Jadon Contractors Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-03-2007

Reported in : (2007)8STR549

Judge : R Abichandani, S T T.V.

Appellant : Jadon Contractors

Respondent : Cce

Judgement :

1. The appellant, who has filed these two appeals against the order of Commissioner (Appeals) dated 14.12.2006, strongly contends that the services provided to BHEL are not covered under 'Manpower Recruitment Agency' as defined under Section 65(68).

2. During the relevant period, the definition of 'Manpower Recruitment Agency' was as under: (68) 'manpower recruitment agency' means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower to a client During the relevant period under consideration 'Taxable Service' was referred to as "any service provided to a client by a manpower recruitment agency in relation to the recruitment of manpower, in any manner, as stipulated in Clause (k) of Sub-section 105 of Section 65 of the Act." 2. In this context, the Trade Notice issued by Mumbai Commissionerate-I (No. 7/97-ST dated 4.7.1997), particularly, para 1.2 of which, as reproduced hereunder may be of relevance: 1.2 It would be pertinent to note that the coverage of the term

manpower recruitment agency is wide and shall include within its ambit the services provided by an agency from the primary stage of building, a database of manpower for different categories of personnel employment, whether white collar or blue collar, whether for employment in India or overseas; determining manpower recruitment for the client, preliminary identification, short-listing and screening for the client, preliminary identification, for interviewing prospective candidates, providing specialists for each stage; placing advertisements for recruitment of manpower in the print or electronic media, etc. In short, service tax on manpower recruitment agency shall cover within its fold the entire gamut of services provided by manpower recruitment agency to a client from the incipient stage of selecting/identifying manpower required for any prospective employment, till the stage of actual selection for the same. It may be noted that in certain cases such as where a person approaches a manpower recruitment agency for being employed in a suitable position abroad, as normally happens in cases of employment in Gulf countries, the prospective candidate for employment becomes the client for purpose of service tax.

3. It was argued on behalf of the appellant that it cannot be brought under the definition of 'Manpower Recruitment Agency'. The reliance was placed on the Minutes of the RAC Meeting of Madurai-II Commissionerate dated 29.08.2003 under which the Service Tax authorities had clarified to the Trade that "the labour contractors, who supply their own labour on contract would not be covered under the definition of 'Man Power Recruitment Agency".

3.2 The learned Departmental Representative, however, contended that the appellants were providing services of recruiting personnel for BHEL. For this he relied upon the work order for deployment of contract labour for the period of 02.07.2001 to 15.04.2002 as contained in the letter addressed by BHEL, Jhansi, dated 29.06.2001.

4. The learned Counsel for the appellants would rely upon this Tribunal's order in Mehta Security and Detective Service v. CCE, Jaipur reported in 2007-TIOL-574-CESTAT-DEL, to state that the service rendered by the appellant never falls within the scope of 'Manpower Recruitment' as before 16.06.2005 'Manpower' did not

attract Service Tax.

5. We have heard both sides and perused the record. We find that at the material point, the definition of 'Manpower Recruitment Agency' relates to any commercial concern engaged in providing any service directly or indirectly in any manner in recruitment of manpower to a client.

6. During the personal hearing, a point was also raised by the learned Counsel for the appellant that no Service Tax could be charged on the entire value of charges recovered from their clients in view of the fact that their client pays them only Rs. 3.50 per day per man as service charge. A perusal of the work order dated 29.06.1001 from BHEL of course however indicates that there has been an arrangement between the appellants and BHEL, and according to which BHEL shall pay the appellant Rs. 3.50 per day per man as service charge. What is interesting here relates to the payment mechanism of Service Tax which has since been thought of and worked out by the client BHEL and agreed to by the appellant. Para 6.2 of the said letter reads as follows: 6.2 In addition to above, Service Tax at the rate of 5% of the total wages shall be added separately in the wage bill by contractor and the same shall be deposited to Central Excise Authority (Service Tax Cell), Jhansi before 15^th of the following month by the contractors.

7. In view of the exclusive definition of 'Manpower Recruitment Agency' as prevalent at the relevant point of time and the definition of Taxable Services', all going in harmony with para 6.2 of the agreement cited in para 5, it appears to us that the appellants are very much covered in the tax net.

8. In this context, the learned DR relies upon the ratio of the decision of the Hon'ble High Court of Madras in GDA Security Private Ltd. v. UOI reported in 2006 (2) STR 542 (Mad.) for the proposition that in relation to the services provided by a Security Agency to a client, the value of the taxable services shall be the gross amount charged by such agency from the client for services rendered. In this context, para 6.2 of the agreement letter dated 29.06.2001 also stipulates that the appellants were to deposit Service Tax @ 5% of the "total wages" before 15th of the following month, which they have not obviously done. Taking into account the

facts and circumstances of the case, we direct the appellants to deposit the entire amount of Service Tax demanded under the impugned order within eight weeks from today, failing which the appeal(s) shall stand dismissed in which default is committed. On depositing the said amount, the remaining amount relating to penalty as imposed under the impugned order, shall stand waived till the matter comeup for final hearing. Both the applications stand disposed of accordingly.

9. To come up for reporting compliance and further orders on 07.09.2007.

(Dictated and pronounced in the open Court on the 3^rd day of July, 2007)