

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 87195 of 2015

(Arising out of Order-in-Original No. PUN-EXCUS-002-PR.COM-008-1516 dated 17-07-2015 passed by the Principal Commissioner, Central Excise, Pune-1, Pune)

MANKESHWAR ENTERPRISES

.....Appellant

Flat No. 11, Building No. 7-C
Agrasen Nagar
Dapodi, Pune – 411 012.

VERSUS

**Commissioner of Central Excise
Pune-II**

.....Respondent

ICE House, 41-A, Sasson Road
Opposite Wadia College
Pune – 411 001.

APPEARANCE:

Shri Bharat Raichandani, Advocate for the Appellant
Shri M. Suresh, Jt. Commissioner, Authorised Representative for the
Respondent

**CORAM: HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

FINAL ORDER NO. A/87397/2019

Date of Hearing: 07-10-2019

Date of Decision: 07-10-2019

DR. SUVENDU KUMAR PATI

Confirmation of duty demand of Service Tax amounting to Rs. 91,83,978/- along with interest equivalent penalty under Section 78 and penalty of Rs. 6,000/- under Section 70 of the Act read with Rule 7 of Service Tax Rules and Rs. 200/- per day for failure to pay Service Tax from 16-06-2005 to 31-03-2008 etc. imposed on the appellant on the ground that the service provided by the appellant is covered under "Manpower Recruitment and Supply Agency Services" and not "cleaning services" as claimed by it, is assailed by the appellant before this Forum in the second round of litigation.

2. Factual backdrop of the case, in a nut-shell, is that appellant was engaged in activities of providing services to various educational Institutions belonging to D.Y. Patil group. Intelligence gathered by respondent department indicated that appellant was engaged in providing manpower supply services which was become taxable w.e.f. 16-6-2005. Appellant was put to notice for non-payment of Service Tax during the financial year 2005-2008. Through adjudication process duty demand, as indicated in the proceeding para along with interest and penalties were confirmed. Appellant unsuccessfully attempt before the Commissioner (Appeals) had brought the dispute to the CESTAT and vide order No. A/571/15/STB dated 11-03-2015, CESTAT remanded the matter for re-adjudication with observation to ensure compliance of the principles of natural justice which was observed to have been violated in the earlier round of litigation. This appeal arose from the subsequent dismissal of appeal by the Principal Commissioner, Central Excise, Pune-1, Pune upholding adjudication order that upheld the duty demand.

3. In the memo of appeal and during course of hearing of appeal, Learned Counsel for appellant Mr Bharat Raichandani submitted that going by Annexure- A annexed to the agreement dated 27-7-2005 and the terms of the agreement, it would clearly reveal that appellant was providing cleaning services through the Manpower engaged by it, who were under the administrative and supervisory control of the appellant and the same cannot be treated as Manpower, recruitment or Supply Services. In placing reliance on the judicial decision reported in *2017 (3) G.S.T.L 515 (Tri. Mum.) in the case of Bhagyashree Enterprises v. C.C. Pune* which had followed the decision of Bangalore Tribunal in the case of *Ritesh Enterprises and Divya Enterprises reported in 2010 (18) S.T.R. 17 and 2010 (19) S.T.R. 2017* respectively he argued that there was no whisper of supply of manpower by the appellant and the work is in the nature of cleaning services provided by appellant to D.Y. Patil Hospital and Research Institute, which, as per Section 65 and Section 105 of the F.A. 1994, is not a taxable service since provided to educational Institution which is neither a commercial or industrial establishment. With reference to the same case laws he further argued that there is no mention in the agreement about the specific number of employees to be engaged who all worked for the appellant and the work was supervised by the appellant itself for which the contract cannot be termed as a contract for supply of manpower that would make the appellant liable to pay service tax on manpower supply services. He pleaded that the order passed by the Commissioner (Appeals) is

required to be set aside as no manpower supply service was provided by the appellant.

4. Learned Authorised Representative for the respondent department, in response to such submissions, argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and submitted that contract between appellant and institution M/s. D.Y. Patil Pratishthan is loud and clear that the activities were manpower supply services even though such contract copy was produced for the first time before the CESTAT in the first round of litigation and not during the adjudication process. He further submitted that Learned Commissioner (Appeals) had clearly reflected in his order that the nature of work undertaken by the appellant was nothing but manpower supply service covering a bundle of services including maintenance, gardening, housekeeping etc. which were also specified in Annexure-A of the agreement and appellant had collected labour charges as well as service charges separately as entered in the ledger account for which interference in the order passed by the Commissioner (Appeals) is uncalled for.

5. We have heard submissions from both the sides and perused the case record. It is a well settled principle that contract executed between the parties would determine the nature of work and there is no whisper of supply of manpower in the said contract dated 27-7-2005 and 1-6-2006. It was agreed that appellant was to provide service of maintenance, gardening, housekeeping and those specified in

Annexure-A. A cursory reading of the entire contract would reveal that Annexure-A provided the detail nature of work to be carried out and its gist remain confined to cleaning work of various types in the educational Institute of D.Y. Patil Pratishthan which are also listed in Annexure-A. Therefore going by the submissions of the appellant, as per statutory provision contained in the definition of cleaning activity undertaken in an educational Institution in a non-commercial and non-industrial building or premises is not a taxable service. Further, duty demand is made by the respondent department primarily on the ground that appellant's ledger book indicated receipt of two types of payment namely payment towards labour charges and payment towards service charges but no invoice was inspected or verified to substantiate that the amount was collected in the same form/manner which was attributed by the lower authorities to the failure on the part of appellant to produce such document though during hearing of appeal in the second ground of litigation, appellant had voluntarily produced some sample invoice copies. Therefore primarily the issue is not concerning bundle of services provided by the appellant which is also found absent in the show cause notice but the same is concerned with provision for manpower engagement to provide cleaning service or else supply of manpower service. Going by the work contract, it is apparently clear that appellant was providing cleaning service through manpower engaged under its control and supervision and not supplied manpower to the service receiver to undertake cleaning service under the control and supervision of the service receiver. Therefore, in view of the consistent decision of this Tribunal including the one reported in 2017

(3) G.S.T.L 515 (Tri. Mumbai) Bhagyashree Enterprises v. Commercial of Central Excise, Pune, the following order is passed.

ORDER

6. The appeal is allowed and the order No. PUN-EXCUS-002-PR.COM-008-1516 dated 17-07-2015 passed by the Principal Commissioner, Central Excise, Pune-1, Pune is hereby set aside.

(Pronounced in open court)

(DR. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

(C J MATHEW)
MEMBER (TECHNICAL)

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