IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Dr. Dhananjaya Y. Chandrachud; Surya Kant, JJ.
Civil Appeal No. 313 of 2021; February 18, 2022

Adiraj Manpower Services Pvt. Ltd.
Versus
Commissioner of Central Excise Pune II

Service Tax - Whether contract is for job work or for supply of manpower - Agreement has to be read as a composite whole - 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. *(Para 17)*

For Appellant(s) Mr. Tarun Gulati, Senior Advocate Mr. Rohit Rathi, Adv Mr. Rahul Totala, Adv Mr. Kumar Sambhav, Adv. Mr. Sameer Shrivastava, AOR

For Respondent(s) Ms. Alka Agrawal, Adv. Mr. Mukesh Kumar Maroria, AOR

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J.

A Facts 3

B Submissions 7

C Analysis **10**

1. Appeal admitted.

A Facts

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

3. The appellant obtained service tax registration under the category of 'Manpower Recruitment or Supply Agency Service'. On 1 January 2012, the appellant entered into an agreement with Semco Electric Pvt. Ltd. (later known as Sigma Electric Manufacturing Corporation Pvt. Ltd. ["Sigma"]) 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 'Manpower Recruitment or Supply Agency Service';

(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 rates' 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 latter'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 'piecemeal basis' 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 ["CLRA"], 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 Employees' 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 'contractor' under Section 2(c) of the CLRA;

(ii) The definition contained in the CLRA indicates that the expression "contractor" 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:

"*30. Carrying out an intermediate production process as job work in relation to*

…

(c) any goods on which appropriate duty is payable by the principal manufacturer."

This provision therefore comprehends: (i) carrying out an intermediate production process; (ii) as job work; (iii) in relation to goods on which appropriate duty is payable by the principal manufacturer.

12. The agreement which was entered into between the appellant and Sigma on 1 January 2012, *inter alia* contains the following provisions:

"7, The "Contractor" shall decide its own complement to be engaged for performance of this contract and the Company will not interfere in the decision of the Contractor in this respect.

[…]

9. It will be the sole duty and discretion of the Contractor to recruit his own personnel of this own choice. The personnel engaged by the Contractor will work under the direct control, supervision ·and administration of the Contractor and the Company will have no right to interfere in it.

10. It is also agreed between the parties that the contractor shall decide the service

conditions of the employees engaged by the contractor but ensure that he will pay them the wages not less than the rates of minimum wages as applicable for his scheduled industry. The mode of payment will be as described by the Government Authorities.

11. It is agreed between the parties that the contractor shall take necessary licence whenever required under the provisions of Contract labour (Regulation & Abolition) Act, 1970 and shall submit a copy of the same to the Company.

12. The Contractor shall maintain various records, registers, and shall submit timely returns required under legislation, rules and regulations as applicable to him and his personnel. The contractor shall submit xerox copies of musters vouchers to the company in respect of his personnel.

13. The Contractor indemnifies the Company that he shall bear any burden of whatsoever nature like fees, fines, penalty, damages, rise in wages, HRA, Back-wages etc in respect of his personnel under the provisions of any law.

[…]

16. The Contractor ensures that he will maintain the discipline among his own employees. In case of any misbehavior or misconduct by the personnel engaged by the Contractor, the Contractor shall take proper action against such person, the Company shall not have any right to take such action. In the event if the Contractor docs not take proper action the contract is liable to be terminated without notice.

17. The Contractor shall pay timely dues under ESI Act, Provident Fund if applicable in respect of his persons *I* employees and shall maintain Registers, submit returns under ESI Act and Provident fund Act. If due to failure of the Contractor any financial or otherwise burden costs on the Company is at liberty to recover the same from the bills of the Contractor.

[…]

23. The Contractor shall fix the duty and timings of his own personnel as per his own requirement. However, it shall not conflict with the working of the Company and its employees.

24. The Contractor indemnifies the Company against any liability that may arise because of the persons engaged by him.

25. The Contractor will issue the equipment's materials etc. to his personnel on his (Contractor's) responsibility and will keep proper record of it. In case of any shortcomings the Contractor is liable to pay the costs of the same to the Company. In the event of any doubts as to interpretation of the clauses in this agreement, the interpretation of the Company shall be final and binding on the Contractor."

13. Schedules (I) and (II) of the agreement have been extracted in the judgment of the Tribunal and are reproduced below:

“SCHEDULE “I”

Provide services for Felting, Material Handling, Assembly, Pouring, Supply of Cast & machine part, Painting, at our establishment situated at Gate No. 154/1 & 155/1, Mahalunge, Chakan, Pune, 410501, which consists of plant area, offices, stores, canteen, utilities, open land, scrap yard etc.

SCHEDULE “II”

The rate per Kg is given below

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

14. The submission of the appellant is that under the terms of the CLRA, the definition of the expression “contractor” covers both a person who undertakes to produce a given result as well as a supplier of manpower service. Hence it is urged that though the appellant has to be registered as a contractor under the CLRA, that is because the appellant falls within the definition of the expression “contractor” in Section 2(c), as a person who undertakes to produce a given result for the establishment by engaging contract labour.

15. Under the CLRA, the expression “contractor” 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.
