(2023) 06 CESTAT CK 0025

Customs, Excise And Service Tax Appellate, Ahmedabad

Case No: Service Tax Appeal No. 90 Of 2012

S A Engineering Works		APPELLANT
	Vs	
Commissioner Of Central Excise & ST, Vadodara-II		RESPONDENT

Date of Decision: June 15, 2023

Acts Referred:

- Finance Act, 1994 - Section 77, 78

Hon'ble Judges: Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench: Division Bench

Advocate: Shamita Patel, Rahul Gajera, P. Ganesan

Final Decision: Allowed

Judgement

Ramesh Nair, Member (J)

1. The present appeal has been filed by M/s S.A. Engineering Works being aggrieved with the impugned Order-in-Appeal No. Commr(A)/74/VDR-

II/2011 dated 22.02.2011 passed by the Learned Commissioner (Appeals), whereby the demand of service tax of Rs. 1,27,404/- for the period July

2005 to February 2007 has been confirmed.

2. Briefly stated, the facts of the case are that during the audit of M/s Flexican Bellows & Hoses Pvt. Ltd., Vadodara, it was noticed by the revenue

that the Appellant have provided manpower/ Labour supply services to them. However appellant failed to obtain service tax registration during the

period July 2005 to Feb. 2007 of providing services and failed to pay service tax on the amount of Rs. 12,49,057/- received from M/s Flexican

Bellows. A Show Cause notice dated 28.05.2009 was issued to the Appellant demanding Service tax of Rs. 1,27,404/- alongwith interest and also

seeking to impose penalties under Section 77 & 78 of the Finance Act, 1994. In adjudication, demand was confirmed by the adjudication authority vide

OIO dated 24.12.2009. Being aggrieved with the OIO appellant filed appeal before the Commissioner (Appeals), who vide impugned order-in-appeal

dated 22.02.2011 rejected the appeal of appellant and upheld the Order passed by the Adjudicating authority. Hence the present appeal filed by the

Appellant.

3. Ms. Shamita Patel with Mr. Rahul Gajera Learned counsel appearing on behalf of the Appellant submits that during the period July 2005 to

February 2006 the Appellant had carried out the production of bellows on Job work basis for the principal manufacturer Flexican Bellows & Hoses

Pvt. Limited in the premises of the Principal manufacturer. The Appellant produced the said bellows on Job Work basis using the raw materials and

consumables provided by the said Flexican Bellows & Hoses Pvt. Limited for the said job work the appellant employed its own team of experienced

technicians who had years of experience in the bending, cutting, slitting, welding, fabrication, testing etc. of engineering products. The fact that the said

activity was carried out on Job Work basis is evident from the agreement dated 01.12.2004 entered into by the Appellant with the said Flexican

Bellows & Hoses Pvt. Ltd.

4. She also submits that the issue whether Job work carried out by the assessee can be said to be manpower supply services is covered by the

decisions of Tribunal in Nishkarsh Industrial Services vs. CCE 2022 (9)TMI 901-CESTAT. She also placed reliance on the following decisions.

(i) Donypolo Udyog Limited vs. CCE & ST -2023(3)TMI539-CESTAT New Delhi

(ii) Bhagyashree Enterprises vs. CCE 2017(3)GSTL 515(Tri. Mumbai)

(iii) Dhanashree Enterprises vs. CCE -2017(5)GSTL 212

5. Shri P. Ganesan, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

6. We have considered the submission made by both the sides and perused the records. We find that the issue involved in this case is regarding

demand of service tax under the category of manpower Recruitment and Supply Services. On perusal of the sample copy of bills and agreement

entered into by the appellant with M/s Flexicon Bellows & Hoses Pvt. Ltd., it is seen that the amount being paid to the Appellant for the activity of Job

works.

7. We find that M/s Flexicon Bellows & Hoses Pvt. Ltd. has entered into agreement with the appellant for manufacture of Flexicon Bellow on job-

work basis. The appellant was paid for carrying out such activities. The workmen deployed by the appellant for carrying out such activities were

under the supervision and control of the appellant. The ultimate manufacturer, who entrusted the job to the appellant was no way concerned with the

workmen deployed by the appellant. It is also noticed that over and above paying the amount for manufacturing activities undertaken by the appellant

on job-work basis, the said service receiver had not paid any specific price to the workmen/ Labour deployed by the appellant. Thus, under such

circumstances, it cannot be said that the appellant had provided the Manpower Recruitment and Supply Agency Service. The documents submitted by

the appellant indicate a lump sum charge for the work undertaken by them. There is no evidence of supply of manpower with details of number and

nature of manpower, duration and other conditions for such supply. In absence of such evidence, the job work charges cannot be taxed under

â€œManpower Recruitment and Supply Agency Serviceâ€. Hence, we are of the considered view that the adjudged demand confirmed on the

appellant cannot be sustained.

8. Therefore, we do not find any merits in the impugned order. Accordingly we set aside the impugned order and allow the appeal with consequential

relief, if any, as per law.