

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

**PRINCIPAL BENCH-COURT NO. I**

**SERVICE TAX APPEAL NO. 50649 OF 2017**

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-566-16-17 dated 10.01.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal, M.P. ]

**M/s Donyolo Udyog Ltd**

RLY Complex, Shyamgarh Distt.  
Mandsaur (M.P.)

**APPELLANT**

VS.

**Commissioner, Central Excise &  
Service Tax, Indore**

**RESPONDENT**

**APPEARANCE:**

Shri Ankur Upadhyay, Advocate for the Appellant  
Shri Rajeev Kapoor, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING : 21 February, 2023  
DATE OF DECISION : 13 March, 2023**

**FINAL ORDER No. 50305 /2023**

**PER: HEMAMBIKA R PRIYA**

The current appeal has been filed by M/S Donyolo Udyog Limited (herein after referred to as the appellant) to assail the order of the Commissioner (Appeals) dated 10.01.2017.

2. The appellant is a manufacturer registered under Central Excise for manufacturing railway sleeper falling under chapter heading 68109990 of the Schedule to the Central Excise Tariff Act, 1985. The appellant is also registered with service tax under the category of Goods Transport Agency.

3. An enquiry was launched by the Superintendent of Central Excise, Mandsaur, seeking details of payment of service tax under reverse charge on specified services as per notification number 30/2012- ST dated 20.06.2012 for the services received from M/s Balaji Udyog (a Prop. firm) and M/s Karbi Trade and Industries Ltd., Shamgarh. The appellant vide their letter dated 22.10.2013 replied that the services provided by them was not of manpower supply, but was of job work. However, the appellant stated that they have paid service tax on 75% value for the month of September 2013 on the job charge service received from three small service providers availing exemption under notification No. 33/2012 – ST dated 20.6.2012. The jurisdictional officer issued the show cause notice dated 14.3.2014 seeking to demand service tax amount of Rs. 8,39,660/- along with interest and impose penalty under sections 76 and 77 of the Finance Act, 1994. The said show cause notice was adjudicated vide order in original dated 28.5.2015 wherein the aforesaid demand was confirmed, and the amount of Rs. 2,29,337/- already paid by the Noticee was appropriated. Penalties under sections 76 and 77 were also imposed. The Commissioner (Appeals) vide his order dated 10.1.2017 upheld the order passed by the adjudicating authority and rejected the appeal filed by the appellant.

4. The learned counsel appearing for the appellant submitted that M/s Balaji Udyog Ltd did not provide manpower supply service, and have carried out job work for concrete railway sleepers. They have charged service tax in respect of the said service of job work from the appellant. The counsel drew the attention of the bench to the invoices issued by M/s Balaji Udyog Ltd, to the appellant wherein the job description clearly states that it is of job work for concrete sleeper, Shamgarh. The counsel relied upon the judgements of the Tribunal in the case of **Shivshakti Enterprises Vs CCE, Pune<sup>1</sup>** and **Shailu Traders Vs CCE, Indore<sup>2</sup>**.

---

1 2016 (41) S.T.R. 648 (Tri.-Mumbai)

2 2018 (10)G.S.T.L. 462 (Tri.-Del)

5. The learned Authorised Representative reiterated the arguments of the Commissioner (Appeals) wherein he held that the demand of service tax under Manpower Supply Service is liable to be paid by the appellant in terms of notification No. 30/2012 – ST dated 20.6.2012.

6. We have heard the arguments of the learned Counsel and the Authorised Representative. The issue before us is whether the service received by the appellant is Manpower Supply Service or job work service. We find that as per the clause 1A(u) of the aforesaid notification, supply of manpower for any purpose by the individual/proprietary firm, Hindu Undivided Family or partnership firm whether registered or not to a business entity registered as body corporate is liable to pay service tax. In this regard, the Commissioner (Appeals) has relied on the GAR-7 challans of M/s Balaji Udyog, one of the five service providers, who has classified their service under Manpower Recruitment Agency. Therefore, the Commissioner (Appeals) has concluded that the service received by the appellant are to be covered under reverse charge mechanism and service tax is payable on 75% of the value of service.

7. In order to understand the nature of the service received by the appellant, we need to peruse the Agreement between the appellant and service provider, M/s Balaji Udyog Ltd. For ease of reference, the same is reproduced herein after:-

"M/s Donyolo Udyog Ltd, Shamgarh, company registered under the Companies act, 1956 having its registered office at Tinsukia, Assam and its works and office at Railway Complex, Shamgarh, hereinafter known as the First Party,

AND

M/s Balaji Udyog, a proprietorship firm having office at Banderdeva, Arunachal Pradesh and its works at Shamgarh, Madhya Pradesh, hereinafter known as the Second Party,

The First Party during its manufacturing process has various manual labour works in its works viz., stone crushing, cleaning of moulds and finished sleepers, fixing of inserts and plates and threading of wires, handling, staking and loading and unloading of various materials and arranging and weighing

aggregates and handling of finished sleepers etc., cutting of HTS wire, etc., etc., and casting of sleepers, etc., etc.

The Second Party has necessary labourers and staff and is able to perform the various works of the above referred manufacturing process of the first party. The Second Party have approach the First Party and offered to perform the various works of the factory.

The Second Party has quoted its rates for different works and after verbal mutual discussions on agreement was arrived at between them and that is being here with reduced in writing today.

The Second Party shall employ its own labourers, staff and tools for performing the different works allotted to them and shall perform the works as per the satisfaction of the first party.

The First Party shall pay to the Second Party labour charges at the rates mutually fixed from time to time for different works allotted to the second party.

The Second Party shall be responsible for the acts of its staff and workers in the First Party shall in no way be responsible for them etc., etc. the Second Party shall be responsible for fulfilling all obligations under the laws of the government towards them.

This agreement shall be valid unless terminated by mutual comment.

In witness thereof the respective parties put their signature on the 17<sup>th</sup> day of May 04.

Sd"

8. A plain reading of the said agreement clearly indicates that the service received is that of job work. Perusal of the invoices raised by the service provider to the appellant along with the statement of the job work done by them also shows that the appellant was receiving job work service from this service provider viz., Ms/ Balaji Udyog. It is not material to rely on the definition of the service indicated by the service provider in the GAR 7 challans, when the agreement between the appellant and the service provider is crystal clear. We also note that the issue is no longer res integra as Tribunal, in several decisions rendered in **Shivshakti Enterprises Vs CCE, Pune** (supra) and **Shailu Traders Vs CCE, Indore** (supra) has held that where the service

provider had deployed his employees in the manufacturing premises of the appellant for specified job works, the same cannot be held as Manpower Supply Services.

9. In view of the facts and circumstances of this case and various judicial pronouncements, we find that the impugned order challenged by the appellant is liable to be set-aside and is set aside. The appeal is, accordingly, allowed.

(Pronounced in the open court on 13 .03. 2023 )

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**