

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1**

Service Tax Appeal No.394 of 2010

(Arising out of Order-in-Original No.02/ST/Ayukt/2008 dated 31.01.2008 passed by
Commissioner of Central Excise & Service Tax, Patna.)

M/s. Mars Mountain Security Services Private Limited

(203 & 207, Hem Plaza, Fraser Road, Patna-800001.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna

.....Respondent

(Central Revenue Building (Annexe), Bir Chand Patel Path, Patna-800001.)

APPEARANCE

Shri N.K.Chowdhury & Shri D.P. Singh, both Advocates for the Appellant (s)
Shri J.Chattopadhyay, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)
FINAL ORDER NO. 76469/2023**

DATE OF HEARING : 24 August 2023

DATE OF DECISION : 24 August 2023

Per : ASHOK JINDAL :

The appellant has filed this appeal against the impugned order where demand of service tax has been confirmed against the appellant under the category of 'manpower recruitment agency service' and 'security services'.

2. The facts of the case are that during the period October 2001 to March 2006, the appellant was awarded with work orders by different service recipients for undertaking and/or providing some services like providing of security service and man power supply service (HRM service), housekeeping service (cleaning service) and civil contract for digging of earth and laying of optical fibre lines. The appellant was only responsible for paying service tax on security services and other services like supply of manpower, cleaning service and digging earth and cabling were not under the service tax net. The said service of manpower supply, cleaning and cite formation by digging etc. came into

service tax net w.e.f. 16.06.2005 and the appellant was paying service tax thereafter.

3. The proceedings were initiated against the appellant and it was alleged that in the balance sheet for the period 2001 to 2004-05 for the year 2005-05 the appellant has received total value against providing service was to the tune of Rs.9,19,26,693/- but in the ST-3 return, the appellant had declared only Rs.48,16,671/- and thus, the appellant had suppressed the amount of Rs.8,71,10,022/- which resulted in short payment of service tax of Rs.65,24,118/-.

4. On these facts, a show cause notice was issued to the appellant on 29.08.2006 as revenue was of the view that the service of manpower supply and housekeeping service were qualified under manpower recruitment agency service, therefore, the appellant has not paid service tax during the impugned period which was taxable w.e.f. 1998 In that circumstances, demand of service tax was confirmed by the adjudicating authority. Against the said order, the appellant is before us.

5. The Ld.Counsel for the appellant submits that the entire basis of the initiation of proceeding by issuing show cause notice is on the basis of difference of figures between balance sheet and ST-3 return cannot be made the basis of raising any demand. It is the submission of the appellant that except security services, all other services were not taxable before 16.06.2005 and the appellant has not paid service tax for the period prior to 16.06.2005 on the said services, but after 15.06.2005, the appellant has paid service tax thereon. The service tax was payable by the appellant only on the security services and on the said service the appellant has already paid entire amount of service tax.

6. It is further submitted that the demand against the appellant is barred by limitation as demand is for period October 2001 to March 2006, whereas the show cause notice was issued on 29.08.2006, which is beyond the normal period of limitation. Therefore, he prayed that the impugned order is to be set aside.

7. On the other hand, the Ld.AR for the revenue submits that the activity undertaken by the appellant have merit classification under manpower recruitment agency service and the appellant is qualifying for the same, in that circumstances, they are liable to pay service tax.

8. Heard the parties, considered the submissions.

9. On going through the work orders placed before us, which clearly depicts that the description of the scope of the work order is supply of manpower as accounts executive, store-keeper, draftsman etc.etc.. Going through the work order, we do not find that the activity undertaken by the appellant is manpower recruitment agency service as the appellants are supplying manpower to their service recipients.

10. In that circumstances, we hold that the activity undertaken by the appellant do qualify under manpower supply services and not manpower recruitment agency services. The appellant was liable to pay service tax is security service on which the appellant has already discharged service tax.

11. In that circumstances, we hold that no service tax is payable by the appellant under manpower recruitment agency service, therefore, whole of the demand except for security services is set aside.

12. In view of this, we hold that as the appellant has already paid service tax on security service, therefore, no demand is sustainable against the appellant.

13. In these terms, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)