

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Dear Professional Colleague,

## Work carried out on lump sum basis does not falls under supply of manpower services

We are sharing with you an important judgement of the Hon'ble CESTAT in the case of **M/s. Shri Bileshwar Khand Udyog Sahakari Mandali Limited Vs. CCE [(2013) 36 Taxmann.com 8 (Ahmedabad - CESTAT)]** on the following issue:

### Issue:

Whether work carried out on lump sum basis as a contractor, exigible to Service Tax under the Supply of Manpower Services?

### Facts & Background:

M/s. Shri Bileshwar Khand Udyog Sahakari Mandali Limited ("**the Appellant**" or "**the Co-operative Society**") is a sugar co-operative society of farmers.

The farmers of the area, after cultivating the crop of sugarcane, are supplying the said sugarcane to the Appellant's factory for producing sugar. Further the Appellant **pays the farmer, a specified amount as per metric tonne for the cost of sugarcane procured by them.**

The farmers were facing difficulty in arranging the labourer to cut the sugarcane crop, load the same into the trailer, unload it and put the same in sugar factory and accordingly had approached the Appellant for solving their problem. Since the farmers were facing difficulty in arranging the labourers to carry out the above work, the Co-operative Society on request of the farmers had got in touch with various labourers to cut sugarcane crop, load same into trailer, unload it and put it in its sugar factory.

The Appellant was paying price for purchase of sugarcane after deducting Rs. 300 per MT for work done by it i.e. charge of the labours paid by the Co-operative Society.

The Department argued that Rs. 300 per MT was sum (consideration) towards manpower supply agency services provided by the Appellant to farmers.

### **The Appellant contended that –**

- The Appellant are not supplying any labour. Further the Co-operative Society is charging an amount **as lump sum amount from the farmers.**
- An identical issue has been decided by the Bench in the case of **K. Damodarareddy Vs.CCE [2010] 25 STT 69** {" **K. Damodarareddy Case**"} wherein it has been held that when there are multiple services included and the charges are lump sum charges, it could not be covered under the category of man power recruitment or supply agency services. Also the same view has been reiterated by the Tribunal in the case of **Ritesh Enterprises Vs. CCE [(2010) 24 STT 283]** {"**Ritesh Enterprises Case**"}.

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- The farmers of the area are the members of the Appellant's sugar factory and hence they cannot be identified separately, which would result in the proposition that the Appellant is rendering the services to himself and the said services cannot be considered as services rendered to his clients.

## **Held:**

The Hon'ble CESTAT **granted stay to the Appellant** and all the applications for waiver of pre-deposit of the amounts involved are allowed and recovery thereof stayed till the disposal of appeals. In the instant case, the Hon'ble CESTAT observed the following:

- The Appellant has arranged for cutting of sugarcane crop from the field of farmers who are their members.
- As evident from invoices the Appellant is charging lump sum amount of Rs.300/- per metric tonne for the help provided by them to farmers for cutting, loading and unloading of sugarcane from the field of farmers.
- Relied on decision in case of ***K. Damodarareddy Case*** and ***Ritesh Enterprises Case***. In both these cases, the issue involved was identical except that bagging of cement, loading and unloading of the cement exist instead of sugarcane.

For your reference brief of the above relied on cases are as under:

### **K. Damodarareddy Case:**

Under a contract with a cement company, the Assessee carried out activities of loading of cement bags into closed wagons, cleaning, sealing and riveting, etc., wagon door complete spillage recovery of total quantity, drawing of bags to stenciling floor, and wagon door opening/wagon cleaning - It was compensated for different items of work at separate rates prescribed in contract. The Assessee did not supply manpower or charge for labour provided on man-day basis or man-hour basis and carried out work as a **contractor employing its own labour**. The CESTAT held the Assessee carried out the work as a contractor employing its own labour is not classifiable as 'Manpower recruitment or supply agency'.

### **Ritesh Enterprises Case:**

The Assessee entered into a contract with different part for lump sum cargo handling for granite export and also for the purpose of rendering services of handling of bulk goods, bagging of fertilizers, feeding of bags for filling of fertilizers, stacking, destacking, etc. The Adjudicating Authority concluded that the above services rendered by the Assessee would fall under the category of 'Manpower recruitment or supply agency' in terms of Section 65(68) of the Finance Act,1994 ("**the Finance Act**") while the Assessee submitted that the contract in question was a works contract and not for supply of labour.

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The Hon'ble CESTAT held that the Assessee were intimated about the berthing of vessels at various ports and they were given a lump sum contract for cargo handling, i.e., loading and unloading of the goods into the said vessels. Further, the **invoices** issued by the Assessee showed that they were raised for 'cargo handling for granite export and loading of Indian rough granite blocks' for a lump sum amount, charged per Metric Tonne.

The contract which had been given to the Assessee was for the execution of the work of loading, unloading, bagging, stacking, destacking, etc. Further, in the entire records, there was no whisper of supply of manpower to the concerned parties or any other recipient of the services. It was clear **from the contracts and the invoices issued by the Assessee that the entire essence of the contract was an execution of work as understood by the Assessee and the recipient of the services**. Further the entire tenure of the agreement and the purchase **orders issued by the service recipient clearly indicated the execution of a lump sum work. That lump sum work would not fall under the category of providing of service of 'supply of manpower temporarily or otherwise either directly or indirectly'**.

## **Conclusion:**

**In view of above case laws, it can be concluded that no service tax is payable on work carried out on lump sum basis does not amount to manpower supply services.**

## **POINTS TO REMEMBER:**

- **Prior to July 1, 2012**, Manpower Recruitment or Supply Agency was exigible to service tax as being a taxable service defined under Section 65(68) and under Section 65(105)(k) of the Finance Act respectively, which are reproduced as under:

*“Section 65(68) of the Finance Act with effect from May 16, 2008 provides as under:  
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.*

*Section 65(105)(k) of the Finance Act with effect from May 16, 2008 provides as under:*

*Taxable service means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;*

*Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate”*

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- **With effect from July 1, 2012**, Section 65(68) and under Section 65(105)(k) rescinded and new definition of supply of Manpower inserted under **Rule 2(1) (g) of the Service Tax Rules, 1994 (“the STR”)**, which is reproduced here in below:

*“Supply of Manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.”*

## **Difference between Old definition and New Definition of Supply of Manpower:**

There is specific departure of Manpower recruitment, which is not included in the new definition and any supply of manpower, temporarily or otherwise, in any manner was covered in erstwhile definition where as new definition is very specific i.e. Supply of Manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.

In view of above definition, where supplied manpowers are working under supervision or control of service recipient then it will fall under the ambit of “Supply of manpower” and thus exigible to service tax under the stated category.

## **Supply of Manpower is one of the categories under Partial Reverse charge w.e.f 1-7-2012:**

In certain specified circumstances, both service provider and service recipient would be liable to pay service tax in specified percentage under partial reverse mechanism in terms of **Rule 2(1)(d) of the STR read with Notification No. 30/2012-ST dated June 20, 2012 (“the Notification”)** as under:-

S.No	Description of a service	Percentage of service tax payable by the service provider	Percentage of service tax payable by the service recipient
8	<b><u>Supply of Manpower Services</u></b> for any purpose provided or agreed to be provided by an any individual, HUF or partnership firm, whether registered or not, including AOP, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory	25%	75 %

*Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards

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***Released a Book - "Guide to Service Tax Voluntary Compliance Encouragement Scheme, 2013", authored by Bimal Jain, FCA, FCS, LLB***

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