CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Service Tax Appeal No. 51071 of 2019

[Arising out of Order-in-Appeal no. BHO-EXCUS-002-APP-496-18-19 dt. 31.01.2019 passed by the Commissioner (Appeals) Central Goods and Services Tax and Central Excise and Customs, Raipur]

PADAM CHARAN GUMAN SINGH **... APPELLANT**
J-237m Veer Savarkar Nagar
Heerapur
Raipur
Chattisgarh

VERSUS

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX **.... RESPONDENT**
Central Excise Building,
Tikarpara, Raipur
Chhattisgarh 492001

APPEARANCE:
Shri Krishna Mohan K. Menon and Ms. Archita Ishani, Advocates – for the appellant.
Shri Rakesh Kumar, Authorized Representative for the Department

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 08.7.2026
DATE OF DECISION: 31.7.2026

FINAL ORDER NO. 51267 /2026

P V SUBBA RAO

Mr. Padam Charan Guman Singh[1] filed this appeal to assail the Order dated 31.01.2019[2] passed by the Commissioner (Appeals) pursuant to the Final Order of this Tribunal dated 8.8.2018 directing to verify if the appellant had made the pre-deposit and pass an order on merits. The Commissioner (Appeals) examined the appeal of the appellant assailing order-in-original[3] passed by the Additional

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1 Appellant
2 Impugned order
3 OIO

Commissioner dated 26.8.2014 and modified the order upholding the demand of service tax and interest and penalty imposed under section 78 of the Finance Act, 1994[4] but setting aside the penalties under section 76 and 77 of the Act. The Additional Commissioner had, in his order, confirmed the proposals in the Show Cause Notice dated 6.12.2012[5] issued to the appellant and confirmed demand of service tax of RS. 12,50,639/- for the period 2008-09 to 2010-11 with interest and penalties.

2. We have heard learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records. The only points of contention are the demand of service tax under the proviso to section 73(1) of the Act with interest under section 75 of the Act and the mandatory penalty under section 78 of the Act.

3. The appellant was registered with the service tax department for providing services during the relevant period. During audit of the records of M/s S S Ispat, it was found that the appellant had rendered 'manpower recruitment and supply service' to M/s. S S Ispat under an agreement but had not paid the service tax on this service. The SCN, OIO and the impugned order hold so.

4. The appellant's contention is that it had not rendered manpower supply service but had, in fact, acted as a job worker and carried out the entire process of manufacture and therefore, was not liable to pay service tax.

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4 Act
5 SCN

Submissions of the appellant

5. Shri Krishna Menon, learned counsel for the appellant made the following submissions:

(i) The activity undertaken by the appellant was not manpower supply. As per the contract or work order, the appellant was engaged to operate plant and machinery and execute the entire manufacturing process for which purpose the appellant deployed its own labour.

(ii) The consideration was linked to the quantity of the finished goods manufactured and had no link with the number of workers supplied.

(iii) The department ignored the fact that the appellant had retained complete control and supervision of the workforce as per labour laws.

(iv) The activity undertaken by the appellant falls outside the scope of manpower supply and was, indeed a contract for manufacture of goods and hence no service tax was payable and hence it was not paid.

(v) The department relied on the statement of the appellant made under section 14 of the Central Excise Act, 1944[6] which would be relevant only if the person making the statement is examined as a witness by the adjudicating authority under section 9D and then the statement is admitted in evidence. This has not been done in this case and hence the statements are not relevant to this case.

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[6] **Excise Act**

(vi) A copy of the work order received from SS Ispat (valid till 31.3.2007) is placed at page 34 of the appeal. The work orders for the relevant period were also on the same lines although they are not available and hence cannot be produced by the appellant.

(vii) Service tax demand of Rs. 4,98,655/- made on the basis of Form 16A (TDS certificate) cannot be sustained as there is no evidence that the payment was for providing a taxable service.

(viii) The demand is time-barred and there are no grounds to invoke extended period of limitation in the case.

(ix) There were no grounds to impose penalty under section 78 of the Act.

(x) The impugned order may be set aside and the appeal may be allowed.

Submissions of the Revenue

6. Shri Rakesh Kumar, learned authorised representative for the appellant made the following submissions:

(i) The Appellant was actively engaged in providing Manpower recruitment and supply agency services which was unearthed during a forensic audit of the books and accounts of the service recipient, M/s S.S. Ispat, Bhilai, conducted by the Accountant General (Audit) Chhattisgarh. The Appellant had recovered the full applicable Service Tax amount alongside the service value from the recipients but pocketed and failed to deposit it into the government exchequer.

(ii) Despite written requests from the Service Tax Range Raipur to produce ledgers and annual reports, the Appellant refused to comply.

(iii) Therefore, the appellant's place was searched on 17.11.2012 and critical evidence including a bill book and loose papers was seized under Panchnama.

(iv) Shri Padam Charan Guman Singh (Proprietor) voluntarily admitted in his signed statement dated 17.11.2012 that he had rendered taxable labor supply services to M/s S.S. Ispat and had intentionally failed to discharge the service tax liability. The same has not been retracted till date.

(v) The submission of the appellant that it was indeed engaged in production activity and not manpower supply is without force. No valid contract relevant to the period was produced. The contract produced by the appellant expired on 31.3.2007 (well before the relevant period).

(vi) Even if the submission of the learned counsel that the nature of the contract did not change and it was the same as per the old contract is considered, the contract clearly states that it was for manpower supply.

(vii) The mere fact that the payment was not made on per person basis but on per piece basis will not make any difference. As held by the Supreme Court in **Adiraj Manpower Supply Pvt. Ltd. vs Commissioner of C.Ex**

Pune II[7], the contract must be read as a whole and if the intention of the agreement is providing manpower, even if it is camouflaged as a work job work, it should be considered as manpower supply service and should be taxed accordingly.

(viii) In the facts of the case, there was sufficient grounds to invoke extended period of limitation and to impose penalties.

(ix) The impugned order may be upheld and the appeal may be dismissed.

Additional Submissions

7. In the additional submissions given after the hearing, learned counsel asserted that the work order produced by the appellant was relevant even though it had expired because the nature of its business had not changed. He also submitted that the department should have recorded statements of M/s S.S.Ispat and investigated at their end. He further argued that the appellant's statement was coerced although he did not produce any evidence is support of his asserted of coercion. He also asserted that the demand was time barred as the SCN was issued invoking extended period of limitation.

Findings

8. We have considered the submissions advanced by both sides. In dispute is the nature of the service provided by the appellant to M/s. SS Ispat. According to the appellant it was a contract for manufacturing goods since it had undertaken the entire process of

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7 2022(58) GSTL 137(SC)

manufacture and it was also paid on per piece basis. It is further the submission of the appellant that the workers were its own workers and it had fulfilled all the labour laws with respect to them.

9. According to the Revenue, the appellant had supplied manpower and hence was required to pay service tax and it had, in fact, collected service tax from its client but did not deposit it and pocketed the amount collected as tax.

10. It is trite to say that to understand the nature of a contract, it must be read as a whole and interpreted. Unfortunately, the contracts for the relevant period are not on record. The appellant has produced an old contract (page 34 of the appeal) which had expired on 31.3.2007. Learned counsel made a statement at bar that the nature of contracts for the subsequent periods was also the same. In the absence of contracts for the relevant period, we accept the statement of the learned counsel and consider this contract itself to decide this appeal. It reads as follows:

> To
> Shri P G Singh [Contractor]
> House No. J-237,
> Veer Sawarker Nagar
> Heerapur, Raipur
> **Sub: Work Order for Labour Contract**
> D/Sir,
> **With reference to your application and subsequent discussion held on 31/2/2006, we are pleased to appoint you as a Labour Contractor as per the following Terms & Conditions**:
> 1] **You will be engaged your labour of our establishment at our factory from 1/4/2006**.

2] **Your work responsibility is sand mixing, coring, moulding, heating of core, baking of moulding boxes in heat room, charging, casting of Ingot Mould and General Item, finished goods chipping and grinding and cleaning of slag & other work activities upto dispatch of materials**.

3] You have agreed us the rate as per dispatch of finished goods @ Rs. 326/Mt

4] **You will be submitted your bill on 7th of every month.**

5] All labours payment will be paid on 10th of every month.

6] **Employees PF & ESIC recovery and payment is your responsibility and produced the challan to our accounts**.

7] The contract is valid upto 31/3/2007.

8] **No Labour charge rejection will be given.**

9] Company would the right to cancel your contract with one month notice.

You are agree with the above conditions, please sign and return a copy of your acceptance.

Regards,
For SS Ispat
Sd/-
Proprietor

Sd/-
[P G Singh]
Contractor

(emphasis supplied)

11. The above work order has all the essential ingredients of a valid contract. An offer from SS Ispat and an acceptance from the appellant, consideration from both sides and the terms and conditions. The *consensus ad idem* evident in it is that the appellant had applied for a labour contract and thereafter, there were discussions between SS Ispat and the appellant on 31.3.2006 consequent upon which the appellant was appointed as a labour

contractor. Nothing in the work order states that the appellant is appointed as a job worker.

12. The nature of work to be performed by the labour is also clearly given; it starts with sand mixing and ends with finished goods and cleaning of slag. Even in any contract for manpower, the nature of the work expected is always mentioned. For instance if any office invites bids for supply of manpower, it also indicates what the manpower is expected to do. Do they want janitors to do the cleaning and maintenance, secretaries to do secretarial work, software professionals for computer work, etc.

13. The consideration, in the work order is on per MT basis and not on per head basis. The bills had to be submitted by the 7^{th} of every month and the labour bills would be paid by 10^{th} of every month. Thus, although the amount is to be paid on per MT basis, the nature of the bills as agreed to in the work order is that they were for labour supply.

14. The PF & ESIC of the labourers had to be recovered from the wages by the appellant and paid to the respective accounts and the challans had to be produced to SS Ispat. It is further indicated that 'no labour charge rejection' will be given. In plain words, SS Ispat has undertaken not to refuse to pay the labour bills produced by the appellant.

15. There are no standards laid down either with regard to the number of labour to be employed or to the quality of the output, production, productivity, penalties for failure to meet the benchmarks, etc.

16. It has been held by the Supreme Court in **Adiraj** that a contract has to be read as a whole and in a contract for manpower supply payment could be based on the work.

17. Reading the above clauses as a whole leaves no manner of doubt that it was a work order for labour contract which is what the appellant applied for and after discussions which is what was offered to by SS Ispat and accepted by the appellant.

18. Although the measure of consideration is on Rs. per MT basis, the bills are, explicitly stated to be labour bills to be submitted by 7th and to be paid by 10th of every month. It is for this reason, SS Ispat also wanted all challans of PF and ESIC of the workers to be given to it. Had it been a job work, who the contractor engages to get the work done and how he pays them are irrelevant to the principal. For instance, if one hires a bus for a tour or picnic, how the bus operator pays his driver or conductor is immaterial to the person hiring the bus. Similarly, in job work contracts, the contract is for the work and how it gets done is the contractor's own look out. The client has no interest or locus standi in the matter.

19. Lastly, the agreement also assures that 'No labour charge rejection will be given'.

20. During investigation, the appellant was questioned and in his statement also he said that he was a labour contractor. This statement has not been retracted till date. Learned counsel, however, submitted that this statement is not relevant because the procedure prescribed under section 9D of the Excise Act was not followed. Simply put, section 9D states that the statement made before a

central excise officer is relevant to prove the truth of its contents if the person who made the statement is examined as a witness by the adjudicating authority and he concludes that it should be admitted in evidence. Usually, when a person is examined as a witness the other side (noticee in the SCN) gets an opportunity to cross examine.

21. In this case, the appellant was not a witness but a party to the case. He made a statement during the investigation and did not retract it till date. If the Additional Commissioner had to examine the noticee himself to confirm that he had made the statement, he had to call the person who made the statement (i.e., the noticee himself). The appellant did not file any reply to the SCN. He was called for personal hearing on 20.11.2013, 19.12.2013, 7.1.2014 and 11.2.2014 but the appellant did not appear at all. If the work orders were not for labour contract and if he had wrongly said so, he had more than adequate opportunity to say so. Now he cannot cry foul and say that he was not examined when he chose not to attend the personal hearing before the Additional Commissioner. Finally, when the personal hearing was fixed on 25.4.2014, the appellant's Chartered Accountant appeared and made submissions but the appellant had not appeared. Now the appellant is trying to take advantage of his own wrong in not appearing and trying to wriggle out of the statement made by the appellant about the nature of his business. In this factual matrix, we find that the appellant's statement need not be rejected on the ground that the appellant was not examined because the appellant had chosen not to appear at any of the five opportunities given.

22. At any rate, the statement of the appellant only affirms the nature of the contract as a labour contract and the appellant as a labour contractor which are also evident from the various clauses of the contract referred to above.

23. Learned counsel for the appellant submitted that the appellant had no intention to evade and hence extended period of limitation under the proviso to section 73(1) could not have been invoked and penalty under section 78 should not have been imposed. We find that the appellant was well aware of the nature of the contract was of labour supply and there was no doubt of any kind. It is for him to disclose that he was rendering a taxable service and pay tax but he chose not to. Learned authorised representative for the Revenue submits that the appellant had also collected service tax in its bills to SS Ispat but did not pay the same.

24. Learned counsel also submitted that department cannot charge service tax on the basis of Form 16A (TDS) of the Income tax. What must be remembered is when the assessee does not come clean and produce all records, investigation has to be done on the basis of accounts available. Form 16A of the Income Tax shows that the appellant was paid certain sums and tax was deducted from them. The nature of the business of the appellant is clear. If the sums received by the appellant and reflected in Form 16A were not for rendering taxable services but for some other purpose, it is for the appellant to say so. Even in the submissions and synopsis of the appellant, we do not find any indication that the payments were not made for providing manpower but for some other reason. This

submission of the appellant deserves to be rejected in the facts of the case.

25. In view of the above, we find no reason to interfere with the impugned order which is accordingly upheld and the appeal is dismissed.

(Order Pronounced on **31.07.2026**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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