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Hiring sports persons for appearance at events tantamount to supply of manpower services exigible to service tax – SC

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Summary

The Supreme Court (SC) has held that the activity of hiring a tennis player by the appellant (an event organiser) for an appearance at a sports tournament is a supply of manpower service liable to service tax. The SC stated that the definition of manpower supply or recruitment agency service does not incorporate a requirement or condition for the existence of an employer-employee relationship between the manpower supply agency and the person whose services are provided. The SC clarified that the Board circular issued on this issue deals with a situation where there exists a relationship between employer and employee, but it does not assume that such a relationship must exist for the statutory definition to be attracted. Hence, the fact that the absence of a relationship of employment between the tennis player and First Serve Entertainment (FSE) would not be determinative for the purposes of the statutory definition.

Furthermore, the SC held that there was no ground for the imposition of the penalty as the dispute in the present case essentially involved the interpretation of the statutory provisions and their interplay with the circular issued by the Board.

Facts of the case

- International Merchandising Company (hereinafter referred to as the appellant) is engaged in providing diversified sports, entertainment and media services. It organises events such as the Chennai Open Tennis Tournament and Lakme Fashion Week and entered into various agreements, both domestic and international, with regard to the hiring of celebrities for appearances at the events, selling broadcasting rights, etc.
- It had entered into an agreement with FSE for the appearance of a noted tennis player at the Chennai Open Tennis Tournament.
- Upon audit of records of the appellant, Show Cause Notices were issued raising demand of service tax under various heads including manpower recruitment or supply agency service under reverse charge, programme producer service, sponsorship service, and other services.
- The Commissioner confirmed the demand on the ground that the consideration paid to FSE for the appearance of the tennis player for the Chennai Open Tennis Tournament is taxable under the category of “manpower recruitment or supply agency” services. Further, it was held that any programme made by a programme producer and then offered for sale to broadcasters is a taxable activity liable to service tax.
- On further appeal, the demand was upheld by the Tribunal on the ground that the services provided by FSE were in nature of supplying, recruiting and providing players for sports events organised by the appellant which is liable to service tax under section 65(105)(k) read with section 65(68) of the Finance Act, 1994.
- The issue for consideration before the Apex Court is whether the scope of “manpower recruitment or supply agency” includes the requirement of the existence of an employer-employee relationship between the service provider and the person whose services are provided.

SC observations and ruling (Civil Appeal Nos 3532-3536 of 2020 dated 01 November 2022):

- **No requirement of employer-employee relationship:** The SC stated that the definition of manpower supply or recruitment agency service does not incorporate a requirement or condition for the existence of an employer-employee relationship between a manpower supply agency and the person whose services are provided. In the present case, there was undoubtedly nothing on the record to indicate that the tennis player was an employee of FSE.
- **Clarification issued by Board:** The Board vide its circular dated 23 August 2007 had clarified that in cases where individuals are contractually employed by some manpower recruitment or supply agency where the agency agrees to supply the services of such individual for consideration, an employer-employee relationship exists between agency and such individual and not between the individual and person who uses services of such individual. Thus, such cases are covered under the definition of “manpower recruitment or supply agency” in Section 65(68) and are hence liable to service tax.

- **Employer-employee relationship not a determinative factor:** The Board circular does not postulate that an employer-employee relationship must exist for attracting a statutory definition. Hence, the fact that there may be no relationship of employment between the tennis player and FSE would not be determinative for the purposes of the statutory definition.
- **No programme production on behalf of the appellant:** Upon assessment of the agreement between the appellant and Zee Telefilms it is evident that the appellant licensed the right to broadcast Chennai Open Tennis Tournament and a similar agreement was entered with Trans World International. Therefore, there is no production of the programme by either of the parties but by the appellant. Therefore, the Tribunal was in error and the Tribunal's order to this extent needs to be reversed.
- **No invocation of extended period and imposition of penalty:** The SC held that since the issue pertains to the interpretation of the provision of Section 65(68) and Section 65(86b) of the Finance Act 1994, the invocation of an extended period of limitation cannot be warranted. The show cause notice shall be confined to the normal period of limitation. Simultaneously, as the case essentially turned upon the interpretation of statutory provisions, the order for the imposition of a penalty does not hold good.

Our comments

This is a landmark judgement wherein the SC has emphasised that the absence of any employment relationship between the individual hired, and the manpower supply agency would not be determinative for the purposes of the statutory definition of supply of manpower or recruitment services as provided under the former service tax laws.

Though the above judgment was delivered in the context of service tax law, it is important to examine the impact that it will have under the GST laws.

Furthermore, it is pertinent to note that the SC set aside the penalty since the dispute in the present case essentially involved the interpretation of the statutory provisions and their connection with the Board's circular.

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