

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 362 of 2011-DB

[Arising out of Order-in-Original/Appeal No COMM-R--79-82-VDR-II-2011 dated 28.02.2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-II]

Nishkarsh Industrial Services

.... Appellant

36/2/3, SF, A-wing, Abhishek Complex, GIDC, Main
Road, Makarpura, VADODARA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara-II

.... Respondent

1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

WITH

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.... Respondent

1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE :

Shri Dhaval K. Shah, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 13.09.2022

DATE OF DECISION: 19.09.2022

FINAL ORDER NO. A/11139-11140 / 2022

RAMESH NAIR :

The issue involved in the present case is that whether the service of the appellant is classifiable as Manpower Recruitment or Supply Agency Service or under job work service.

2. Shri Dhaval K. Shah, learned Counsel appearing on behalf of the appellants submits that as per the agreement with the appellant is for job work service. The appellant have undertaken the job work in the factory premises of the service recipient. He further submits that the appellant was assigned engineering works as per drawings on the machines, tool provided by the contractors. The charges for the job work is also on per piece of the product manufactured by the appellant. On the basis of this condition, as per the nature of work, the service does not fall under the category of Manpower Recruitment or Supply Agency Service. He submits that entire responsibility of the appointed workers on the assigned work is of the appellant. Therefore, the appellant have undertaken only the job work of manufacture and the service recipient has no responsibility of the workers deputed for the work. He placed reliance on the following judgments:-

- (a) M/s. Sureel Enterprise Pvt. Limited vs. CCE & ST., Ahmedabad – II 2019 (10) TMI 1245-CESTAT Ahmedabad
- (b) M. Arul Prakasm & Ors. vs. Comm. CGST & C. Ex., Chennai –2021 (8) TMI 1063- CESTAT Chennai
- (c) Indira Industrial Labour Welfare Association vs. CCE & ST., Chennai III – 2018 (6) TMI 1363 – CESTAT CHENNAI

3. Shri R P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He also placed reliance on the following judgments:-

- (a) 2019 (25) GSTL 513 (Mad.) - CCE, Puducherry vs. CESTAT, Chennai
- (b) 2017 (4) GSTL 16 (Tri. Del) - RB Yadav vs. CCE, Raipur
- (c) 2019 (370) ELT 864 (Tri.-All.) - Radico Khaitan Limited vs. CCE, Meerut-I

4. We have carefully considered the submissions made by both the sides and perused the record. We find that in the present dispute whether the

service is of Manpower Recruitment or Supply Agency Service or job work can be decided only on the basis of the agreement entered between service provider and service recipient. As per the agreement in the present case, the service recipient is having their factory and carried out various manufacturing activities. The present appellant was assigned job work related to manufacturing on the basis of charges which is per piece basis and the item being manufactured by the appellant. As per terms and conditions of the agreement, the service recipient will provide all the facilities such as machines, tools, place etc. The appellant has only to undertake work done their skilled, semi-skilled, non-skilled workers as per drawing by appointing workers/contractor. It is also one of the conditions that the appellant is under obligation to pay minimum wages to its workers even though there is no work. However, whenever there is work, the charges will be paid by the service recipient to the appellant as per the rates decided i.e. per piece basis.

5. As regards the responsibility and control, it is the appellant who has to bear all the responsibility of appointed workers according to the labour laws. With the aforesaid terms and conditions, it is clear that the appellant is carrying out the job work relating to manufacturing as per agreement entered with the facilities provided by the service recipient and the charges is also per piece basis. The entire control of workers deputed by the appellant for the job work is with the appellant only and the service recipient has no obligation as regards the number of workers, man-hour etc. for the job assigned to the appellant. In these terms of contract, we are of the clear view that contract is for job work carried out by the appellant for the service recipient. Therefore, there is no activity of providing the service of Manpower Recruitment or Supply Agency Service. The judgment relied upon

by the appellant are directly on the issue. In the case of *Sureel Enterprise Pvt. Limited vs. CCE & ST., Ahmedabad - 2019 (10) TMI 1245-CESTAT Ahmedabad* wherein the similar facts are prevailing inasmuch as the service provider provided the manufacturing activity in the factory of service recipient with the help of his own workers and it was held that service is of not Manpower Recruitment or Supply Agency Service but it is job work.

6. As regards the judgments relied upon by the Revenue, the facts in those cases are entirely different. Therefore, ratio of the judgments relied upon by the Revenue is not applicable in the facts of the present case. Accordingly, we are of the view that the appellant have not provided service of Manpower Recruitment or Supply Agency Service, hence the demand does not sustain. The impugned orders are set-aside and the appeals are allowed.

(Pronounced in the open court on 19.09.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)