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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 275 of 2012

(Arising out of Order-in-Original No.175/2011 dated 31.10.2011 passed by the Commissioner of Service Tax, Bangalore.)

M/s. BPL Limited
11th KM, Bannerghatta Road,
Arakere,
Bangalore – 560 076. — Appellant(s)

VERSUS

The Commissioner of Service Tax
No.16/1, 5th Floor, S.P. Complex,
Lalbagh Road,
Bangalore. — Respondent(s)

APPEARANCE:

Ms. Meghana Lal and Ms. Vani, Advocates for the Appellant.

Shri P. Saravana Perumal, Addl. Commissioner (Authorised Representative) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20879 / 2025

DATE OF HEARING: 20.03.2025
DATE OF DECISION: 27.06.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding demand of service tax under 'Manpower Recruitment or Supply Agency Service'. Appellant is registered under service tax category of renting of immovably property, maintenance and repair service etc. As per the balance sheet maintained by the appellants, it was observed that they have received an amount of Rs.5,27,06,600/- for the period from 2005-2006 towards rent

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facility and salary of the employees. Since the amount was not subject to payment of service tax, the appellants were directed to produce the details of said expenditure. In response to said query, the appellant submitted that it was towards the salary and wages paid during the disputed period. Thus, considering the said amount was towards rent and manpower recruitment or supply agency service, service tax was demanded and show-cause notice was issued on 19.10.2010. Thereafter, the adjudicating authority drop the demand against rent and confirmed the demand against Manpower recruitment or supply agency service as demanded . Considering the confirmed the demand. Adjudicating authority also imposed penalty under different provisions of law. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, the learned counsel submitted that appellant had entered into a joint venture with M/s. Sanyo Electric Company and named as M/s. Sanyo BPL Pvt. Ltd. (SBPL). SBPL was primarily to cater Indian market and for OEM exports primarily to middle east and Europe. Thereafter, appellant had entered into a Business Transfer Agreement on 14.12.2005 with SBPL and transferred their entire business pertaining to sale, manufacture and distribution of colour television sets to SBPL. Learned counsel drew our attention to the agreement dated 14.12.2005 and submitted that as per the said agreement, SBPL would have taken over the business by June 2005 and due to reasons beyond the control of the appellant, the business was taken over only on 15.12.2005. Since the appellant had incurred expenditure towards salary and rental charges during the period, appellant had raised debit notes. In response to the query, the appellant had submitted that said amount is not on account of any service but only to cover-up the expenditure and it is shown as financial arrangement in the accounting system. There is no question of providing manpower service to SBPL when the joint venture business commenced only from 15.12.2005.

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3. The learned counsel also drew our attention to the reimbursable expenses which clearly shows that it was towards the expenses such as salary. The learned counsel also drew our attention to the letter dated 27.12.2010 where the SBPL has issued a certificate along with Chartered Accountant certificate specifying that the said amount was towards reimbursement of expenses. The learned counsel further submits that issue regarding tax liability on reimbursable expenses is squarely covered by the judgment of the Hon'ble Supreme Court in the matter of **Union of India vs. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd.: 2018 (10) GSTL 401 (SC)** and **Kou Chan Knowledge Convergence (P) Ltd. vs. CST: Final Order No.20859 – 20864/2024 dated 18.09.2024**. Hence, the entire demand on this issue is unsustainable.

4. The learned counsel further submits that the entire transactions were reflected in the books of account and it was subject to audit from time-to-time, a fact being so, allegation of suppression of facts for evasion of duty is unsustainable. Learned counsel also submitted that the demand is also barred by limitation and the amount was reflected in the balance sheet during the financial year 2006-07 and the show-cause notice was issued only on 19.10.2010. In this regard, Ld. Counsel relied on the decision of this tribunal in case of **Trissur Municipal Corporation vs. CCE: Final Order No.20240/2024 dated 10.04.2024** and submits that the entire demand is time barred.

5. Learned Authorized Representative (AR) reiterated the findings in the impugned order and submitted that since the commencement of the joint venture company was postponed, the amount reimbursed by SBPL till the actual commencement of the activity is to be considered as manpower supply. The learned AR further submitted that as held by the adjudicating authority, the appellant was holding the employees for the purpose of

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ultimate recruitment / employment in the joint venture company and for the said service, they have received the consideration. Learned AR also relied on the judgment of the Tribunal in the matter of **CCE vs. Chemplast Sanmar Ltd.: (2023) 13 Centax 35 (Tri.-Mad.)** wherein it is held that:

> **"7.1** The difference between the contesting parties appears to be in the field of semantics as much as from the provisions of law. Revenue refers to the payments made by the group companies to the respondent as 'consideration', while the respondent labels the same payment as a 'reimbursement'. Since the term 'consideration' has been defined in section 67, the discussion will have to be confined to understanding the term from the said description. No import of definition from any other statute or legal reference is possible. The factual position can be ascertained only by examining the nature of payment. The fact is that the group company's pay the respondent for the use of staff provided by them. This payment is for the benefit of using the expertise of the respondents staff for fixed periods. The term 'consideration' as defined in the section includes 'any amount' that is payable for the taxable services provided or to be provided which is broad enough to include payments labelled as 'reimbursement' under its fold. Once a nexus between the provision of service and payment is evident and it is determined that service has been provided in terms of the definition of the impugned service and payments made toward it are received from time to time, then the payments labelled as 'reimbursement' come under the definition of 'consideration'. The respondent does not deny this nexus but states that they have produced a Chartered Accountant's certificate before the adjudicating authority wherein it has been certified that what is received from the group company during the relevant period is only towards the reimbursement of actual expenses and there was no mark-up. Hence there is no consideration received so as to attract service tax.

6. The learned AR also relied on the decision in the case of **CCT vs. Fuji Furukawa Engineering and Construction Co. (India) Pvt. Ltd.: (2024) 22 Centax 206 (Tri.-Bang.) and**

Mitsui Prime Advanced Composites India Pvt. Ltd. vs. CCE: (2024) 25 Centax 148 (Tri.-Del.).

7. Heard both sides. As per the agreement entered by the appellant with SBPL, the joint venture was proposed to commence from June 2005 and as per Article 1 of the Agreement, the asset of the seller in respect of the specified business shows employees and all personal records (including without limitation all personnel human resources and other records and each employees' current position and base annual compensation) of the seller relating to the employees. Thus, as per this condition of the Agreement, it is complete contract for sale of the property for new venture and said contract cannot be vivisected to different categories to find out the service tax element on each activity. The appellant had taken a specific contention that the consideration is towards reimbursement of salary for the delay in commencement of joint venture and the same cannot be considered as service provided by the appellant under 'Manpower Recruitment or Supply Agency Service'. Further Tribunal in the case of **Spirax Marshall P.Ltd. v. Commissioner of Central Excise, Pune-1 [2016 (44) S.T.R. 310(Tri. Mumbai)]** observed that deputation of staff to group companies and the salary given by the assesses would not amount to providing any services falling under the category of Manpower Supply. This was also so held in the case of **UTI Asset Management Company Ltd. v. Commissioner of S.T., Mumbai-I [2016 (45) S.T.R. 540 (Tri.-Mumbai)]**. In the present case, the appellant is not a person engaged in supply of manpower and is primarily undertaking other activities. It cannot be held that they were providing any Manpower Supply Services. Further as regarding the reimbursable expenses, the issue is squarely covered by the judgment of the Hon'ble Supreme Court in the case of **UOI vs. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd.** (supra), where is categorically held that:

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> **"24.** In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service."

8. As regarding invoking extended period of limitation, we find strong force on the contention of the appellant that the entire documents and the details of the transactions are subject to verification from time-to-time. Fact being so, no finding can be concluded that the appellant had committed fraud for evasion of service tax. This tribunal in case of **Trissur Municipal Corporation vs. CCE: Final Order No.20240/2024 dated 10.04.2024** observed that:

> "7.1 There is no dispute that whenever the appellant rendered services in furtherance of business or commerce, necessary Service Tax is being paid even though there are disputes regarding the taxable value. The alleged short-payments are not with any intent to evade payment of duty but on assessing the incorrect taxable value. Having already held in the previous paragraphs that the appellant is not liable to pay Service Tax for some of the services, as rightly pointed out by the appellant there is nothing on record to establish the intent to evade payment of

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> duty. The appellant has relied on the decision of **TS Motors** (supra) and **Southern Power Distribution** (supra) wherein the Tribunal in these cases referring to the decision of the Hon'ble Supreme Court in the case of **Pushpam Pharmaceuticals Co. and Continental Foundation Joint Venture Holding Vs. Commissioner of Central Excise, Chandigarh** where the Supreme Court had observed that "the expression suppression has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and, therefore has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. On the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of facts. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."

9. Thus, in the instant case, the consideration is not received towards 'Manpower Recruitment or Supply Agency Service' but only towards reimbursement of the salary paid for retaining the employees during the relevant period. Considering the same, the demand is unsustainable. Appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 27.06.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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