

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

**Service Tax Appeal No. 51747 of 2018 [DB]**

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-495-17-18 dated 21.03.2018 passed by the Commissioner of Central Goods & Service Tax, Central Excise & Customs (Appeals), Raipur]

**M/s. D B Corp Limited**

7<sup>th</sup> Floor, DB Corporate Park,  
Rajbandha Maidan,  
Raipur (C.G.) - 492001

**...Appellant**

*VERSUS*

**Commissioner of Central Excise  
and Service Tax, Raipur**

Central Excise Building, Dhamtari Road,  
Tikrapara, Raipur,  
Chhattisgarh - 492001

**...Respondent**

**APPEARANCE:**

Shri Abhas Mishra, Advocate for the Appellant

Shri Rohit Issar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING: 11.07.2023

DATE OF DECISION: **04.10.2023**

**FINAL ORDER No. 51386/2023**

**DR. RACHNA GUPTA**

In the present case, the appellant is engaged in the publication of Daily Newspaper. The officers of Audit Commissionerate, Raipur audited the books and accounts of the appellant for the period of 01.04.2011 to 31.03.2016 and observed that the appellant has engaged two firms namely M/s. Green Steps facility Management Services, Raipur and M/s. Clintech Service and Workforce, Raipur for supply of manpower for housekeeping i.e. cleaning of appellant's plant and office premises. Observing that

the appellant has availed the Manpower Supply Services. As per Section 68(1) of the Finance Act, 1994 every person providing taxable services shall pay the service tax. However, Section 68(2) empowers the government to notify services and the persons liable to pay service tax on such services. In other words, once a service is notified under Section 68(2), instead of the person providing the service, the person who is notified will have to pay the service tax. Notification No. 30/2012-ST dated 20.06.2012 was issued under Section 68(2) notifying, *inter alia*, supply of manpower for any purpose shifting the onus of paying service tax to the service recipient under Reverse Charge Mechanism (RCM). Till 31.03.2015, the recipient's liability was to the extent of 75% of the tax payable, however w.e.f. 01.04.2015, 100% of the service tax has to be paid by the recipient of manpower supply. Since appellant, the service recipient, had not discharged its liability, the Show Cause Notice No. 290 dated 13.01.2027 was served upon the appellant proposing the recovery of service tax of Rs.2,21,951/- as calculated in accordance of the table given in Para 2.4 of the show cause notice. The interest on the aforesaid amount along with the imposition of appropriate penalty was also proposed vide the aforesaid show cause notice. The proposal was initially confirmed vide Order-in-Original No. 18/2017-18 dated 27.11.2017. The appeal against the said order has been dismissed vide the Order-in-Appeal No. 495-17-18 dated 21.03.2018. Being aggrieved the appellant is before this Tribunal.

2. We have heard Shri Abhas Mishra, learned Advocate for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the impugned order has been contrary to the facts and the applicable laws. It rather reflects the non-application of the mind by the departmental authorities. It is submitted that the adjudicating authority has miserably ignored the fact that 100% of the service tax was already paid in the case of service provider M/s. Clintech Service and Workforce, by the said service provider under the head 'Cleaning Services'. The tax liability qua the Cleaning Services has to be discharged by the service provider. Learned counsel impressed upon that the services received by the appellant were actually Cleaning Services and not Manpower Supply Services as alleged by the department. It is submitted that as per Rule 2(1)(g) of Service Tax Rules and CBEC Circular dated 15.12.2015, the service tax liability under RCM on Manpower Supply Service cannot be demanded where the payment has been made on job work basis and where the labourers are under the control and supervision of the service provider. Rule 2(1)(g) reads as follows:

*"supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control."*

With these submissions, the order confirming the demand holding the service received to be a Manpower Supply Service are alleged to be wrong. Accordingly, order is prayed to be set aside

and appeal is prayed to be allowed. Learned counsel has relied upon the following decisions:

**(i) Pankaj Kumar Vs. CCE & ST, Raipur, Final order No. 54789/2014 dated 04.12.2014.**

**(ii) Shivshakti Enterprises Vs. CCE reported as 2016 (41) STR 648 (Tri-Mumbai).**

**(iii) A. Sagayaraj Vs. CCE reported as 2014 (35) STR 784 (Tri.-Chennai).**

**(iv) CCE, Nagpur Vs. Balaji Fabricators, K.K. Fabricators reported as 2015 (7) TMI 140 – CESTAT Mumbai.**

4. Rebutting these submissions, learned DR has mentioned that both the firms i.e. both the service providers of the appellant, were found raising bills to the appellant on monthly basis, claiming charges for the payment of manpower deployed though for cleaning works. Hence it has rightly been held that the appellant was availing Manpower Supply Services from these agencies. Otherwise also from the comparison of ledgers of payments made to the above two service providers vis-à-vis ST-3 Returns filed by the appellant, it was noticed that appellant has short paid the service tax on the Manpower Services despite his liability for such services under RCM. The adjudicating authority has correctly interpreted the terms of the contract to arrive at the conclusion that contract has all the ingredients of the contract for supply of manpower. Until 31.03.2015, the service provider had also discharged his service tax liability to the extent of 25% only as per the Notification No. 30/2012-ST dated 20.06.2012. No error therefore has been

committed by the adjudicating authorities while holding the services in question to be classifiable as Manpower Supply Services for which the service recipient is liable under RCM. Hence, the appellant being the recipient has rightly been confirmed for the impugned demand. Appeal is accordingly prayed to be dismissed.

5. Having heard the rival contentions and perusing the records, we observe and hold as follows:

6. We observe the following question to be of moot adjudication.

**“Whether the services received by the appellant are the services in the nature of Cleaning Services or in the nature of Manpower Supply Services?”**

For this purpose, definition of both the services is important.

(i) Section 65 (24b) of Finance Act, 1994 defined Cleaning Services as follows:

*“cleaning activity” means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of—*

- (i) commercial or industrial buildings and premises thereof; or*
- (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof,*

*but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying*

(ii) Section 65(68) defined Manpower Supply Service as follows:

*“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.*

(iii) The latter services are taxable under Section 65(105)(k) of the Act which reads as follows:

*"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;]*

7. We also observe from the circular relied upon by the appellant bearing No. 190/9/2015-ST dated 15.12.2015, wherein it has been clarified as under:

*"2. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle."*

8. From the above provisions it becomes abundantly clear that Cleaning Service is a specifically defined and distinct service from

the Manpower Supply Service. For any person to provide a Manpower Supply, the following things have to be fulfilled:

(i) The service provider should have been registered as a Manpower Recruitment or Supply Agency.

(ii) The agency should have done all other activities as that of services in relation to pre-recruitments screening, verification of credentials, authenticity of the documents submitted by the candidate and the antecedents of the candidate [as elaborated in the explanation to Section 65(105)(k)]

(iii) The manpower is provided to be at the disposal and temporarily under effective control of the service recipient during the period of the contract

(iv) The value of the service should be directly co-related to the manpower deployed.

9. To understand the nature of services in question so as to adjudicate the above question framed, we also need to check the scope of the contract between the service provider and the service recipient. Contracts of the appellant with both the vendors than that the service providers had agreed to provide the Housekeeping and Cleaning Services. The manpower/the labourers as were to be deployed by the provider for doing House Cleaning Services in the plant and office premises of the appellant were under the control and supervision of the service providing companies only. The service provider only had agreed to ensure that its manpower will conduct themselves in most orderly manner and maintained perfect discipline else they would be immediately recalled to be substituted

with the another person. The safety of the manpower was also agreed to be within the purview of the service provider only.

10. We also observe from the invoices of both the companies that they charged not only for service of cleaning but also for housekeeping tools, equipments, chemicals and consumables. From such contracts, we hold that none of the above observed requirements of Manpower Supply Service stands fulfilled in the given set of the discussed circumstances. We also observe that both the service providers have nowhere mentioned to have been registered as Manpower Supply Services. Their invoices also identify them as an agencies involved in Housekeeping and Cleaning services. The invoices were also for provision of Housekeeping Services. It is clear from the contract and invoices that activities in question fall within the scope of cleaning activities as defined under Section 65(24b) of the Finance Act.

11. We have also perused the case law as relied upon by the appellant. It has been held in **Pankaj Kumar (supra)** that since the contractual production charges has been paid to the contractor on per metric tone basis, the contract for supply cannot fall under the definition of Manpower Supply. Similarly in **Shivshakti Enterprises (supra)** also it was held that when the payment made to the labour contractor is on the number of piece manufactured, the service provided cannot be called as the Manpower Supply Service. In the present case, the service providers are not even the labour contractors but, as their names suggest, they are into Housekeeping, Cleaning and Facility Management Services. The Department has also not produced their registration certificate to



show that they have been registered as Manpower Supply Agency. Therefore, the question of service rendered by them to be in nature of Manpower Supply Service does not at all arise.

12. We, therefore, hold that the findings of the adjudicating authority below are not correct. Just because some persons have been deployed by the service providing agency for providing Cleaning Services, the activity of Cleaning Services cannot be converted into the activity of providing manpower. The order is therefore set aside. However, we observe from the table in show cause notice that the service tax liability arising out of the contract between the parties to the appeal is short paid to the extent as shown in the table in 2.4 of the show cause notice. Department is set at liberty to take appropriate action, if possible, in accordance of law against the service providers. With these observations, the appeal is hereby allowed.

[Order pronounced in the open court on **04.10.2023**]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

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

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