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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11872 of 2014-DB

[Arising out of Order-in-Original/Appeal No SUR-EXCUS-002-APP-276-13-14 dated 31.01.2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Sneha Insulation Pvt Limited .... **Appellant**
Plot No. 901/6, Opp. Norris Medicine Limited,
GIDC, Ankleshwar, BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat-ii .... **Respondent**
New C. Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri Ankush Dugar, Chartered Accountant for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 12.07.2023
DATE OF DECISION: 21.07.2023

FINAL ORDER NO. 11550/2023

RAMESH NAIR :

The limited issue to be decided in this case is that whether the appellant is liable to pay service tax of Rs. 52,928/- on account of Management, Maintenance and Repair service.

2. Shri Ankush Dugar, learned Chartered Accountant appearing on behalf of the appellant submits that appellant had a bonafide belief that their activity of Management, Maintenance and Repair service does not attract service tax. They had taken registration and paid the service tax under the category of Erection, Commissioning and Installation Service. Therefore, there is no malafide on the part of the appellant, accordingly the demand of Rs. 52,928/- is time-barred inasmuch as the show cause notice for the period 2006-07 to October 2011 was issued on 06.04.2012. He invited out attention to Para 5.12 of order-in-appeal and submits that learned

Commissioner (Appeals) has given a categorical findings that there is no malafide on the part of the appellant. Therefore, in view of this finding, the demand for extended period is also not sustainable.

3. Shri Prakash Kumar Singh, learned Superintendent (AR) reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that limited issue to be decided is whether the demand on Management, Maintenance and Repair service is hit by limitation or otherwise as submitted by learned Chartered Accountant on behalf of the appellant. In this regards, we find that learned Commissioner (Appeals) regarding bonafide of the appellant has given findings in Para 5.12 which is reproduced below :-

> "**5.12** With regards to various penalties, it is noticed that in subject case, there is a bonafide mistake on the part of the Appellant and there is no evidence contrary to that, and it also involves the question of interpretation of the legal provisions, accounting treatment, and exemption notifications, therefore no penalty of any type is justified in this case. This is well settled issue in number of cases, cited more recently in case of M/s Gary Pharmaceuticals (P) Limited vs. CCE Ludhiana- 2013 (297) ELT 391 (Tri. Delhi), and also in case of M/s Kesursani Zarda Bhandar vs. CCE Allahabad-2013 (289) ELT 33 (Tri Delhi). I respectfully follow it, keeping in view the directions and order of Hon'ble Supreme Court in M/s. Kamalakshi Finance Corporation Limited."

From the above categorical finding it is observed that the learned Commissioner (Appeals) has concluded that as against the bonafide mistake on the part of the appellant there is no contrary evidence and also found that the issue involved question of interpretation of legal provisions, accounting treatment and exemption notifications.

5. In this position, since the Revenue has not filed any appeal against this finding of the Commissioner (Appeals), we are of the view, applying the same finding demand for extended period is also not sustainable. Hence the

demand for the extended period is set-aside. The appeal is allowed in the above terms.

(Pronounced in the open court on 21.07.2023*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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