CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO.III

Service Tax Appeal No.40853 of 2013

(Arising out of Order-in-Original No.55/2012 dt. 31.12.2012 passed by Commissioner of Central Excise, Chennai II Commissionerate)

M/s.Komatsu India Pvt. Ltd.
Plot No.A1, SIPCOT Industrial Park Growth Centre,
Oragadam
Thenneri (via)
Kancheepuram District 631 604 **Appellant**

VERSUS

Commissioner of Service Tax,
Newry Towers
2054-I 2nd Avenue
Anna Nagar West
Chennai 600 040 **Respondent**

APPEARANCE :

Shri G. Natarajan, Advocate For the Appellant

Ms. T. Ushadevi, DC (AR) For the Respondent

CORAM : HON'BLE MR. S.K.MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P.VENKATA SUBBA RAO, MEMBER(TECHNICAL)

Date of Hearing : 24.09.2019
Date of Decision : 24.09.2019

FINAL ORDER No. 41735 / 2019

PER S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein, is engaged in the manufacture of dump trucks and other allied items. The appellant's company belongs to the Komatsu Group, having their business establishments in the countries of Japan and Singapore. During the initial period of setting up of the factory premises, the appellant had entered into secondment agreement with its parent companies, by which the employees of the said companies were deputed to work in the appellant's

factory. For deployment of the employees, the appellant had incurred expenditure in foreign exchange towards payment of salary to the employees. The modus operandi adopted by the appellant regarding deployment of the employees of the parent company and payment of salaries to them was considered by the department as a taxable service under the head 'Manpower Recruitment or Supply Agency Service', defined under Section 65 (68) of the Finance Act, 1994. Accordingly, show cause proceedings were initiated on the premise that the appellant should be liable to pay service tax under reverse charge mechanism, as a recipient of such taxable service. The learned adjudicating authority has confirmed the adjudged demands on the appellant, holding that by deploying the employees to the appellant company, the parent company located abroad had provided the taxable service and the appellant being a recipient of service in India, is liable to pay service tax under reverse charge mechanism in terms of Section 66A ibid. Feeling aggrieved with the impugned order dated 31.12.2012, the appellant has preferred this appeal before the Tribunal.

2. The Ld. Advocate appearing for the appellant submitted that the group companies did not provide any service in the nature of man power recruitment or supply agency service, in order to fall under the taxing net for levy of service tax. He further submitted that the agreements entered into between the appellant and its group companies did not mention that there will be any service provider-service recipient relationship. He also contended that the group companies were paid only the actual amount payable to the employees' families and no additional amount were charged from them for the purpose of provision of service. Hence Ld. Advocate submitted that in absence of any taxable service being provided by the foreign group companies to the appellant, no service tax should be leviable on the activities undertaken by both sides. To strengthen his argument, Ld. Advocate has relied upon the decision of this Tribunal in the case of *Nissin Brake India Pvt. Ltd*. *Vs CCE Jaipur-I* - 2019 (24) G.S.T.L 563 (Tri.-Del.), *Ivanhoe Cambridge Investment Advisory India (P) Ltd. Vs CST Delhi* -2019 (21) G.S.T.L 553 (Tri.-Del.), *Lea International Ltd*. *Vs CST Delhi* – 2018 (12) G.S.T.L 166 (Tri.-Del.), *TAISEI Corporation Vs CCE New Delhi* – 2017 (5) G.S.T.L 61 (Tri.-Del.), *Nortel Networks (I) Pvt. Ltd. Vs CST New Delhi* – 2017 (520 S.T.R 489 (Tri.-Del.), *Bain & Co. India Pvt. Ltd. Vs CST Delhi* – 2014 (35) STR 553 (Tri.-Del.).

3. On the other hand, Ld. A.R appearing for the respondent reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. Section 65 (68) of the Finance Act, 1994 defines the taxable service under the category of "Man Power Recruitment or Supply Agency" to mean any person engaged in providing any service for recruitment or supply of man power. Further, 'taxable service' has been defined under Section 65 (104) (k) ibid to mean any service provided to any person by a man power recruitment or supply agency for recruitment or supply of man power to any other person. On close reading of the said statutory provisions, it transpires that the role of the man power recruitment or supply agency is confined to the area of recruitment or supplying of the man power to cater to the requirements to the service recipient. The man power supplied to the recipient of service is under the control and supervision of the agency, who deploys the same as per the directions of the recipient of service. Further, the agency has no obligation to pay the salary and other charges to the man power deployed by it. Considering the scope and ambit of the definition of "Man Power Recruitment or Supply Agency Service", the CBEC vide Circular No.B1/6/2005-TRU dt. 27.7.2005 has clarified that in order to be categorized under such taxable service, the relevant aspect for consideration is that the staff are not contractually employed by the recipient, but come under his direction. In this case, the fact is not under dispute that the appellant had not entered into any specific agreement with the overseas group companies, so that the later will perform the role of manpower agency for providing or recruiting the man power to the former. On perusal of the contract entered into between both the sides, we find that there is no existence of service provider-service recipient relationship. Further, the appellant had also separately entered into contract with the employees deputed by the group companies, providing for payment of salary and other benefits. Mere transfer of fund on security reason for the benefit of the family of the employees based in abroad cannot create the tax liability under such category of taxable service. It is not the case of Revenue that over and above the amount paid to the employees or their families, any other additional amounts were charged by the overseas entities or paid by the

appellant towards such deployment of the employees. Thus, under such circumstances, it cannot be said that the overseas group companies have provided the service of recruitment or supply of man power and the appellant should be liable to pay service tax as a recipient of such service under the reverse charge mechanism. We find that this Tribunal in the case of *Nissin Brake India Pvt. Ltd.* (supra) has held that deputed employees working under control, direction and supervision of the assessee cannot be termed as a taxable service, leviable to service tax under the category of "Man Power Recruitment or Supply Agency Service". The said order of the Tribunal was upheld by the Hon'ble Supreme Court, reported in 2019 (24) G.S.T.L J171 (SC). Further, we also find that in the case of *Bain & Co. India Pvt. Ltd.* (supra), this Tribunal has held that just because the social security contribution in respect of the expatriate employees was paid by the holding company, the expatriate employees cannot be treated as the employees of the holding company provided to the Indian company on man power supply or recruitment basis.

6. In view of the above discussions, we do not find any merits in the impugned order passed by the Ld. Adjudicating authority. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in court)

(S.K.Mohanty)
Member (Judicial)

(P.Venkata Subba Rao)
Member (Technical)

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