**2014-TIOL-1896-HC-ALL-ST**

**IN THE HIGH COURT OF ALLAHABAD**

**#REFERENCE**

**Central Excise Appeal No.173 of 2014**

**THE COMMISSIONER OF CENTRAL EXCISE**

**Vs**

**M/s COMPUTER SCIENCES CORPORATION INDIA PVT LTD**

**Dr D Y Chandrachud , CJ & Pradeep Kumar Singh Baghel , J**

**Dated: October 16, 2014**

**Appellant Rep by:** Amit Mahajan
**Respondent Rep by:** None

**ST** - Manpower recruitment or Supply agency - Respondent A ssessee in the course of its business operations hired certain expatriate employees - CST, Noida confirming ST demand under the head Manpower Supply or Recruitment Agency Service - Tribunal holding that issue squarely covered in favour by the Final Order in *Volkswagen India (Pvt.) Ltd.* - 2013-TIOL-1640-CESTAT-MUM - appeal before High Court.

**Held:** Commissioner clearly missed the requirement that the service which is provided or to be provided, must be by a manpower recruitment or supply agency - Moreover, such a service has to be in relation to the supply of manpower - assessee paid the salaries of the employees in India, deducted tax and contributed to statutory social security benefits such as provident fund etc. - There was no basis whatsoever to hold that in such a transaction, a taxable service involving the recruitment or supply of manpower was provided - Unless the critical requirements of clause (k) of Section 65(105) of FA, 1994 are fulfilled, the element of taxability would not arise - Tribunal decision in accordance with law, hence appeal dismissed: High Court [para 7, 8]

**Appeal dismissed**

**Case law cited :**

**Volkswagen India (Pvt.) Ltd. Vs Commissioner of C. Ex., Pune-1 - 2013-TIOL-1640-CESTAT-MUM . ... para 5, 6...relied upon**

**JUDGEMENT**

1. The appeal arises from a judgement and order of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi The Tribunal dated 18 February 2014.

2. By an order of adjudication dated 30 October 2012 the Commissioner, Customs and Central Excise, Noida confirmed a demand of service tax of Rs . 3,78,49,744/- under Section 73(i) of the Finance Act, 1994 The Act of 1994 and besides demanding interest, imposed a penalty in a like amount under Sections 75, 77 and 78.

3. The assessee is a part of a group of companies situated in the US, UK and Singapore, among other countries, and had booked expenses during financial years 2006-07 to 2010-11. The assessee in the course of its business operations hired certain expatriate employees overseas.

These employees were either directly employed by the assessee or were transferred from other Group Companies to the assessee in India. During the tenure of their employment in India, the expatriate employees performed their duties and responsibilities like other employees of the assessee in India. A letter of employment was entered into between the expatriate employee and the assessee from the date when the employee was transferred to India for the duration of the employment in the country.

4. The assessee stated that it had incurred expenditure on social security benefits of the expatriate employees in India including by way of provident fund. Tax was deducted from the salaries payable to the expatriate employees on the basis of the total income earned, on behalf of the employees and the assessee issued Form 16 and Form 12BA to the employees, in its status as an employer. The assessee also remitted to its group companies certain social security and other benefits that were payable to the accounts of the expatriate employees under the laws of the foreign jurisdiction.

5. The Commissioner in the order of adjudication confirmed the demand of tax, interest and penalties on the basis that the assessee had provided a taxable service within the meaning of Section 65(105 )(k) of the Act of 1994. Under Section 65(105 )(k) a taxable service is a service provided or to be provided "to any person by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner". The Tribunal while allowing the appeal, filed by the assessee, relied upon a decision of its coordinate Bench in *Volkswagen India (Pvt.) Ltd. Vs Commissioner of C. Ex., Pune-1 2014 (34) STR 135 =* ***2013-TIOL-1640-CESTAT-MUM***.

6. The Revenue, in this appeal, has raised the following questions of law;

> *"(i) Whether on the facts and in the circumstances of the case the Tribunal has committed an error of Law in holding that in the light of the judgement in Volkswagen India (Pvt.) Ltd. Vs. Commissioner of Central Excise, Pune-I reported in 2014 (34) STR 135 =* ***2013-TIOL-1640-CESTAT-MUM*** *the appeal is liable to be allowed and the impugned adjudication order is quashed;*
>
> *(ii) Whether on the facts and in the circumstances of the case the Tribunal has committed an error of Law in following the judgment in the case of Volkswagen India (Pvt.) Ltd. Vs. Commissioner of Central Excise, Pune-I reported in 2014 (34) STR 135 =* ***2013-TIOL-1640-CESTAT-MUM*** *and in ruling that there is no taxability issue as there is no supply of manpower service rendered to the assessee by the foreign/ holding company and that method of distribution of salary cannot determine the nature of transaction, without considering the fact that the three perquisites of taxability of the transaction are fulfilled, i.e. service provider, service recipient and consideration for services received also made and hence the activity clearly falls under "Manpower Recruitment of Supply Agency" Service;*
>
> *(iii) Whether on the facts and in the circumstances of the case the Tribunal has committed an error of Law in ignoring Board's Circular No. 96/7/2007-ST dated 23-08-2007, which clearly stipulates that in the case of supply of manpower individuals are contractually employed by the manpower supply agency and the agency agrees for use of services of an individual employed by him, to another person, for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual;*

7. In order to be a taxable service within the meaning of Section 65(105 )( k), the service must meet the following requirements: (i) there has to be a service provided or to be provided to any person;

> (ii) the service has to be provided by a manpower recruitment or supply agency; and
>
> (iii) the service must be provided in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner.

8. In the present case, the Commissioner clearly missed the requirement that the service which is provided or to be provided, must be by a manpower recruitment or supply agency. Moreover, such a service has to be in relation to the supply of manpower. The assessee obtained from its group companies directly or by transfer of the employees, the services of expatriate employees. The assessee paid the salaries of the employees in India, deducted tax and contributed to statutory social security benefits such as provident fund. The assessee was also required to remit contributions, which had to be paid towards social security and other benefits that were payable to the account of the employees under the laws of the foreign jurisdiction. There was no basis whatsoever to hold that in such a transaction, a taxable service involving the recruitment or supply of manpower was provided by a manpower recruitment or supply agency. Unless the critical requirements of clause (k) of Section 65(105) are fulfilled, the element of taxability would not arise.

9. For this reason, we are of the view that the decision of the Tribunal was in accordance with law. No substantial question of law would arise.

10. The appeal is, accordingly, dismissed. There shall be no order as to costs.