

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. III

**SERVICE TAX APPEAL No.42349 of 2013**

(Arising out of Order-in-Appeal No.105/2013 dt. 20.08.2013 passed by the Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli 620 001.)

**Mr. A. Natarajan**

No.6/15, Immanuel Nagar,  
Thuvakudi Malai North,  
Tiruchirappalli 620 022

**Appellant**

VERSUS

**The Commissioner of GST & Central Excise**

Tiruchirappalli Commissionerate  
No.1, Williams Road,  
Cantonment,  
Trichy 620 001.

**Respondent**

**AND**

**SERVICE TAX APPEAL No.42353 of 2013**

(Arising out of Order-in-Appeal No.109/2013 (RST) dt. 20.08.2013 passed by the Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli 620 001.)

**M/s.Anand Contractors**

C-72A, BHEL Nagar,  
Post REC,  
Tiruchirappalli 620 015

**Appellant**

VERSUS

**The Commissioner of GST & Central Excise**

Tiruchirappalli Commissionerate  
No.1, Williams Road,  
Cantonment,  
Trichy 620 001.

**Respondent**

**APPEARANCE :**

Mr. G. Derrick Sam, Advocate  
For the Appellant

Mr. M. Ambe, Deputy Commissioner (AR)  
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI, MEMBER (JUDICIAL)  
HON'BLE MR. M. AJIT KUMAR, MEMBER(TECHNICAL)**

**DATE OF HEARING : 31.05.2023  
DATE OF DECISION : 14.06.2023**

**FINAL ORDER No.40429-40430/2023****ORDER : Per Hon'ble Sulekha Beevi, C.S**

The issue involved in both these appeals being the same they are heard together and disposed of by this common order.

2. Brief facts are that in the appeal filed by Mr. A. Natarajan (ST/4249/2013), the appellant was registered under the category of "Manpower Recruitment or Supply Agency Service" (MRSAS). It appeared to the department that the appellant provided MRSAS for the work of water cooling system pipeline laying to M/s.BHEL, Trichy during the period January 2011 to March 2011 and received payment from M/s.BHEL Trichy. The appellant did not discharge service tax on the payments received from M/s.BHEL, Trichy and was liable to pay service tax of Rs.66,642/- under the category of MRSAS. Show cause notice was

issued to the appellant demanding service tax along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. On appeal, Commissioner (Appeals) upheld the same. Hence the appeal.

3. Brief facts in Appeal No.ST/42353/2013 are that on verification of accounts of M/s.BHEL Trichy, it was noticed that appellant, M/s.Anand Contractors had provided MRSAS in relation to works of Combined Cycle Demonstration Plant (CCDP) operation and maintenance, DM Plant operation and lab tests and PIR supported testing works at WRI laboratory during the period 2007-08 to 2009-10 and received payment from M/s.BHEL which was liable to be taxed under the category of MRSAS. Show cause notice was issued to the appellant proposing to demand service tax of Rs.15,85,666/- along with interest and for imposing penalty. The demand raised is for the period from 2006-07 to 2010-11 (upto December 2010). After due process of law, the original authority confirmed the demand along with interest and imposed penalty. On appeal, the Commissioner (Appeals) upheld the same. Aggrieved by such order, the appellant is now before the Tribunal.

4. Ld. Counsel Shri G. Derrick Sam appeared and argued for the appellant. In regard to the appeal filed by the appellant, Shri A. Natarajan, it is submitted that the nature of activity of the appellant as per the work orders of M/s.BHEL is to assist the work of

turning, machining, welding, assembly and hydraulic test station and to assist in the work of shipping, grinding, painting and cleaning. It is explained by the Ld. Counsel that appellant's responsibility does not cease with the supply of man power but it is actually manufacturing valves (boiler components) and the remuneration fixed is on tonnage basis. This being so, the activity is not covered under the category of MRSA Service.

5. The facts with regard to appellant M/s.Anand Contractors is that the nature of activity of the appellant as per the work order of M/s.BHEL is for chemical analysis and testing of ferrous and non-ferrous samples and various coatings and the metals etc. The appellant provided man power with necessary tools for the work of testing and chemical analysis and preparation of samples in R & D lab. It is submitted by the Ld. Counsel that the amount received is per unit quantity basis and not per person basis. For the same reason, the activity does not fall within the levy of service tax. To support the arguments, Ld. Counsel relied upon the judgments in the case of *Ritesh Enterprises Vs CCE Bangalore* - 2010 (18) STR (Tri.-Bang.) and *Divya Enterprises Vs CCE Mangalore* - 2010 (19) STR 370 (Tri.-Bang.).

6. It is also argued that the activities are in the nature of ancillary works of manufacturing activity and therefore cannot be subject to levy of service tax. To support this argument that the works are in the nature of manufacturing activity, the counsel relied upon the decision in the case

of *Sharwan Kumar Vs CCE Chandigarh - 2013 (30) STR 176 (Tri.-Delhi)*. In the said case, the process of denting and painting, which were carried on bus bodies before clearances from the factory, was held to be a process essential for completion of finished products and held to be part of manufacturing activity. The Order-in-Original No.43/2011 dated 02.09.2011 passed in the case of *Shri C. Singaram* was referred to by the Ld. Counsel for appellant to support the contention. The demand in the said case was raised alleging that Shri C.Singaram had provided services to M/s.BHEL in the nature of shot blasting, cleaning, painting services. The demand was raised under BAS. The Joint Commissioner set aside the demand holding that as the payments were made per MT basis, the activities are incidental to the completion of manufacture and hence not subject to levy of service tax. It is argued by Ld. Counsel that similar activities were undertaken by the appellant who was the contractor for completion of manufacturing works for various stages in the BHEL premises. The demand of service tax cannot therefore sustain.

7. As an alternative argument, it was submitted that in any case, the activity will not fall under MRSAS, but may come under BAS and for this reason, the demand cannot sustain. To support this alternate contention, the circular issued by Tax Research Unit dated 23.11.2009 was referred to by the Ld. Counsel for appellant. It is clarified that when member-manufacturer engaged contractors as job workers in their factory premises and paid manufacturing / job charges against bills raised for

fabricating work carried out by the job worker, the activity cannot fall under MRSAS. But would be covered under Business Auxiliary Service (BAS).

8. Ld. Counsel submitted that demand in the case of M/s.Anand Contractors is raised by invoking the extended period of limitation. There has been several clarifications issued by the Board and representations given by the manufacturer associations seeking clarification with regard to the nature of activity whether it would be covered under 'manufacture' or would attract levy of service tax. The issue being interpretational in nature, the demand raised invoking extended period may be set aside. Ld. Counsel prayed that the appeals may be allowed.

9. Ld. A.R Shri M. Ambe appeared for the department. The findings in the impugned orders were reiterated by the Ld. A.R.

10. Heard both sides.

11. The issue to be decided is whether the appellants are liable to pay service tax under MRSAS. To understand the nature of the activity it is necessary to examine the documents. In page 25, the work order executed by Shri A. Natarajan to M/s.BHEL is seen enclosed. The details of the order are as under :

“(1) A Maximum of 909 MT of assistance work is to be executed by you in a period of Four months (From 02/08/2006 to 01/12/2006). You shall

provide up to a maximum of 18 persons per day as labour assistance in valves production / shipping. The demand of man power on day to day basis will be indicated to you periodically.

(2) The payment for execution of works shall be at the rate of Rs.270.50 per MT of work executed. The EMD of Rs.25,000/- paid by you along with the offer shall be treated as security deposit. No recovery of security deposit from any running bill.

(3) In addition to above, condition covering the contract are enclosed as annexure "A" and general conditions of contract are enclosed as annexure "B" These annexure were also part of the tender document issued in the enquiry and please ensure compliance to all the conditions."

11.1. Page 26 is a document with reference to another work order which reads as under :

"With reference to the above Order placed on for us for Labour Assistance in Production and Shipping Activities in Valves, we are enclosing the following invoice and request you to kindly forward to Finance / Valves for Payment.

11.2. The invoice enclosed in page 26 shows that the payment is made on tonnage basis.

12. It is the case of the department that appellants have rendered MRSAS to M/s.BHEL, Trichy and are liable to pay service tax under the said category. The definition of "Manpower Recruitment or Supply Agency Services" are defined under Section 65 (68) of Finance Act, 1994 which reads as under :

"(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.”

13. On perusal of the work orders and invoices, it is seen that the contract is for performance of work and not for supply of manpower. This is established from the invoices raised for payment made to the appellant. The payments are for the works executed on tonnage basis / unit basis and not on man hours or per person basis. Similar issue was considered by the Tribunal in the case of *CST Kolkata VS Anmol Biscuits Ltd. – 2022* (62) G.S.T.L. 171 (Tri.-Kolkata) wherein the Tribunal held as under

“**12.** We also find that the C.B.I. & C. Circular No. 190/9/2015-Service Tax, dated 15-12-2015 has also explained the conditions when one service can be interpreted as manpower supply or job work. In the given case since the contractors are being paid on the basis of quantity packed and not on the basis of number of persons deployed, the same cannot partake the nature of ‘Manpower Supply Service’.

**13.** Reliance is also placed on the Tribunal’s decision in the case of *M/s. Dhanashree Enterprises v. CCE, Pune* in Appeal No. ST/565 & 566/12, wherein *vide* Final Order dated 10-7-2017 it was held that the department could not establish that the service provided by the Appellant are of supply of manpower. In the instant case also we find that the department has not brought any evidence in contrary to prove that the services provided by the contractors to the Respondent are in the nature of Manpower Supply.”

14. In the case of *Divya Enterprises* (supra), the Tribunal observed that essence of the contract was for execution of work and not for supply of manpower. After scrutiny of the work orders, the Tribunal observed that



the work was for completion of particular projects or tasks and therefore will not fall within the definition of "MRSA Service".

15. In the present case, the facts establish that the appellant has obtained work order to execute certain works which are part of the manufacturing activity. The appellants are thus responsible to execute the work. The payment is on tonnage basis / unit rate. Being a contractor for execution of work, the contractor gets to decide the number of persons that have to be engaged for completion of the work whereas, in the case of man power recruitment services, the contract for supply of workers and the payment is on the basis of man hours spent by the employee. The facts in both these appeals establish that the situation is not covered under MRSA Service. Our view is supported by the decision of the Tribunal in the case of *Divya Enterprises* (supra). The demand cannot sustain.

16. In the result, the impugned orders are set aside. Appeals are allowed with consequential reliefs, if any.

(pronounced in court on 14.06.2023)

Sd/-  
**(M. AJIT KUMAR)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(SULEKHA BEEVI C.S.)**  
**MEMBER (JUDICIAL)**