IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. ST/08/11

(Arising out of Order-in-Original No. 08/ST/2010/C dated 14.07.2010 passed by Commissioner of Central Excise & Customs, Nagpur)

For approval and signature:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Hon'ble Mr. Raju, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

Vidarbha Iron & Steel Co. Ltd. Appellant

Vs.

Commissioner of Central Excise, Nagpur Respondent

Appearance:

Shri L. Badrinarayanan, Advocate for appellant

Shri J.S. Mishra, Addl. Commissioner (AR) for respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 08.07.2015

Date of Decision: 08.07.2015

ORDER NO.

Per: M.V. Ravindran

This appeal is directed against order-in-original number 08/ST/2010/C dated 14 July 2010.

2. The relevant facts that arise for consideration are that appellant herein was an industry, primarily engaged in the business of manufacture of steel ingots. Due to slump in the steel industry the appellant could not keep the operation continued due to which the creditors filed a petition for winding up of the company. As a compromise scheme, Honourable High Court of Bombay approved the said compromise scheme wherein the factory along with the machinery of the appellant was to be given under leave and licence to one company namely Ferro Alloys Corporation Ltd. (FACOR) initially for a period of 5 years. for the survival of the appellant the said agreement was renewed from time to time. During the scrutiny of the records by authorities it was noticed that appellant did not discharge service tax liability on an amount received for the salary of employees from FACOR. Accordingly, show cause notice was issued demanding the tax on certain amount along with interest and penalties were sought to be imposed. Appellant contested the show cause notice on merits as well as on limitation. Adjudicating authority after following the due process of law rejected contentions raised by the appellant and confirmed the demand with interest and also imposed penalties.

3. Learned Counsel after taking us through the entire records submit that appellant had no commercial interest in the salaries paid to their employees by the said FACOR and the

arrangement was as per the direction of the Hon'ble High Court. It is his submission that the issue is covered by the judgements of the Honourable High Court of Gujarat in the case of Arvind Mills Ltd., v. CST 2013-TIOL-1455-T-AMD and the judgement of Honourable High Court of Allahabad in the case of Computer sciences Corporation India Pvt Ltd.,v. CST, Noida - 2014-TIOL-434-CESTAT-DEL. He would produce the copies of the said judgements.

4. Learned Departmental Representative on the other side would submit that as per clause 8 of the leave and licence agreement, the employees of the appellant were to be used by FACOR during the period of leave and licence. He would submit that additional staff if any, were also to be appointed by the appellant on their rolls. This would indicate that appellant was supplying manpower to the FACOR and were paid the amount of salaries and other dues. He would reiterate the findings of adjudicating authority. He would rely on the judgement of this Tribunal in the case of Daurala Organics - 2009 (14) STR 620 (Tri. - Del.) for the proposition that salaries paid towards the deputation of staff to sister concern is taxable under manpower recruitment and supply agency service.

5. We have considered the submissions made by both sides and perused the records.

6. The issue involved in this case is whether the amounts received by the appellant towards salary and other government dues are liable to service tax or otherwise under the category of manpower recruitment and supply agency service. It is undisputed that the amount received by the appellant is nothing but the reimbursement of salaries and other dues of the employees, who were on the muster role of appellant, as per the compromise scheme approved by High Court amounts as salaries paid by FACOR to appellant and to make payment to the employees.

6.1 The adjudicating authority has confirmed the demands on the ground that the agreement provides for payment of salaries and wages to the employees by FACOR to appellant for further payments, the role of the appellant as per compromise scheme was to supply staff, that they are discharging the tax liability on an amount received as a rent under the same agreement cannot take a stand that amount received towards the salaries is not taxable.

6.2 In our considered view, the stand of the adjudicating authority holding that the service tax liability arises is incorrect for more than one reason. Firstly, we find that clause 8

of the leave and licence agreement specifically states that the employees will be on the muster roll of the appellant and salaries to be paid by the appellant on receipt from FACOR. It is undisputed that the appellant had received only the actual dues towards the employees. Secondly, the arrangement of continuation of the services of the employees by FACOR was an arrangement approved by the Hon'ble High Court of the compromise scheme in order not to deprive the employees of their job and lively hood. Thirdly, there is nothing on record to show that the appellant functioned as a commercial concern engaged in supply of manpower to FACOR during the material period. In our view, the arrangement of the employees of appellant continuing the job and getting paid will be akin to the deputation of personnel to the FACOR. This issue is now squarely covered by the judgement of Honourable High Court of Gujarat in the case of Arvind Mills (supra). The entire judgement is reproduced.

1. Revenue is in appeal against the judgment of the Customs Excise & Service Tax Appellate Tribunal (the Tribunal for short) dated 26.7.2013 raising following questions for our consideration:-

(a) Whether in the fact and the circumstances of the case the Hon□ble CESTAT has erred in applying the ratio of a case decided by CESTAT Delhi in case of Pramount communication Ltd. reported in - (2013-TIOL-37-CESTAT-DEL).: 2013 (29) STR 317 without narrating and applying the same to the facts of the present case?

(b) Whether in the facts and the circumstances the activity of the Respondent is covered under the definition of Manpower Recruitment Agency as contemplated in C168 of S.65 of the Finance Act 1994 R/w. C1 105 (k), thus the respondent is liable for the Service Tax?

(c) Whether in the facts and circumstances of the case whether the service rendered by the respondent is a taxable activity attracting Service Tax?

2. Issue in brief is whether the respondent is a Manpower Supply Recruitment Agency. Definition of the said term applicable at the relevant time reads as under:-

Manpower recruitment or supply agency means any commercial concern engaged in providing any service directly or indirectly, in any manner for recruitment or supply of manpower, temporary or otherwise to a client.

3. Brief facts are that respondent had a composite textile mill and was engaged in manufacturing of fabrics and ready-made garments. In order to reduce its cost the respondent deputed some of its employees to its group company, who were also engaged in similar businesses. Reason for such deputation was also on certain occasions stipulated work arising for a limited period. The Tribunal recorded that there was no allegation of finding that the respondent had deputed employees to any other concerns outside its own subsidiary companies. The Tribunal also recorded that undisputedly the employees deputed do not work exclusively under the direction or supervision of the subsidiary company and

upon completion of the work they were repatriated to the respondent company. On such basis, the Tribunal held that the respondent cannot be said to be Manpower Supply Recruitment Agency and, therefore, not exigible to service tax.

4. Counsel for the Revenue vehemently contended that the definition of Manpower Supply Recruitment Agency is very wide and would include range of activities of supply of manpower either temporarily or permanently. He submitted that sizable manpower was required for the respondent from the group companies for deputation of the staff. He drew our attention to the amendment of such definition to contend that after the amendment, the definition was widened.

5. It is true that in the present form, the definition of Manpower Supply Recruitment Agency is wide and would cover within its sweep range of activities provided therein. However, in the present case, such definition would not cover the activity of the respondent as rightly held by the Tribunal. To recall, the respondent in order to reduce his cost of manufacturing, deputed some of its staff to its subsidiaries or group companies for stipulated work or limited period. All throughout the control and supervision remained with the respondent. As pointed out by the respondent, company is not in the business of providing recruitment or supply of manpower. Actual cost incurred by the company in terms of salary, remuneration and perquisites is only reimbursed by the group companies. There is no element of profit or finance benefit. The subsidiary companies cannot be said to be their clients. Deputation of the employees was only for and in the interest of the company. There was no relation of agency and client. It was pointed out that the employee deputed did not exclusively work under the direction of supervision or control of subsidiary company. All throughout he would be under the continuous control and direction of the company.

6. We have to examine the definition of Manpower Supply Recruitment Agency in background of such undisputable facts. The definition though provides that Manpower Recruitment Supply Agency means any commercial concern engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client, in the present case, the respondent cannot be said to be a commercial concern engaged in providing such specified services to a client. It is true that the definition is wide and would include any such activity where it is carried out either directly or indirectly supplying recruitment or manpower temporarily or otherwise. However, fundamentally recruitment of the agency being a commercial concern engaged in providing any such service to client would have to be satisfied. In the present case, facts are to the contrary.

7. In the result, no question of law arises. Tax Appeal is dismissed.

6.3 We also find that High Court of Allahabad in the case of computer sciences Corporation (supra) in paragraph number 7 and 8 held as under.

7. In order to be a taxable service within the meaning of Section 65 (105) (K), the service must meet the following requirements: (i) there has to be a service provided or to be provided to any person;

(ii) the service has to be provided by a manpower recruitment or supply agency;

And

(iii) the service must be provided in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner.

8. In the present case, the Commissioner clearly missed the requirement that the service which is provided or to be provided, must be by a manpower recruitment or supply agency. Moreover, such a service has to be in relation to the supply of manpower. The assessee obtained from its group companies directly or by transfer of the employees, the services of expatriate employees. The assessee paid the salaries of the employees in India, deducted tax and contributed to statutory social security benefits such as provident fund. The assessee was also required to remit contributions, which had to be paid towards social security and other benefits that were payable to the account of the employees under the laws of the foreign jurisdiction. There was no basis whatsoever to hold that in such a transaction, a taxable service involving the recruitment or supply of manpower was provided by a manpower recruitment or supply agency, Unless the critical requirements of clause (k) of Section 65(105) are fulfilled, the element of taxability would not arise.

6.4 It can be seen from the above reproduced ratio; that the amounts received by the appellant in this case as actual salaries cannot be considered as an amount received for rendering of manpower recruitment and supply agency services. As the ratio which has been laid down by the Honourable High Court squarely covers the issue, the decision of the Tribunal in the case of Daurala Organics (supra) will not carry the case of the revenue any further.

7. In view of the foregoing, in the facts and circumstances of this case, relying on authoritative judicial pronouncements we hold that the impugned order is unsustainable and liable to be set aside and we do so.

8. The impugned order is set aside and appeal is allowed.

(Dictated in Court)

(Raju)

Member (Technical)

(M.V. Ravindran)

Member (Judicial)