

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

SERVICE TAX APPEAL NO. 70 OF 2008

(Arising out of OIA No. 104/2007 dated 12/10/2007 passed by Principal Commissioner Customs, Excise and Service Tax-SERVICE TAX - AHMEDABAD)

METADIN MALI

25-B, VUNDAVAN SOCIETY,
KADI KAKOL ROAD, KADI,
MEHSANA, GUJARAT

.....Appellant

VERSUS

C.S.T. SERVICE TAX AHMEDABAD

7 TH FLOOR, CENTRAL EXCISE BHAWAN, NR. POLYTECHNIC
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

....Respondent

APPEARANCE:

Shri. Pooja Shah, Advocate for the Appellant

Shri. J. A. Patel, (Superintendent) Authorized Representative for the Respondent

CORAM:

**HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 11226 /2022

DATE OF HEARING: 01.07.2022

DATE OF DECISION: 18.10.2022

RAMESH NAIR

M/s. Matadin Mali has filed the present appeal being aggrieved with the Order-in-Appeal No. 104/2007(Ahd-III)CE/ID/Commr. dtd. 12.10.2007

2. The brief facts of the case are that on the basis of intelligence an inquiry was conducted and a statement of Shri Om Prakash R. Mali, proprietor of the Appellant has been recorded and he produced the copies of Bills raised to M/s Pino Bisazza Glass Pvt. Ltd., Kadi for providing Labour Contract Services. He rendered this service since 16.06.2005 without obtaining service tax registration though the turnover has exceeded Rs. 4 Lakhs during the period 16.06.2005 to 31.03.2006. After investigation, a show cause notice was issued to the Appellant demanding services tax of Rs. 90,378/- under Section 73 of the Finance Act, 1994 read with Rule 6 of Service tax Rules 1994

alongwith interest under Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act 1994.

3. Appellant contested the issue on merits and appeared for the personal hearing granted by the adjudicating authority. The adjudicating authority after following due process of law, confirmed the service tax demands raised under the manpower recruitment agency service along with interest and also imposed penalties. The appeal preferred against such Order-in-Original dtd. 16.04.2007 was also rejected by the Ld. Commissioner (Appeals) vide impugned order-in-appeal dtd. 12.10.2007. Being aggrieved, appellant is before this Tribunal.

4. Ms. Pooja Shah, learned Chartered Accountant appeared on behalf of the appellant submits that M/s. Pino has entered into agreement with the appellant for packing and salvaging activities. The appellant was paid for carrying out such activities on per Kgs / Per Metric Ton basis. The workmen deployed by the appellant for carrying out such activities were under the supervision and control of the appellant. M/s Pino, who entrusted the job contract to the appellant was no way concerned with the workmen deployed by the appellant. The amount for which activities undertaken by the appellant on job contract basis, the said service receiver had not paid any specific price to the workmen deployed by the appellant. There is no specific mention about deployment of labour/work force for the services provided by the appellant therefore it should not fall under the taxable category of manpower recruitment or supply agency service. Further, the rate contract provided in the work order clearly indicates that the amount shall be paid at a fixed basis i.e. on per kgs /per metric ton basis. There is no specific mention about payment of reimbursement of wages and salaries to the workman hence, the services provided should not fall under such taxable category of service. She further argued that on the basis of the

above facts, it cannot be said that the appellant had provided the Manpower Recruitment and Supply Agency Service.

5. Shri J.A. Patel, learned Authorized Representative appearing on behalf of revenue reiterated the findings of the adjudicating authority and submits that the activity of the Appellant is covered under the definition of manpower recruitment agency. Therefore, the contention of the Appellant that they took the work of factory on contract basis is nothing but providing a taxable service to the said factory.

6. We have carefully gone through the relevant contract entered into by Appellant with M/s Pino Bisazza Glass Pvt. Ltd and find that M/s. Pino has entered into agreement with the appellant for packing and salvaging activities. The appellant was paid for carrying out such activities on per Kgs / Per Metric Ton basis. The workmen deployed by the appellant for carrying out such activities were under the supervision and control of the appellant. M/s Pino, who entrusted the job contract 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 activities undertaken by the appellant on job contract basis, the said service receiver had not paid any specific price to the workmen deployed by the appellant. Since there is no specific mention about deployment of labour/work force, the services provided by the appellant should not fall under the taxable category of manpower recruitment or supply agency service. Further, the rate contract provided in the work order clearly indicates that the amount shall be paid at a fixed basis i.e. on per kgs /per metric ton basis. Since there is no specific mention about payment of reimbursement of wages and salaries to the workman, the services provided shall not fall under such taxable category of service.

7. Thus, under the facts and circumstances of this case, it cannot be said that the appellant had provided the Manpower Recruitment and Supply Agency Service. Hence, we are of the considered view that the service tax demands confirmed on the appellant cannot be sustained.

8. Therefore, we do not find any merits in the impugned order. Accordingly after setting aside the same, we allow the appeal in favour of the appellant with consequential relief as per law.

(Pronounced in the open court on 18.10.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha