

Agreement has to be read in toto - Mere consideration on piece rate basis wouldn't make it a job work contract – SC

9 March 2022



## Summary

The Supreme Court (SC) has held that for granting the exemption based on the nature of agreement, the said agreement should be read as a composite whole. The SC viewed that just because the agreement contained a provision for payment on a rate basis, it would not make it a job work agreement and mentioned that crucial elements of a job work agreement were missing in the said agreement. Accordingly, it is opined that the contract is a pure and simple contract for the provision of contract labour and an attempt has been made to camouflage it as a contract for job work.

## Facts of the case

- The appellant<sup>1</sup> had obtained Service Tax registration under the category of 'Manpower Recruitment or Supply Agency Service'. The appellant entered into an agreement with a party<sup>2</sup> for providing personnel for activities such as felting, material handling, pouring and supply of material to the furnace.
- A Show Cause Notice<sup>3</sup> (SCN) was issued demanding service tax along with interest and with a proposed penalty<sup>4</sup>. The SCN alleged that the appellant failed to assess and discharge the service tax liability on or before the due date and had suppressed the facts and made misrepresentations by filing incorrect returns<sup>5</sup>.
- Placing reliance on certain judgements<sup>6</sup> the appellant argued that when the invoices were raised on the basis of work done on piece rate, the nature of work would be considered as job work and not manpower supply. Accordingly, it is eligible to avail exemption.

## Mumbai CESTAT observations and ruling<sup>7</sup>:

- **Appellant is a 'contractor'**: The agreement provides for payment of wages to workman/employees by the appellant, along with the mode of payment. It also provides for payment of statutory dues with proper records of the same and provides for recovery of such payment from him in case the company faces a financial burden. On perusal of the terms and conditions of the contract, it is abundantly clear that the appellant qualifies as a contractor<sup>8</sup>.
- **Not liable for exemption as per notification**: The agreement entered into by the appellant is not a job work contract but a contract labour agreement executed for the purpose of providing required manpower. Hence, the services provided do not qualify for exemption as per the notification<sup>9</sup>.
- **Extended period of limitation and imposition of penalty**: The non-payment of service tax by treating the

<sup>1</sup> Adiraj Manpower Services Pvt. Ltd.

<sup>2</sup> Semco Electric Pvt. Ltd. (later known as Sigma Electric Manufacturing Corporation Pvt. Ltd. "Sigma")

<sup>3</sup> On 26 September 2014

<sup>4</sup> ₹ 10,50,23,672 under Section 76

<sup>5</sup> ST-3 returns

<sup>6</sup> Om Enterprises v. Commissioner of Central Excise, Pune-I, 2018 (17) G.S.T.L. 260; Bhagyashree

Enterprises v. Commissioner 2017 (3) G.S.T.L.515  
Dhanashree Enterprises v. Commissioner 2017 (5) G.S.T.L., & S. Balasubramani v. Commissioner 2019 SCC OnLine CESTAT 480

<sup>7</sup> Service Tax Appeal No. 86153/2015; Order No. - A/86237/2019 dated 15 July 2019

<sup>8</sup> Under Section 2(c) the Contract Labour (regulation and Abolition) Act, 1970.

<sup>9</sup> SI No 30 of exemption Notification No 25/2012-ST

agreement as job work agreement was not brought to the knowledge of the department, hence an extended period of limitation can be invoked. Further, a penalty for delayed payment of tax can be imposed even if the appellant has no malafide intention or claims no mens rea.

etc., in the agreement which disqualifies the appellant from being a job worker. Therefore, there has been an attempt to camouflage the contract as a job work contract to avail the benefit of exemption from payment of service tax.

### SC observations and ruling<sup>10</sup>:

- **Whether the appellant is a job worker:** The definition of 'contractor' in the first part comprehends a person who undertakes to produce results for an establishment and the latter covers the supply of contract labour for any work of the establishment.
- **Reading of the agreement as a whole:** The agreement contains a provision for payment on a rate basis. Upon reading of the agreement, it appears as a pure and simple contract for the provision of contract labour. Thus, a complete reading of the agreement is required to determine the nature of contract.
- **Attempt to camouflage the contract as job work contract:** The agreement deals with regulation of manpower supplied by the appellant is his capacity as a contractor. There is an absence of certain terms, such as nature of the process of job- work, delivery schedule, specifications of work to be performed,

### Our comments

In the contract for the supply of manpower, the supplier deploys manpower that works under the effective control of the service recipient for the period of contract. On the other hand, in the case of job work service, the service recipient is assigned a particular job.

In the case in hand, the Apex Court has reiterated the importance of the agreement to substantiate any transaction. It has assigned a significant amount of importance to the nature and terms of the job work agreement, such as the nature of the process of work, delivery schedule, provisions for maintaining quality of work, etc.

For such reasons, the Apex Court has held that in order to decide the eligibility of exemption, the agreement should be read as a composite whole.

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<sup>10</sup> Civil Appeal No. 313 of 2021 dated 18 February 2022

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