

Classification of service depends on essential character of service

The Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad (“**the Tribunal**”) in the case of *M/s. Talala Taluka Sahakari Khand Udyog Mandali Limited v. Commissioner of Central Excise and Service Tax [Service Tax Appeal No. 10372 of 2012—DB] dated December 06, 2022*, held the harvesting and transportation charges deducted were not to be considered as charges for independent supply. Hence, not liable for service tax.

Facts:

M/s. Talala Taluka Sahakari Khand Udyog Mandali Limited (“**the Appellant**”) is engaged in the business of harvesting and transporting agricultural produce from farmer’s farm to processing mills. The Appellant entered into an agreement with sugar mills for harvesting and transporting sugarcane from farmers farm to sugar mills. As per the contract the sugar mills were paying the Appellant on the basis of per-ton of sugarcane supplied to sugar mills. The Appellant was paying the farmers on the basis of per-ton of sugarcane harvested from framer’s farms after deducting harvesting and transportation charges.

The Commissioner of Central Excise and Service Tax (“**the Respondent**”) vide an Order in Original dated December 19, 2012, (“**the OIO**”) confirmed a demand of service tax on the amount deducted by the Appellant for harvesting and transportation expense.

As per the Respondent, the harvesting and transportation expenses were liable to service tax under the category of ‘Manpower Recruiting and Supply Agency Services’ as the same involves manpower.

The Appellant contended that there was no supply of manpower for harvesting and transportation, as the farmers were not concerned with number of manpower deployed for harvesting and transportation moreover, the payment to farmers were made on the basis of sugarcane harvested. Therefore, there was no supply of manpower.

Aggrieved by the OIO passed by the Respondent the Appellant filed appeal before the Tribunal.

Issue:

Whether the manpower used for fulfilling the contractual obligation should be considered as an independent supply of 'Manpower Recruiting and Supply Agency Services'?

Held:

The Tribunal held that:

- It was not under dispute that the Appellant had no agreement with farmers for supplying manpower for harvesting and transportation of sugarcane. As the farmer was not concerned with number of manpower deployed for harvesting and transportation as the payment made by farmer was decided on the weight of harvest transported. Therefore, it can be said that the agreement was job specific and not manpower specific.
- As per Supreme Court judgment in the case of ***Super Poly Fabriks Ltd. v. Commissioner of Central Excise, Punjab [2008(10) S.T.R. 545 (S.C)]***, the classification of service should be ascertained only from the terms and conditions of the agreement and neither from nomenclature of the document nor by focusing on a particular activity undertaken by the party to the agreement.
- Since the consideration was received on the quantity of sugarcane delivered, the essential character of the service was of harvesting and transportation of sugarcane.

The Tribunal allowed the appeal and held that the demand raised in OIO under Manpower Recruitment and Supply Agency Services did not stand.

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