

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 41328 of 2016

(Arising out of Order in Original No. MAD-CEX-COM-02 – 03/2016 dated 29.03.2016 passed by the Commissioner of Central Excise, Madurai)

Tractors and Farm Equipment Ltd.

10/250, Kalladipatti Post
Nilakottai Taluk, Kalladipatti
Dindigul – 624 201.

Appellant

Vs.

Commissioner of GST & Central Excise

Central Revenue Building
No. 4, Lal Bahadur Shastri Road
Bibikulam, Madurai – 625 002.

Respondent

APPEARANCE:

Shri Raghav Rajeev, Advocate and
Ms. Nimrah Ali, Advocate for the Appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41365/2025

Date of Hearing: 13.11.2025

Date of Decision: 25.11.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Original No. MAD-CEX-COM-02 – 03/2016 dated 29.03.2016 passed by the Commissioner of Central Excise, Madurai (impugned order).

2. Brief facts of the case are that the appellant is a manufacturer of tractor and parts of tractors and holds a Central Excise registration certificate. They are also registered with the Service Tax Department for payment of Service Tax. It appeared to the department that the appellant was utilizing the services of various manpower suppliers

who were providing labour for carrying out various activities in the appellant Company. These manpower suppliers were not registered with the department and did not pay Service Tax. Supply of labour is a taxable service classifiable under 'Manpower Recruitment or Supply Agency' service for which service providers are liable to pay tax on 25% of service charges received and service receiver i.e. the appellant are liable to pay Service Tax on the remaining 75% of the service charges paid under partial 'Reverse Charge Mechanism' (**RCM**), with effect from 01.07.2012 under Notification No. 30/2012-ST dated 20.06.2012. Hence Show Cause Notice dated 20.10.2014 was issued to the appellant proposing to demand duty covering the period from 07/2012 to March 2015 apart from demanding interest and proposing imposition of penalty. After due process of law, the Ld. Commissioner confirmed the proposals in the Show Cause Notice and the Statement of Demand along with interest and imposed penalty under section 76 and 77 of the Finance Act, 1994. Hence the present appeal.

3. The learned Advocates Shri Raghav Rajeev and Ms. Nimrah Ali appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 The Ld. Counsel for the appellant, Shri Raghav Rajeev, submitted a Table summarizing the issue which is reproduced below.

Table

Appeal No.	ST/41328/2016
Issue	Demand of Service tax from the recipient of Service on alleged supply of manpower even after payment of the entire Service tax by the supplier.
Impugned Order	Order-in-Original No. 02 & 03/2016 dated 29.03.2016
Pre-deposit paid	Rs. 21,79,730/-

Impugned Period	July 2012 to November 2013	December 2013 to March 2015
SCN	Show Cause Notice No. 7/2014-ST dated 20.10.2014	Statement of Demand No. 10/2015 dated 15.09.2015.
Demand	Rs. 1,40,40,227/-	Rs. 1,50,22,801/-
Interest	Not quantified. As per Section 75 of the Finance Act, 1994.	Not quantified. As per Section 75 of the Finance Act, 1994.
Penalty	Rs. 14,04,023/- under Section 76 of the Finance Act, 1994. Rs. 10,000/- under Section 77 of the Finance Act, 1994.	Rs. 15,02,280/- under Section 76 of the Finance Act, 1994. Rs. 10,000/- under Section 77 of the Finance Act, 1994.

He stated that the appellant hired independent contractors to manufacture and clear tractors, with each contractor using their own employees and managing specific tasks under separate agreements. These contractors collected payment including Service tax from the appellant and paid the tax themselves, starting from 01.07.2012 as "other taxable services." Despite this, proceedings were initiated, leading to appeals before CESTAT, Chennai. The Tribunal, vide Final Order Nos. 41888-41889/2021 dated 26.08.2021 and Final Order Nos. 40178-40182/2022 dated 18.05.2022 remanded the matter for a decision afresh since the Ld. Adjudicating Authority did not consider that Service tax was already paid by independent contractors. Previously, the Tribunal had set aside Service tax demands on these contractors for 'manpower supply services' prior to 01.07.2012 under the same agreements in **G. Ramakrishnan and Others v. CCE & ST, Madurai, Final Order Nos. 40359-40367/2019 dated 19.02.2019** and **M. Arul Prakasam and others v. Commissioner of GST and Central Excise and others, Final Order Nos. 41762-41771/2021 dated 23.08.2021**. The said finding was arrived at on the basis of the following reasons:

- *The contractor is responsible for the defects in executing the work and merely because he has engaged other workers in executing the work, it cannot be said that he is a supplier of manpower.*

- *The Company has privity of contract only with the contractor and it has nothing to do with the conditions of employment of the workers who work for the contractor.*
- *The payments were made on piece rate basis, and the payments were not for man hours or per person supplied.*
- *There is no evidence unearthed by the Department to prove otherwise. That being the case, the demand is based on mere assumptions.*

The Tribunal had set aside the demand, ruling that services from independent contractors do not constitute 'supply of manpower'. No appeal appears to have been filed against these orders, making them final. Boards **Circular No. 190/9/2015-ST dated 15.12.2015** clarified that services from independent contractors are not taxable as manpower supply, based on similar agreements. The Ld. Counsel provided a table comparing relevant clauses in the Circular and the Agreement between the Appellant and the contractors.

S. No	Clauses as per the Circular	Relevant Clause in the Agreement
1	The Contractor is engaged for undertaking specific jobs.	The purchase orders are issued for carrying out specific works [Annexure-5, Page 22 of the Appeal Paperbook]
2	The Contractor is at liberty to decide the number of workers.	There is no stipulation in the agreement or the purchase orders to engage any particular number of workers [Clause 4, 11 and 17 of the Agreement, Annexure-3, Page 17 of the Appeal Paperbook]
3	The job worker may undertake job in his premises or in the premises of the service-receiver.	In this case, the work is undertaken in the Appellant's Factory [Clause 6 of the Agreement, Annexure-3, Page 17 of the Appeal Paperbook]
4	Value of service is payable on per piece basis.	Consideration is paid on piece rate basis and not on man hours spent [Annexure-5, Page 22 of the Appeal Paperbook].
5	Service provider is liable to compensate the service recipient if the work is not as per standard form.	In case the work executed is not in accordance with the specifications, the contractor shall compensate the Appellant

		[Clause 3 and 7 of the Agreement, Annexure-3, Page 17 of the Appeal Paperbook]
6	In case the work is executed by service provider at the site of service recipient, the service provider would indemnify the service receiver of any loss to infrastructure.	The contractor will be liable and make good any loss or damage to Appellant [Clause 8 of the Agreement, Annexure-3, Page 17 of the Appeal Paperbook]
7	The employee deployed for the assigned job would be under the control/supervision of the service provider.	The contractor is independently responsible for the work [Clause 11 and 12 of the Agreement, Annexure-3, Page 17 of the Appeal Paperbook]

He submitted that is a well settled position of law that Service tax liability cannot be fastened on the basis of assumptions and presumptions and the burden of proof to establish taxability is on the Revenue. In this regard, reliance is placed on the following cases:

- ***Diamond Flush Doors (P) Ltd. v. Commissioner of CGST & Central Excise, Chennai - 2024 (6) TMI 847 - CESTAT Chennai.***
- ***Paramjit Singh v. The Commissioner, Customs & Central Excise, Tikrapara, Raipur - 2024 (1) TMI 86 - CESTAT New Delhi.***

In light of the same, the Appellant submits that the Department has not discharged their onus to establish taxability under partial RCM and the Impugned Order merits to be set aside on this ground alone. Further the entire tax liability has been discharged by the independent contractors who were the service providers and is not disputed, as recorded at para 24 of the impugned order. Moreover, the situation was revenue neutral and hence he prayed that the impugned order may be set aside.

3.2 Smt. O.M. Reena, the Ld. Authorized Representative who appeared for the respondent, reiterated the points made in the

impugned order. She stated that the appellant had in the case of M/s. Sigma Enterprises, Madurai paid service tax under the partial RCM with effect from 01.07.2012 and had not done so for the services received from the other service providers and hence it shows that they knew that they had to pay tax on partial RCM basis but had evaded duty by not doing so. She prayed that the appeal may be dismissed.

4. We have heard the parties to the appeal and perused their written submissions. We find that the dispute relates to the classification of the service involving manpower utilized by appellant in their factory. In a situation like this the matter cannot be decided by assumptions and presumptions more so when the Hon'ble Supreme Court has formulated a series of tests, which if applied in this case would have helped determine the classification of the service. In **Diamond Flush Doors** (supra), this Tribunal speaking through one of us [Shri M Ajit Kumar, Member (Technical)], had examined the issue. The Bench observed:

"7. The question before us is whether there is a relationship of employer and an employee between the appellant, who is the manufacturer of flush doors and the persons who fix the doors at the buyers' premises. The issue involves a mixed question of fact and law. This question has come up before Constitutional courts in the past on how to determine whether a person is an employee or not. The Supreme Court in various cases have stated that no one test of universal application can be depended upon to give the correct result. Some of the judgments the Supreme Court that which laid out the different tests are listed below;

- i) the employer's level of control over the persons engaged should be high and the persons could be directed about not only what work to do, but also how to do it. (Control and Supervision Test) [See **Shivnandan Sharma v. Punjab National Bank Ltd.** [1955 AIR 404, 1955 SCR (1)1427]

- ii) whether the persons were integrated within the employer's business during the course of their engagement. This test (organisation test) looks at the degree of integration in work committed in the employer's primary business with the understanding that the higher the level of integration, the more likely the worker is to be an employee. (Organisation Integration Test) [See **Silver Jubilee Tailoring House vs Chief Inspector of Shops & Establishments** (1974) 3 SCC 498]
- iii) whether the employer had the power to select, appoint and dismiss the persons without restriction. The persons, like any typical employee enjoyed benefits such as leave/paid time off, holidays, bonus, perquisites, social security, insurance coverage etc (Mutual Obligation Test) [See **Ram Singh vs U.T. of Chandigarh** (2004) 1 SCC 126 (Supreme Court)]
- iv) whether the workers are provided with and use company equipment during their engagement. (Provision of Equipment Test) [See **Silver Jubilee Tailoring House vs Chief Inspector of Shops & Establishments** (1974) 3 SCC 498]
- v) whether the workers were bound to provide their services in any place as directed by the employer, and do not have the flexibility to provide the services from any remote location not approved by the employer. They are required to adhere to the same specified times of work and rules that apply to the employers' permanent employees. (Control and Supervision Test) [See **Shivnandan Sharma vs Punjab National Bank Ltd.**[955 AIR 404, 1955 SCR (1)1427]

8. This is not an exhaustive list of tests to discern the relationship between the parties. For example, from the textbook scenario of 'complete control' to 'complete independence' lies a variety of circumstances involving a wide range of initiative and discretion being enjoyed by the worker. In fact, Courts and Tribunals in different cases, have used 'multiple sets of factors' test while deciding these relationships. What is critical is that it is essential to examine and test the nature of relationship between the parties before arriving at a conclusion. Mere reference to invoices raised or payments made, without reference to the specific provisions of a contract or working arrangement, will not be indicative of employer-employee relationship.

*****. *****. *****

11. In the light of the non-examination of the true nature of relationship between the parties a conclusion of the appellant being the employer of the workers cannot be fastened by assumptions and presumptions. Revenue has not proved its case regarding the true nature of the disputed activity provided by workmen to the appellants customers. Hence the question of examining the correctness of the extended period invoked or imposition of penalty does not arise."

5. The multifactor test mentioned above was reiterated by the Hon'ble Supreme Court in its latest judgment in the case of **GENERAL MANAGER, U.P. COOPERATIVE BANK LTD. Vs ACHCHEY LAL & ANR.** [2025 INSC 1175 / Civil Appeal No.2974/2016, Dated: 11.09.2025], to bring out the **distinction between a contract of service and a contract for service.**

6. Further as stated by the appellant this Tribunal had set aside Service tax demands on these contractors for 'manpower supply services' prior to 01.07.2012. The principles involved in identifying the relationship are the same and we find no reason to deviate from them.

7. Revenue has hence failed to discharge its burden on merits. The payment of tax by M/s. Sigma Enterprises, Madurai, as cited by revenue, is based on the setting of its own facts which involved supply of manpower and is not relevant in determining the classification of a service in the case of independent contractors. Once an order cannot be sustained on merits the connected issues relating to interest and penalty etc. also do not survive.

8. Considering the totality of the issue as discussed above, we set aside the impugned order and allow the appeal. The appellant will be eligible for consequential relief if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 25.11.2025)

sd/-
(AJAYAN T.V.)
Member (Judicial)
Rex

sd/-
(M. AJIT KUMAR)
Member (Technical)