Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 132 of 2012

(Arising out of OIA-84/2011/BVR/COMMR-A-/RBT/RAJ passed by Commissioner of Central Excise-BHAVNAGAR]

M/s. Ultra Tech Cement Ltd **.......Appellant**
Gujarat Cement Works,
P.O. Kovaya, Taluka : Rajula
AMRELI, GUJARAT -365541

VERSUS

C.C.E. & S.T.-Bhavnagar **........Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

WITH
Excise Appeal No. 133 of 2012
(Arising out of OIA-80/2011/BVR/COMMR-A-/RBT/RAJ passed by Commissioner of Central Excise-BHAVNAGAR]

M/s. Ultra Tech Cement Ltd **.......Appellant**
Gujarat Cement Works,
P.O. Kovaya, Taluka : Rajula
AMRELI, GUJARAT -365541

VERSUS

C.C.E. & S.T.-Bhavnagar **........Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE:

Sh. Jigar Shah, Advocate for the Appellant
Sh. S.K. Shukla, Authorised representative for the respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11036-11037 /2019

DATE OF HEARING: 26.06.2019
DATE OF DECISION: 26.06.2019

RAMESH NAIR

The issue involved is that the appellant's refund claim made under Notification No. 17/2009-ST dated 07.07.2009 in respect of CHA service and technical testing and analysis service has been rejected on the ground that the classification of the service is not correct.

2. Sh. Jigar Shah, Ld. Counsel appearing on behalf of the appellant submits that the classification has been decided by the service provider as mention in the invoices. The appellant has no locus-standi to change the

classification being a recipient of service. He further submits that even though the service is otherwise classifiable under any other head but it is not disputed that the services were used in the export of goods. As per the Notification No. 17/2009-ST all the services covered under Section 65 (105) are eligible for refund if it is used in export of goods, therefore, even though if there is a dispute of classification of services, refund on this ground cannot be rejected. He placed reliance on following judgments:-

- AIA Engineering Pvt Ltd-2014 (36) STR 1236 (Guj.)
- Newlight Hotesl & Resorts Ltd-2016 (44) STR 258 (T)
- Thermax Limited Vs. Unioun of India the Hon’ble Gujarat High Court order dated 11/02/2019 in the Civil application No. 11846 of 2018

3. Sh. S.K. Shukla, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

We have heard both the sides and perused the record. We find that the only dispute raised by the lower authorities is that the service received was classified wrongly by the service provider, therefore, the refund is not admissible. On going through the Notification No. 17/2009-ST, we find all the services covered under Section 65(105) are eligible for refund under the said Notification if it is used for export of goods, therefore, even though there is any dispute on classification but the service being used for export of goods are eligible for the refund. Therefore, on this ground refund could not have been rejected. As regard, dispute of classification, it is service provider who have classified the services. The appellant being a recipient services, the classification at their end cannot be challenged, for this reason also the refund on the dispute of classification cannot be rejected.

4. Accordingly, we set aside the impugned order and allow the appeals.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi