,884/- and dropped the remaining portion.

5.1. Against the above order, the appellant preferred an appeal before the Ld. Commissioner of C.G.S.T. and Central Excise, Kolkata Appeals-II Commissionerate, who, by way of the impugned Order-in-Appeal dated 26.04.2024 has upheld the demand of Service Tax of Rs.5,76,884/- as confirmed in the Order-in-Original dated 31.03.2023.

5.2. Aggrieved by the confirmation of the above demand, the appellant has filed this appeal.

6. The Ld. Counsel appearing on behalf of the appellant submits that in view of Notification No. 30/2012-S.T. dated 20.06.2012, Service Tax is liable to be paid by the recipient of service in the case of manpower supply service; that the amount of Service Tax payable by the service recipient in respect of such services has been enhanced to '100%' vide Notification No. 07/2015-S.T. dated 01.03.2015. In

this connection, reliance has been placed by the appellant on the following decisions in their favour: -

- *Forward Resources Pvt. Ltd. v. Commissioner of C.Ex. & S.T., Surat-I [2023 (69) G.S.T.L. 76 (Tri. – Ahmd.)]*
- *Alert Intelligence Services Pvt. Ltd. v. Commissioner of Central Excise & C.G.S.T., Lucknow [2025 (392) E.L.T. 652 (Tri. - All.)]*

6.1. In view of the above, the Ld. Counsel for the appellant submits that the appellant herein cannot be made liable to pay Service Tax in respect of the charges received for supply of labour. Accordingly, it is prayed that the demand confirmed against the appellant in the impugned order be set aside.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

8. Heard both sides and perused the appeal records.

9. It is a fact that during the period under dispute, the appellant has supplied labour and received payment, which is reflected in their Balance Sheet under the head of 'labour charges' and in the Income Tax Returns filed by them. On the basis of the above information furnished in the Income Tax Returns, the lower authorities have confirmed the impugned demand of Service Tax against the appellant.

9.1. In the present case, the appellant has contended that the services rendered by them are liable to be classified under the category of 'manpower recruitment or supply agency service'. I find that the ld. adjudicating authority has not classified the said services under any particular category of service.

However, from the evidences available on record, I find that the appellant has supplied labour, which is liable to be classified as 'manpower recruitment or supply agency service'.

9.2. Notification No. 30/2012-S.T. dated 20.06.2012 envisages that the Service Tax liability in respect of 'manpower supply service' is cast upon the recipient of service. Initially, the percentage of tax liability was in the ratio of 25:75 between the service provider and service recipient. However, later on, by way of Notification No. 07/2015-S.T. dated 01.03.2015, the liability has been enhanced to 100% at the hands of the service recipient. For the sake of ready reference, the relevant portions of the aforesaid Notifications are reproduced below: -

- **Notification No. 30/2012-S.T., dated 20-6-2012**

  ....

  (II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	***Description of a service***	***Percentage of service tax payable by the person providing service***	***Percentage of service tax payable by the person receiving the service***
8.	*in respect of services provided or agreed to be provided by way of supply of manpower for any purpose*	*25%*	*75 %*

- **Notification No. 7/2015-S.T., dated 1-3-2015**

.....

(B) in the Table,-

(i) in column (4), for the column heading, the following column heading shall be substituted with effect from 1st March, 2015, namely :-

"Percentage of service tax payable by any person liable for paying service tax other than the service provider";

(ii) .....

(iii) ***against Sl. No. 8, in column (3) and column (4), for the existing entries, the entries "Nil" and "100%" shall respectively be substituted;***

(iv) ....

2. Save as otherwise provided, this notification shall come into force on the 1st day of April, 2015.

(Emphasis supplied)

9.3. From a perusal of the said Notifications, I find that by virtue of Notification No. 30/2012, as amended vide Notification No. 07/2015 ibid., the 100% liability to Service Tax in respect of 'manpower supply service' for the period under dispute i.e., 2015-16 to 2017-18, is on the service recipient. Thus, I agree with the submission of the appellant that the demand of Service Tax from the appellant is not sustainable.

10. In support of the above view, it would also be relevant to refer to the decision of the Tribunal, Ahmedabad in the case of *M/s. Forward Resources Pvt. Ltd. v. Commissioner of C.Ex. & S.T., Surat-I [2023 (69) G.S.T.L. 76 (Tri. – Ahmd.)],* wherein under

similar facts and circumstances, it has been held as under: -

> *"5.6 We also find that in the present matter for confirmation of service tax demand Ld. Commissioner also relies upon the TDS/26AS Statement. The said statement under provisions of Income-tax Act, 1961 is an Annual Consolidated tax statement. Income-tax and service tax are two different/separate and independent Acts and their provisions operating in two different fields. Therefore by relying the 26AS/TDS Statement under the Service Tax Act, demand of service tax cannot be made. We also find the support from the decision of Ved Security v. CCE, Ranchi-III - 2019 (6) TMI 383 CESTAT, Kolkata wherein it was held that the value of taxable services cannot be arrived at merely on the basis of the TDS statements filed by the clients inasmuch as even if the payments are not made by the client, the expenditure are booked based on which the Form 26AS is filed, which cannot be considered as value of taxable services for the purpose of demand of Service tax."*

11. In view of the above, I hold that the demand of Service Tax from the appellant as confirmed in the impugned order is not sustainable and consequently, the same is set aside.

12. In the result, the appeal is allowed, with consequential relief, if any, as per law.

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

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

Sdd