

(2022) 02 SC CK 0066

Supreme Court Of India

Case No: Civil Appeal No. 313 Of 2021

Adiraj Manpower Services Pvt.
Ltd.

APPELLANT

Vs

Commissioner Of Central Excise
Pune-II

RESPONDENT

Date of Decision: Feb. 18, 2022

Acts Referred:

- Service Tax Rules, 1994 - Rule 7
- Contract Labour (Regulation And Abolition) Act, 1970 - Section 2(c), 21(4)
- Finance Act, 1994 - Section 66B, 70(1)

Citation: (2022) 2 JT 277 : (2022) 3 Scale 578

Hon'ble Judges: Dr. Dhananjaya Y Chandrachud, J; Surya Kant, J

Bench: Division Bench

Advocate: Tarun Gulati, Rohit Rathi, Rahul Totala, Kumar Sambhav, Sameer Shrivastava
Alka Agrawal, Mukesh Kumar Maroria

Final Decision: Dismissed

Judgement

....

Dr. Dhananjaya Y Chandrachud, J"....

A Facts,,,

B Submissions,,,

C Analysis,,,

1 Appeal admitted....

A Facts,,,

2 This appeal arises from a judgment dated 15 July 2019 of the Customs, Excise & Service Tax Appellate Tribunal [â€œCESTATâ€].",,,,

3 The appellant obtained service tax registration under the category of â€˜Manpower Recruitment or Supply Agency Serviceâ€™. On 1 January,,,

2012, the appellant entered into an agreement with Semco Electric Pvt. Ltd. (later known as Sigma Electric Manufacturing Corporation Pvt. Ltd.",,,

[â€œSigmaâ€]) and was required to provide personnel for activities such as felting, material handling, pouring and supply of material to furnace.",,,

Similarly, on 1 January 2013 and 1 January 2014, fresh agreements were entered into between the appellant and Sigma.",,,

4 On 26 September 2014, a notice to show cause was issued by the Commissioner of the erstwhile Pune-I Central Excise Commissionerate",,,

demanding service tax along with interest and with a proposed penalty of Rs. 10,50,23,672. The allegations in the show cause notice were that:",,,

(i) The appellant had failed to pay their service tax dues on or before the due date for the period from April 2012 to March 2014;,,,

(ii) The appellant had failed to assess and discharge service tax liability on the service value in accordance with their sales ledgers relating to Sigma,,,

for the period from September 2012 to March 2014 regarding the supply of manpower;,,,

(iii) The appellant had suppressed the facts and made a misrepresentation by filing incorrect ST-3 returns for the above period and did not declare the,,,

true and correct taxable value and service tax thereon; and,,,

(iv) The appellant had filed ST-3 returns for the period between April 2013 to September 2013 after the due date as stipulated under Section 70(1) of,,,

the Finance Act 1994 and Rule 7 of the Service Tax Rules 1994.",,,

5 The allegations in the show cause notice were based on material collected during the course of an investigation by the Department, indicating that:",,,

(i) The appellant had obtained service tax registration under the category of â€˜Manpower Recruitment or Supply Agency Serviceâ€™;,,,

(ii) The bills were raised by the appellant on their customers on a monthly basis for providing manpower supply services and service tax was charged,,,

thereon;,,,

(iii) The supply of manpower services by the appellant conformed to the provisions of the Contract Labour (Regulation and Abolition) Act 1970;,,,

(iv) In respect of the services of manpower supplied by the appellant to their customer, namely Sigma, the appellant had charged and paid service tax",,,

up to July 2012;,,,

(v) From 1 August 2012, based on an agreement dated 1 January 2012, the appellant had termed the service activity as "job work with tonnage",,,

ratesâ™ and had not charged and paid service tax, classifying the provision of the said services as business auxiliary services, claiming the benefit of",,,

a service tax exemption specified at Serial No. 30(c) of Notification No.25/2012-Service Tax dated 20 June 2012;,,,

(vi) The invoices raised by the appellant and its agreement dated 1 January 2012 and 1 January 2013 indicated that the services provided by the,,,

appellant were of supplying skilled/unskilled manpower for carrying out activities like material handling, assembly, pouring, supply of cast machine",,,

parts and painting within the factory premises of Sigma which was confirmed by the director of the appellant in his statement recorded on 6 February,,,

2014;,,,

(vii) The nature of the services provided by the appellant was similar before and after August 2012;,,,

(viii) The appellant had not substantiated their claim of job work; and,,,

(ix) The appellant had not obtained service tax registration under the category of business auxiliary services for the period from September 2012 to,,,

March 2014.,,,

6 The show cause notice was adjudicated upon by the Commissioner of Central Excise Pune-I, Commissionerate by an order dated 24 February 2015.",,,

The adjudicating authority held that:,,,

(i) The appellant habitually delayed paying service tax every month from April 2012 to March 2014;,,,

(ii) The appellant did not have any machinery or equipment of its own and was using the equipment and machinery of Sigma at the latterâ™s,,,

premises; and,,,

(iii) The supply of labour by the appellant to Sigma for doing the work of fettling, material handling, assembly and pouring on â€˜piecemeal basisâ€™,,,

did not alter the characteristics of the manpower services provided by the appellant to Sigma. The adjudicating authority confirmed the demand of,,,

service tax and interest besides imposing penalty.,,,

7 The order of the adjudicating authority was challenged in an appeal before the CESTAT, WZB, Mumbai. By its judgment dated 15 July 2019, the",,,,

Tribunal held that the service provided by the appellant to Sigma was not in the nature of job work services exempted under the Notification bearing,,,

No.25/2012-Service Tax dated 20 June 2012. The Tribunal held, after considering the terms of the agreement between the appellant and Sigma and",,,,

the relevant provisions of the Contract Labour (Regulation and Abolition) Act 1970 [â€œCLRAâ€], that the services provided by the appellant were in",,,,

the nature of contract labour and not job work. The Tribunal held that (i) clause 10, 11 and 17 of the agreement required the appellant to obtain a",,,,

licence under the CLRA; (ii) the agreement imposed the responsibility for the payment of wages to the employees/workmen and for making payments,,,

under the Employeesâ€™ State Insurance Act 1948 and Provident Fund in respect of the employees of the contractor on the appellant. The Tribunal,,,

accordingly held that the agreement between the appellant and Sigma is a contract labour agreement executed for the purpose of providing requisite,,,

manpower and is not a job work contract to extend the benefit of Notification No.25/2012-Service Tax dated 20 June 2012.,,,

B Submissions,,,

8 Mr Tarun Gulati, senior counsel appearing on behalf of the appellant assailed the decision of the Tribunal by urging the following submissions:",,,

(i) The Tribunal held that the appellant satisfied the definition of the expression â€˜contractorâ€™ under Section 2(c) of the CLRA;,,,

(ii) The definition contained in the CLRA indicates that the expression â€œcontractorâ€ means:,,,

(a) A person who undertakes to produce a given result for the establishment through contract labour; or,,,

(b) A person who supplies contract labour in any work.,,,

(iii) The former covers a job worker while the latter covers a supplier of manpower. Since the definition of the expression "contractor" under the,,,

CLRA includes within its ambit a job worker, the registration of the appellant under the statute would not indicate that the appellant is a mere supplier",,,

of manpower;,,,

(iv) The Tribunal held that under the agreements dated 1 January 2012, 1 January 2013 and 1 January 2014 executed by the appellant, provisions have",,,

been made from the payment of wages and other statutory dues in accordance with labour legislation and for giving an indemnity to the principal,,,

employer in the event of any liability arising due to a default by the appellant. Sigma is a principal employer who can be made liable if there is any,,,

breach in complying with labour legislation. This obligation of the principal employer is imposed by Section 21(4) of the CLRA under which the,,,

principal employer has to pay wages in the event of default by the contractor. Service 21(4) permits the principal employer to recover the amounts so,,,

paid from the contractor. The agreements merely replicate what is contemplated by the statute;,,,

(v) The agreements between the appellant and Sigma are job work agreements. Under the terms of each agreement, the appellant is required to",,,

provide specialized services in respect of felting, material handling, assembly, pouring, supply of machine parts, and painting. The contractor has to",,,

determine the persons to be engaged for performing the contract and their service conditions and the appellant is entrusted with supervision as the,,,

contractor. There is no supply of manpower to Sigma, since in that case the control would have shifted to Sigma. However, in this case, it is the",,,

appellant who exercises due supervision; and,,,

(vi) The invoices were based on the work done on piece rate basis. A service charge has been levied on the quantity of work done and not on the,,,

quantity of the manpower supplied. In Om Enterprises v. Commissioner of Central Excise, Pune-I, 2018 (17) G.S.T.L. 260 the CESTAT held that",,,

when a contractor carries out a process work and charges the principal employer on rate per piece, the nature of work would be considered as job",,,

work and not manpower supply. The CESTAT has rendered similar findings in Bhagyashree Enterprises v. Commissioner 2017 (3) G.S.T.L.515,",,,

Dhanashree Enterprises v. Commissioner 2017 (5) G.S.T.L., & S. Balasubramani v. Commissioner 2019 SCC OnLine CESTAT 480, where it refused"....

to consider piece rate work as manpower supply, and held that it was job work."....

9 Opposing the above submissions, Mr N Venkataraman, Additional Solicitor General submitted that"....

(i) Entry 30(c) of Notification 25/2012-Service Tax dated 20 June 2012 envisages the carrying out of intermediate production process as job-work in,"....

relation to any goods on which appropriate duty is payable by the principal manufacturer....

(ii) The above provision contemplates carrying out of intermediate production process as job work in relation to any goods on which duty is payable by,"....

the principal manufacturer. In other words, it covers a situation where the principal manufacturer pays tax on the value of the final goods which would"....

include the cost of the job work;....

(iii) The agreements which have been executed by the appellant with Sigma are not for carrying out job work and camouflage the supply of manpower,"....

services;....

(iv) The provisions of the agreements executed by the appellant indicate that appellant is required to cover the supply of manpower services to Sigma,"....

as distinct from the performance of job work. The contracts are pure labour contracts in which there is a conspicuous absence of details or,"....

specifications pertaining to the work which is to be performed, the output to be generated, and delivery schedules, among other crucial elements of a"....

genuine contract for job-work ; and....

(v) If the services provided by the appellant were of the category of "intermediate production process as job work", the appellant would have"....

declared them under the category of "business auxiliary services" or would have claimed exemption to the extent of the value of services under,"....

Notification No. 25/2012-Service Tax dated 20 June 2012. However, the appellants suppressed the taxable value. They neither amended their service"....

tax registration, nor declared these services in their ST-3 returns as business auxiliary services."....

10 The rival submissions now fall for consideration....

C Analysis,,,

11 The appellant has sought the benefit of Notification No. 25/2012-Service Tax dated 20 June 2012. Under the terms of the notification, the Central",,,

Government exempted certain taxable services from the whole of the service tax leviable under Section 66(B) of the Finance Act 1994. Para 30(c) of,,,

the notification reads as follows:,,,

â€œ30. Carrying out an intermediate production process as job work in relation to,,,
â€œ1,,,

(c) any goods on which appropriate duty is payable by the principal manufacturer.â€œ,,,

Particulars,Copper/kg,Zinc/kg,Aluminium/kg,Steel/kg

Felting,,0.83,,

Material

Handling",,0.58,,

Packing,,,

Pouring,,,

Supply

Cast/Machined

Parts",2.49,,,

Painting,,,

,,,

Total,2.49,1.41,0.00,0.00

15 Under the CLRA, the expression â€œcontractorâ€ is defined to mean:",,,

(i) A person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture through",,,
contract labour; and,,,

(ii) A person who supplies contract labour for any work of the establishment including a sub-contractor.,,,

The definition covers, in the latter part, the supply of contract labour for any work of the establishment. But in the first part noted above, it",,,

comprehends a person who undertakes to produce a result for the establishment other than a mere supply of goods and services. The issue before the,,,

Court is whether the appellant is a job worker within the meaning of the exemption notification dated 20 June 2012 or is merely a supplier of contract,,,

labour for the work of the establishment.,,,

16 The substratum of the agreement between the appellant and Sigma deals with the regulation of the manpower which is supplied by the appellant in,,,

his capacity as a contractor. The fact that the appellant is not a job worker is evident from a conspicuous absence in the agreement of crucial,,,

contractual terms which would have been found had it been a true contract for the provision of job work in terms of Para 30(c) of the exemption,,,

notification. There is a complete absence in the agreement of any reference to:,,,

(i) the nature of the process of work which has to be carried out by the appellant;,,,

(ii) provisions for maintaining (a) the quality of work; (b) the nature of the facilities utilised; or (c) the infrastructure deployed to generate the work;,,,

(iii) the delivery schedule;,,,

(iv) specifications in regard to the work to be performed; and,,,

(v) consequences which ensue in the event of a breach of the contractual obligation.,,,

17 The decisions of CESTAT relied upon by the appellant also do not help their submissions as they are fact-specific and based on a reading of the,,,

contracts in those cases. In this case, though ostensibly, the agreement contains a provision for payment on the basis of the rates mentioned in",,,,

Schedule II, the agreement has to be read as a composite whole. On reading the agreement as a whole, it is apparent that the contract is pure and",,,,

simple a contract for the provision of contract labour. An attempt has been made to camouflage the contract as a contract for job work to avail of the,,,

exemption from the payment of service tax. The judgment of the Tribunal does not, in the circumstances, suffer from any error of reasoning.",,,

18 For the above reasons we have come to the conclusion that there is no merit in the appeal. The appeal shall accordingly stand dismissed.,,,

19 Pending application(s), if any, stand disposed of.",,,