

Mehta Security and Detective Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-2007

Reported in : (2007)10STJ28CESTATNew(Delhi)

Judge : N T C.N.B., M Ravindran

Appellant : Mehta Security and Detective

Respondent : C.C.E.

Judgement :

2. The appellant had "man power supply" contracts with JNVU, Jodhpur and some other parties. The appellant paid service tax on the amount received for the said supplies of man power. The tax was payable during that period (Feb'01 to March'02) in respect of 'Manpower Recruitment Agency Services'.

3. Subsequently, the refund of tax paid was claimed by contending that the appellant had not carried out any "recruitment service" and therefore, the payment made was a mistake. In adjudicating as well as in the first appeal, the refund claim was rejected by holding that the appellant had in some manner rendered manpower recruitment agency service. The finding is that the supply of skilled manpower would involve recruiting and, therefore, recruitment service was rendered, 4. The submission of the Ld. Consultant for the appellant is that in the present case, man power in question is not supplied through recruitment of persons for the hiring organization. It is being emphasized that the supplied man power never became part of the organization availing of their service.

5. A perusal of the agreement shows that the agreement was clearly for supply of man power and not for recruitment. The agreement dt.27.1.01 with the University at Jodhpur stated that the appellant's "rates to provide the staff have been approved". It is seen from the rate that the rate is minimum wage + 1.9% of the total amount as service charges.

Thus, it is clear that the supply was of man power and not for 'recruiting' persons for the University. In fact the appellant had no authority to carry out any recruitment of personnel for the University and the University had no obligation to accept any recruitment made by the appellant on its behalf.

6. Clearly, the relationship between the parties was not one of recruitment of staff by one for the other.

7. The findings of the lower authorities are merely about the scope of man power recruitment agency service. They do not, in any way show as to what service rendered by the appellant fell within the scope of man power recruitment. Therefore, the findings are not sustainable in the facts of the case.

8. It is also to be seen that w.e.f. 16.6.05, man power supply was also brought within the ambit of service tax. Thus, before this day, man power supply did not attract service tax.

9. In the above factual and legal situation, the appellant was right in its contention that the original payment was erroneous and is required to be refunded. The lower authorities were not justified in rejecting the refund claim. It is also to be seen that the revenue does not have a case on the ground of passing on of the tax amount, as it is seen that from a certificate dt.18.11.04, no service tax was passed on to the recipient of the service.

10. In the result, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.