

2012 (25) S.T.R. 471 (Tri. - Ahmd.)

IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD

[COURT NO. II]

Shri B.S.V. Murthy, Member (T)

RAMESHCHANDRA C. PATEL

Versus

COMMR. OF SERVICE TAX, AHMEDABAD

Final Order No. A/2121/2011-WZB/AHD, dated 25-11-2011 in Appeal No. ST/610/2010

REPRESENTED BY : Shri Vipul Khandhar, C.A., for the Appellant.

Shri R.S. Srova, AR, for the Respondent.

[Order]. - Appellant is a labour contractor and was doing conversion of tin plate to containers or granules to jars/pet bottles in the factory premises of M/s. N.K. Proteins Ltd. (NKPL). The machinery, space and all other facilities were provided by NKPL. The appellant was required to take the required labour to the factory of NKPL and was required to undertake the conversion of tin plate to containers or granules to jars/pet bottles depending upon the requirement of NKPL. According to the agreement between NKPL and the agreement, the appellant was to pay specific amounts determined on the basis of number of containers/jars/pet bottles produced by the appellant. Proceedings were initiated against the appellant on the ground that the activity undertaken by the appellant amounts to providing manpower recruitment or supply agency service which has resulted in confirmation of demand for service tax of Rs. 3,93,905/- with interest and penalties under various sections of Finance Act, 1994.

2. The learned Chartered Accountant on behalf of the appellants submitted that according to the contract, the appellant was doing only contract manufacturing work and there was no question of any labour supply or manpower supply or manpower recruitment agency. Nowhere in the agreement there is any mention with regard to manpower supply or recruitment and the agreement specifically talks about the products to be manufactured and payments to be made. He also submits that appellant is also registered with the labour department as a contract manufacturer and not as a labour supply or manpower supply or manpower recruitment agency. Therefore he submits that the activity undertaken by the appellant is not liable to service tax at all. The learned A.R. submits that the appellant was supplying manpower for conversion of raw materials to finished products and in view of the fact that plant & machinery, space and all other facilities are provided by the principal, the activity undertaken by the appellant is nothing but supply of manpower only and therefore the department is justified in demanding the service tax with interest and imposing penalty.

3. I have considered the submissions made by both the sides. Before I proceed further, it would be appropriate to have a look at the definition of manpower recruitment or supply service. According to Section 105(k) of Finance Act, 1994, manpower recruitment or supply agency service is a taxable service provided by a manpower recruitment or supply agency to any person in relation to the recruitment or supply of manpower, temporarily or otherwise in any manner, 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.

4. From the above it can be seen that there are two requirements for determining whether a service is taxable service under the category of manpower recruitment or supply agency. First of all, it should be provided by a manpower recruitment or supply agency and secondly it should be in relation to manpower supply or recruitment. In this case, whether it is in the agreement entered into between the two parties or in the activity undertaken by the appellant which is contract manufacturing, looked into, it is seen that nowhere the question of supply of manpower or recruitment arises. In fact the agreement is totally silent as regards the manpower. It does not have any provision relating to the number of men or labour to be used or the manner in which they have to be used or the quantum of payment to be made to them etc. The department has totally failed to show in which manner the service provided by the appellant can be categorized under manpower recruitment or supply. In the Order-in-Original, the adjudicating authority proceeded on the ground that there was no challenge to the liability of tax at all since the appellant had deposited the amount during investigation. Commissioner (Appeals) in her order simply stated that she agreed with the view of the adjudicating authority and went on to say that appellants had wilfully suppressed the fact of service and appellants failed to pay service tax. Both the authorities have not at all discussed how the service provided by the appellant amounts to service of manpower recruitment or supply. After considering the records, submissions and the orders passed by the lower authorities, I am unable to find any ground on which the appellant can be held liable to service tax on the activity undertaken by them. In the result appellant succeeds and the appeal is allowed with consequential relief to the appellant.

(Dictated & Pronounced in Court)
