

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 12743 of 2014 - DB

(Arising out of OIA-AHM-SVTAX-000-APP-063-14-15 dated 30/05/2014 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Hitech Industries

A-113, Sreyas Complex, Near Vejalpur Bus Stand,
Vejalpur,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.S.T.-Service Tax – Ahmedabad

7th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat - 380015

.....Respondent

APPEARANCE:

Shri Dhaval K Shah, Advocate for the Appellant

Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/ 11807 /2023

DATE OF HEARING: 01.05.2023
DATE OF DECISION: 29.08.2023

RAMESH NAIR

The issue involved in the present case is whether the appellant's activity of carrying out job of fabrication for their service recipient with the help of the labour of the appellant is classifiable under Manpower Recruitment or Supply Agency Service or otherwise.

2. Shri Dhaval K Shah, Learned Counsel appearing on behalf of the appellant submits that the appellant has not provided the manpower, they have undertaken the job of fabrication of various types and they have charged to their customers as per KGs or per piece basis. Therefore, the activity of appellant does not fall under the category of Manpower Recruitment or Supply Agency Service. He also referred to the invoice copies and a letter from the

service recipient, to submit that as per these documents it is clear that the appellant have not provided the Manpower Recruitment or Supply Agency Service. He placed reliance on the following judgments:-

- Ritesh Enterprises Vs. CCE, Bangalore – 2010 (18) STR 17 (Tri.Bang)
- Divya Enterprises Vs. CCE, Mangalore – 2010 (19) STR 370 (Tri.- Bang)
- S.S Associates Vs. CCE , Bangalore- 2010 (19) STR 438 (Tri.Bang)
- Damodarareddy Vs. CCE, Tirupathi – 2010 (19) STR 593
- Rameshchandra C. Patel Vs. Com of ST – 20112 (25) STR 417
- M/s. Delphi Automotive Systems Vs CCE- 2004 (163) ELT 47
- M/s. Manglam Cement Ltd Vs. CCE – 2004 (163) ELT 177
- General Pharmaceuticals P Ltd Vs. CCE – 2007 (218) ELT 86
- M/s Marsha Pharma P Ltd Vs. CCE - 2009 (248) ELT 687 (Tri.Ahmd)
- P.T. Education & Training Services Vs. CCE – 2010 (19) STR 818 (Tri.Del)

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the revenue has classified the service of the appellant under Manpower Recruitment or Supply Agency Service and demanded the service tax only on the ground that in some of the invoices the appellant has mentioned the labour charges. To understand the activity of the appellant it is necessary to go through the documents related to the activity therefore, the invoices and letter of service recipient are scanned below:-

ANNEXURE : 102 TRANSWELD MECHANICAL ENGG. WORKS LTD.

12.12.2012

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Hightech Industries,
Plot No. 113-A, Shreyas Complex,
Vejalpur, Ahmedabad.

Subject : Issuance of letter clarifying the dispute involved in the Show Cause Notice F. No. STC/4-92/O&A/ADC/D-1/11-12 dated 14.10.2011, issued by Additional Commissioner, Service Tax, Ahmedabad.

Dear Sir,
In the subject matter, we have received from you a letter dated 15.12.2012, requesting us to issue a letter giving clarity on payments made to you, which is a subject matter for issue of above mentioned notice to you.

In response to your letter, we hereby state as under on the basis of factual position of the transactions involved for payment specified in your letter.

1. After the audit of our manufacturing unit having been conducted by central excise audit officers in the month of October, 2010, covering the period from March, 2009 to September, 2010, we had provided to our Range Superintendent a copy of ledger relating to payment made to you. We have provided this on 10.10.2011, in response to their letter dated 30.09.2011.
2. While providing such ledger to the Range Superintendent, we have not stated that payments reflecting therein are for proving of any manpower to our company. This is because of the fact that we have never availed from you a service of providing laborers / manpower during aforesaid period covered in the notice.
3. All payments, reflecting in such ledger are for the fabrication work carried by you in our factory with your work force and under your supervision. Such payments have been made based on bills / Invoices raised by you at relevant time. Various components of value mentioned in such Invoices are for such fabrication job only.
4. Such fabrication work has been carried out by you as per different type of assignment of fabrication work allotted to you at relevant time and verbal commitment agreed upon between us for such work.
5. Further due to different parameter involved in fabrication work assigned to you, it was not feasible for both of us to execute a written agreement and such work has been carried out on good faith of verbal commitment.

Hope above clarifications would meet with your requirement.

Thanking you,
Yours truly,
For Transweld Mechanical Engineering Works Ltd,
[Signature]
Authorised Signatory

44-C, Ashwamegh Industrial Estate, Sarkhej-Bavala Highway, Village : Changodar,
Tal : Sanand, Dist : Ahmedabad - 382 213. Tele. : 02717 - 645621 Telefax : 02717 - 250622



HI - TECH INDUSTRIES

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ENGINEERS, FABRICATORS & CONTRACTORS

AMBICA NAGAR -1, BEHIND MOTIPURA, SARKHEJ, AHMEDABAD - 382210.

M/s. *Transweld Mechanical Engg. Works Ltd.* Bill No: *21* Date: *4-11-07*
C. 44, Ashwamegh Ind. Area, Your Order No.: Date:
Changodar. Our Challan No.: Date:

Sr. No.	Particulars	Qty.	Rate		Amount	
			Rs.	Ps.	Rs.	Ps.
	<i>(Lab. charges only)</i>					
(1)	<i>Lathe Lab. charges for October. 07. Rs per attached Sheet.</i>	<i>01 Lot</i>	<i>8050</i>	<i>00</i>	<i>8050</i>	<i>00</i>
(2)	<i>Supervisor Sal. for Oct. 07</i>	<i>01</i>	<i>20000</i>	<i>00</i>	<i>20000</i>	<i>00</i>
(3)	<i>D/C. Tank fabrication & Erection work. Sheet attached.</i>	<i>01</i>	<i>11030</i>	<i>00</i>	<i>11030</i>	<i>00</i>
(4)	<i>Fabrication of Tank + Core Channel Repter W/sterchised</i>	<i>01 Lot</i>	<i>320670</i>	<i>00</i>	<i>320670</i>	<i>00</i>
(5)	<i>Loading & Unloading for the month of Oct.</i>	<i>41315 Kg</i>		<i>060</i>	<i>2478</i>	<i>00</i>
(6)	<i>Cleaning charges</i>	<i>01</i>	<i>750</i>	<i>00</i>	<i>750</i>	<i>00</i>
(7)	<i>Rate Diff: 73830kg + 50065kg = up to 4/11/05.</i>	<i>123895 Kg</i>		<i>050</i>	<i>61947</i>	<i>00</i>
					<i>Rs. 4,24,925/-</i>	
					<i>4,24,925-00</i>	
					<i>3,52,978-00</i>	
					<i>Total</i>	

Amount in words *Four lakh twenty four thousand nine hundred*
Subject to Ahmedabad Jurisdiction. *Twenty five only* For, **HI - TECH INDUSTRIES**
E. & O. E.

For, Transweld Mechanical Engg. Works Ltd.
[Signature]
Authorised Signatory

For, HI-TECH INDUSTRIES
[Signature]
PROPRIETOR



4.1 From the above invoices and the letter given by the service recipient it is clear that the appellant have not provided the manpower to the service recipient. It is not a case that the service recipient has control or supervision over the manpower for getting their job done as per their direction. It is clear that the appellant had been assigned the job of fabrication by the service recipient and the appellant have charged on the quantum of job basis and not on the basis of number of manpower or man hours. Therefore, irrespective of number of manpower or man hours involved in the job to be carried out, the appellant is under obligation to complete a job of fabrication as assigned to him, therefore, in this arrangement it cannot be said that the appellant have provided the service of Manpower Recruitment or Supply Agency Service.

4.2 Needless to say that for performing any job manpower is required but that itself does not decide that the assessee has provided the manpower. The important aspect to be seen is that whether there is a supply of manpower alone without concern of any job with the manpower supplier and the charges of the same has to be strictly on the basis of number of manpower and the wages to be paid to them which is not the fact in the present case. Therefore, as per the arrangement between the appellant and service recipient as evident from the above documents the service of the appellant does not fall under the category of Manpower Recruitment or Supply Agency Service however, the same is classifiable under 'Business Auxiliary service' under the sub category of 'production or processing on behalf of the client. Since demand was not raised under 'Business Auxiliary service' hence, the demand will not sustain for this reason alone. Moreover, it is the submission of the appellant that their service recipient are paying excise duty on their final product for this reason the appellant's activity are otherwise exempted under Notification No. 08/ 2005-ST. The judgments relied upon by the appellant directly support the case of the appellant.

5. As per the discussion and finding given herein above, we are of the view that impugned order is not sustainable, hence, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 29.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L. MAHAR
MEMBER (TECHNICAL)

Geeta