CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Service Tax Appeal No. 556 of 2011

[Arising out of OIO-02/STC/BRC-I/MP/COMMR-I/2011 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

M/s. Nandesari Industries Association ....**Appellant**
Plot No. 134/1, Gidc Estate,
Opp. Shopping Centre,
Nandesari, Gujarat-391340.

VERSUS

C.C.E. & S.T.-Vadodara-I ....**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Sh. Sailesh Vyas, Advocate appeared for the Appellant
Sh. K. Kinariwala, Assistant Commissioner (AR) for the Respondent

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

FINAL ORDER NO.A/ 11902 /2019

DATE OF HEARING: 30.09.2019
DATE OF DECISION: 30.09.2019

RAMESH NAIR

The issue involved is that the appellant is an industry association set up for the activity of treatment and recycling of effluents and solid wastes.

2. The Revenue has demanded the Service Tax under the Club or Association Service referred under sub-clause (zzze) of clause (105) of Section 65.

3. Sh. Sailesh Vyas Ld. Counsel appearing on behalf of the Appellant submits that the very same service is exempted by virtue of Section 145 of Finance Act 2012. He also submits that as per the condition of said Section, in the present case also the financial assistance was sanctioned by Government of Gujarat in the Ministry of Industry. In this regard he invited our attention to the sanction letter issued by the Industry Commissionerate. He also referred to the decision of this Tribunal in the case of Vapi Waste &

Effluent Management Co. Vs. Commr. of C.EX., Daman 2012 (28) S.T.R. 356 (Tri.-Ahmd.).

4. Sh. K. J. Kinariwala, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. Heard both sides and perused the records. We find that Club and Association Service for the purpose of treatment of effluent has been exempted by Section 145 of Finance Act, 2012 which is reproduced below.

> ***"145. Validation of exemption given to club or association including cooperative societies in relation to project.*** *— (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 566(E), dated the 25th July, 2011, issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), granting exemption from the whole of service tax leviable under section 66 thereof, on the club or association service referred to in sub-clause (zzze) of clause (105) of section 65 of the said Act, provided by a club or an association including registered cooperative societies, in relation to the project, shall be deemed to have, and deemed always to have, for all purposes, validly come into force on and from the 16th day of June, 2005, at all material times.*
>
> *(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected as if the notification referred to in sub-section (1) had been in force at all material times.*
>
> *(3) Notwithstanding anything contained in the Finance Act, 1994 (32 of 1994), an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2012 receives the assent of the President.*
>
> *Explanation.— For the removal of doubts, it is hereby declared that,—*
>
> *(i) project means common facility set-up for treatment and recycling of effluents and solid wastes, with financial assistance from the Central Government or a State Government;*
>
> *(ii) the provisions of section 11B of the Central Excise Act, 1944 (1 of 1944), shall be applicable in case of refunds under this section."*

6. In view of the above section, the Club or Association Service set up for a project for treatment and recycling of effluents and solid wastes is exempted subject to condition that the same is set up with the Financial assistance by the Central Government or a State Government. As per the sanction letter dated 09.09.2010 issued by the Industry Commissionerate, it is clear that the project was financially assisted by the State Government of Gujarat.

7. Accordingly the Service is clearly exempted under Section 145. The impugned order is set aside the appeal is allowed.

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Kamakshi