

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 42385 of 2013**

(Arising out of Order-in-Appeal No. 99/2013 dated 20.08.2013 passed by the Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

**Shri S. Selvam**

Lorry Transporting & Civil Contractor,  
40, Kootahaipar Road,  
Thiruverumbur,  
Tiruchirappalli – 620 013

**: Appellant**

**VERSUS**

**The Commissioner of Central Excise and Service Tax : Respondent**

No. 1, Williams Road, Cantonment,  
Tiruchirappalli – 620 001

**APPEARANCE:**

Shri G. Natarajan, Learned Advocate for the Appellant

Shri M. Ambe, Learned Deputy Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 40266 / 2023**

DATE OF HEARING: 03.04.2023

DATE OF DECISION: 12.04.2023

**Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]**

Briefly stated the facts in this appeal are that Shri S. Selvam, Lorry Transporting and Civil Contractor, the appellant herein, was engaged by M/s. BHEL Complex Co-operative Labour Contract Society Ltd., Trichy for the purpose of unloading of coal from railway wagons and for its transportation to the coal yard. It appears that a contract was entered by M/s. Bharat Heavy Electricals

Ltd., Trichy with M/s. BHEL Complex Co-operative Labour Contract Society Ltd., Trichy (hereinafter referred to as the "Society") for unloading of coal from wagons, shifting and stacking at the coal yard. The appellant had hired JCBs, Front Loaders and Tipper Lorries for providing the above services, along with required labourers.

2. When the accounts of the Society were audited, the Officers have noticed certain payments being made by the Society to the appellant, who is a sub-contractor, during the period from 2007-08 to 2009-10. Consequently, a Show Cause Notice dated 29.09.2011 was issued to the appellant *inter alia* proposing demand of Service Tax under 'manpower recruitment or supply agency' service by invoking the extended period of limitation.

3. After due process of law, the Order-in-Original No. 26/2013-ST dated 27.03.2013 came to be passed, confirming the demand of Service Tax along with interest, including the imposition of penalties under Sections 77 and 78 of the Finance Act, 1994. On the appellant's appeal, the lower appellate authority vide order impugned herein has upheld the order passed by the adjudicating authority.

4.1 In the grounds-of-appeal, the appellant has submitted that he was engaged by the society only for the purpose of unloading of coal from the railway wagons, which was shifted to the coal yard using hired JCBs, Trucks and Tipper Lorries with the help of required labourers for the said services provided such as loading, unloading and stacking of coal, which have been paid by the Society based on the quantum of coal off-loaded and transported.

4.2 The appellant has stated that he has not been engaged for recruitment of any labourers or for supply of manpower, but for executing the works of loading, unloading, transportation and stacking of coal at the coal

yard and that the services rendered by him are more appropriately classifiable under 'goods transport agency' services. It has been further put forth that in respect of 'goods transport agency' service, the liability for payment of Service Tax would fall on the service recipient i.e., the Society, and that from the records it was clear that the Society had already paid the Service Tax under the head 'manpower recruitment or supply agency' service on the entire consideration received from M/s. BHEL, Trichy and as such, the demand of Service Tax once again under 'manpower recruitment or supply agency' on the sub-contractor would not be legally sustainable.

4.3 The appellant has further submitted that he is not required to take registration under Service Tax law as he is not liable to pay Service Tax for the goods transport agency (GTA) services rendered and thus he was under the *bona fide* belief that the services rendered by him are not at all liable for payment of Service Tax and as such, the proposal for invocation of the extended period would not be sustainable in the light of the decision of the Principal Bench of the CESTAT at New Delhi in the case of *M/s. Gaytri Construction Co. v. Commissioner of Central Excise, Jaipur [2012 (25) S.T.R. 259 (Tribunal – Delhi)]* wherein it was held that in case of *bona fide* belief that the service was not liable to tax, extended period is not invocable. Similar facts exist in his case wherein he had been under the *bona fide* belief that he was not liable for payment of Service Tax in respect of the GTA services provided by him. The appellant also had relied upon the decision of the Tribunal, Chennai in the case of *Commissioner of Central Excise, Tirunelveli v. M/s. Global Software Solutions (P) Ltd. [2011 (24) S.T.R. 707 (Tribunal – Chennai)]* wherein it was held that mere failure to obtain registration and pay Service Tax is not sufficient to hold that the assessee has suppressed the rendering of service and a positive act on the part of the assessee is imperative to invoke the extended time-limit,

with the burden of establishing the suppression lying on the Revenue.

4.4 It was also submitted that the provisions of Section 80 of the Act would apply in his case as no penalty shall be imposed on an assessee for any failure if it is proved that there was reasonable cause for the said failure. As the appellant had not suppressed any facts with an intention to evade payment of tax, he has requested for waiver of penalties in terms of Section 80 of the Act.

4.5 He has also referred to the provisions of Section 67 of the Finance Act, 1994 which provides for treating the gross-amount received as inclusive of tax for computation of the demanded tax.

4.6 Shri G. Natarajan, Learned Advocate appearing for the appellant, firstly reiterated the submissions as incorporated in the grounds-of-appeal. Then, he has drawn our attention to the decision rendered in the case of *M/s. Ritesh Enterprises v. Commissioner of Central Excise, Bangalore* [2010 (18) S.T.R. 17 (Tribunal – Bangalore)] wherein it has been held: -

*"9. On a careful consideration of the above reproduced facts from the entire case papers, we find that the contract which has been given to the appellants is for the execution of the work of loading, unloading, bagging, stacking destacking etc., In the entire records, we find that there is no whisper of supply of manpower to the said M/s. Aspin Wall & Co. or to CWC or any other recipient of the services in both these appeals. As can be seen from the reproduced contracts and the invoices issued by the appellants that the entire essence of the contract was an execution of work as understood by the appellant and the recipient of the services. We find that the Hon'ble Supreme Court in the case of Super Poly Fabriks Ltd. v. CCE, Punjab (supra) in paragraph 8 has specifically laid down the ratio which is as under :*

*"There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular*

*activity undertaken by the parties to the contract would be decisive.”*

*An identical view was taken up by Hon’ble Supreme Court in the case of State of A.P. v. Kone Elevators India Ltd. (supra) and UOI v. Mahindra and Mahindra in a similar issues. The ratio of all the three judgments of the Hon’ble Supreme Court, is that the tenor of agreement between the parties has to be understood and interpreted on the basis that the said agreement reflected the role of parties. The said ratio applies to the current cases in hand. We find that the entire tenor of the agreement and the purchase orders issued by the appellants’ service recipient clearly indicates the execution of a lump-sum work. In our opinion this lump-sum work would not fall under the category of providing of service of supply of manpower temporarily or otherwise either directly or indirectly.”*

5.1 Shri M. Ambe, Learned Authorized Representative appearing for the Revenue, has stated that M/s. BHEL Complex Co-operative Labour Contract Society Ltd., Trichy have registered under ‘manpower recruitment or supply agency’ service with the Department for supply of manpower to M/s. BHEL, Trichy. On the basis of audit of the accounts of this Society, to whom the appellant has worked as a sub-contractor, it appeared that the contract envisaged unloading and shifting of coal by using JCBs, Front Loaders, Lorries, Tippers, etc., all of which require sufficient manpower, which has been supplied by the appellant. He submitted that shifting of coal necessarily involved manual labour, which was supplied by the appellant to M/s. BHEL, Trichy; as such, the service rendered is not solely concerned with transportation of coal, but involved employing sufficient manpower. He has thus argued that the Service Tax demand is legally sustainable.

5.2 He would contend that the services of the appellant could not come under ‘goods transport agency’ as a goods transport agency means “any person who provides service in relation to transport of goods by road and **issues a consignment note**, by whatever name called”.

As the consignment note was not issued by the appellant, the service could not be considered as 'goods transport agency' service.

6. We have heard both the sides.

7. The main issue that has to be decided in this appeal is: whether the services rendered by the appellant are classifiable under manpower recruitment or supply agency service?

8.1 "Manpower recruitment or supply agency" is defined under Section 65 (68) of the Finance Act, 1994, which reads below: -

*"(68) "manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person;"*

8.2 The scope of the definition of "taxable service" relating to manpower recruitment or supply agency service is defined under Section 65 (105) (k) of the Finance Act, 1994 as under: -

*"(k) to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;*

*Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate;"*

8.3.1 Thus, in order to attract the levy of Service Tax under manpower recruitment or supply agency service, it is clear that the services should be rendered in relation to either recruitment of manpower or its supply, either temporarily or otherwise. A perusal of the records in the appeal clearly indicate that M/s. BHEL Complex Co-operative Labour Contract Society Ltd., Trichy was awarded the contract for unloading of coal from the railway wagons and its shifting and stacking at the coal yard. A copy of the letter issued by M/s. BHEL, Trichy evidencing the above is reproduced below: -

**A) -**

	<b>Bharat Heavy Electricals Limited</b> High Pressure Boiler Plant, Tiruverumbur, Tiruchirappalli – 620 014. ☎ : 0431 – 2374627, 1516, Fax: 0431 – 2520212 e.mail: ram.raj@bheltrichy.co.in <b>Materials Management / Manufacturing</b> <b>Contracts, Claims &amp; Clearance</b>	<b>AN</b> <b>ISO 9001</b> <b>COMPANY</b>
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Ref:CCC/MM/Mfg./ S1 / 7 / 2013

12.08.2007

To  
 The Special Officer  
 BHE Labour Contract Society  
 BHEL Township TIRUCHY-14

Sir,

Sub: Awarding of Contract for unloading of Coal from Wagon,  
 Shifting and Stacking at Coal Yard – reg.

--0--

CCC / Stores / MM/ Manufacturing is hereby releasing this Contract for Unloading of Coal from Wagon, Shifting and Stacking of the same at Coal Yard / BHEL/Trichy for a period of ONE YEAR from 01.04.2007 to 31.03.2008.

The total value of the Contract is Rs.31,59,363.40 (Rupees Thirty One Lakhs Fifty Nine Thousand and three hundred and sixty three and paise forty only) for handling coal of 12,745 MT through Single Side Opening Wagons and 33,455 MT through Double Side Opening Wagons. (Total tonnage 46,200 MT).

The details of rates and tonnage are given in the enclosed Work/Rate Schedule.

BHEL reserves the right to short close the contract with one month notice.

This Contract is sent herewith in duplicate. One copy may be returned duly signed in token of your acceptance.

ENCL: Work/Rate Schedule

  
 (R.RAMASWAMY)  
 DGM/CCC/MM/Mfg.,

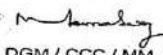
**B) -**

WORK / RATE SCHEDULE NO. S1 / 7 / 2013 DT. 12.06.2007

UNLOADING OF COAL FROM WAGONS, SHIFTING AND STACKING

Total Number of Wagons : Single Side Opening : 193  
 Double Side Opening : 507  
700

S.No	Category of Work	Qty per Wagon MT	Total No. of Wagons	Total Qty MT	Rate Per MT	Value Rs. P.	
01	Unloading of Coal through Single Side Opening	66	193	12,745	Rs.11.80	1,50,391.00	
02	Unloading of Coal through Double Side Opening	66	507	33,455	Rs.10.08	3,37,226.40	
03	Line Cutting, Wagon Placement, removal and connected Miscellaneous Activities (2.5 man power per Wagon)	-	-	46,200 (700 Wagons x 66)	Rs.5.83	2,69,348.00	
04	Shifting and Stacking	-	-	46,200	52.00	24,02,400.00	
	Total Amount						31,59,363.40

  
 DGM / CCC / MM / Mfg.,

8.3.2 Further, the letter dated 10.04.2009 issued by Shri S. Selvam (appellant herein) is also extracted below:-

☎ : 3200445  
Cell: 93455 18412

## S. SELVAM

**Lorry Transporting Contractor & Civil Contractor**  
40, KOOATHAIPAR ROAD, THIRUVERUMBUR,  
TRICHY - 13.

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TO, LCS, BHEL Date: 10.4.2009  
Tres: 14

செலவுகள் மற்றும் சேவைகளுக்கான  
பணம் JCB காரில் சேமிக்கப்பட்டுள்ள  
சேமிக்கப்பட்ட பணத்தை (பணப்படி)  
Lorry சேமிக்கப்பட்டு @ 56/- ரூபாயில்  
2700 Lorry சேமிக்கப்பட்டு X @ 56 ரூபாயில் Rs. 1,51,200.00  
சேமிக்கப்பட்ட பணத்தை (பணப்படி) சேமிக்கப்பட்ட பணத்தை  
சேமிக்கப்பட்ட பணத்தை

151,200

308A.	
308	34.6
100	
4774	

S. Selvam  
10.4.2009

SBI No: 246195 / 10.4.2009  
14774/ செலவுகள் அபிவிருத்தி  
செலவுகள் அபிவிருத்தி  
S. Selvam  
10.4.2009

Special Officer

[Translation:-  
Charges for transportation of Coal in JCB, Tipper Lorry from the railway line situated in the Gas Plant to the Stocking Yard  
Per Tonne Rs.56/-  
2700 x Rs.56/- ----- Rs.1,51,200.00 ]

9. All the above documents indicate that the appellant was in fact paid for the services rendered for transportation of coal in JCBs, Front Loaders or Tipper Lorries from the railway wagons to the coal yard of the Gas Plant on per tonne basis.



10. The above Society has sub-contracted the work to the appellant viz. Shri S. Selvam, who is a lorry transporting contractor and civil contractor. The society has been paid for the services on the basis of the quantity of coal handled. The services provided are unloading of coal from the wagons, its transportation by using JCB front loaders and tipper lorries and its shifting to the specified place in the coal yard for stacking. In our opinion, the above services are definitely not related to either recruitment or supply of labour. Though consignment note was not issued by the appellant for transportation of the coal to be classified as 'GTA service', the classification of the services provided by him are not under manpower recruitment or supply agency service.

11. The appellant has repeatedly put forth that he has been paid for the services rendered on the basis of quantity of coal handled, by M/s. BHEL Complex Co-operative Labour Contract Society Ltd., Trichy. When specifically asked for an Agreement copy by the appellant with M/s. BHEL Complex Co-operative Labour Contract Society Ltd., the Learned Advocate for the appellant has stated that such a written contract was not entered into. However, he has stated that the appellant was paid on the basis of quantity of coal unloaded and transported. The documents extracted supra reveal that both the Society and the appellant were paid and consideration for the services rendered was received on the basis of quantity of coal handled. We find that the decision rendered by CESTAT, Bangalore in the case of *M/s. Ritesh Enterprises (supra)* is squarely applicable to facts of the present case. The work that was given to the appellant was for unloading, transportation and stacking of coal from the railway wagons to the coal yard and the documents available in the appeal indicate that there is no agreement for supply of manpower to the recipient of service i.e., M/s. BHEL Complex Co-operative Labour Contract Society Ltd., Trichy. The contract that was

awarded to M/s. BHEL Complex Co-operative Labour Contract Society Ltd., which has been executed by the appellant, is relating to the handling and transportation of coal.

12. In view of the above, we have to hold that the appeal succeeds on merits. The services rendered by the appellant cannot be classified under the category of "manpower recruitment or supply agency" service. As the appeal is allowed on merits, there is no need to discuss regarding the invocability of extended period and justification for imposition of penalties.

13. Hence, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in the open court on **12.04.2023**)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sdd