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

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No.488 of 2009**
(Arising out of OIA-319/2009/STC/HKJ/COMMR-A-/AHD dated 02/12/2009 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

**Messrs N J Devani Builders Pvt Ltd** **......Appellant**
BEHIND ISHWAR BHUVAN,
NAVRANGPURA, AHMEDABAD, GUJARAT

*VERSUS*

**C.S.T.-Service Tax – Ahmedabad** **.........Respondent**
7 TH FLOOR, CENTRAL EXCISE BHAWAN, NR. POLYTECHNIC
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD,GUJARAT-380015

**APPEARANCE:**
Shri. Amal Dave, Advocate for the Appellant
Shri R.K. Bhashkar, Superintendent (AR) for the Respondent

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

**Final Order No. A/ 11308 /2021**

DATE OF HEARING: 17.03.2021
DATE OF DECISION:17.03.2021

**RAMESH NAIR**

The brief facts of the case are that the appellant was providing Commercial or Industrial Construction Service and they were availing exemption under Notification No. 01/2006-S.T., 21/97-S.T., 39/97-S.T., 40/97-S.T., 12/2001-S.T., 8/2003-S.T., 12/2003-S.T., 18/2003-S.T., 19/2003-S.T., 2/2004-S.T., 9/2004-S.T. and 10/2004-S.T. whereby the appellant is entitled for the abatement of 76% from the gross value of the construction service. The appellant had availed Cenvat credit in respect of GTA Service. The case of the department is that since the appellant had availed the Cenvat credit in respect of input service, namely GTA service, they are not entitled for the abatement of 76% provided under various Notification from time to time. Accordingly, the exemption was denied and differential duty was demanded.

2. Shri Amal Dave, Learned Counsel appearing on behalf of the appellant submits that this is the periodical demand in the present case. For earlier period this Tribunal vide Order No. A/10973/2019 dated 03.06.2019 remanded the matter to the Adjudicating Authority holding that the appellant shall be entitled for the benefit of Notification subject to reversal of

Cenvat Credit availed on Input Service. This order was challenged before Hon'ble High Court in Special Civil Application No. 11513 of 2019 wherein the Hon'ble High Court vide Order dated 12.03.2020 set aside the Tribunal's Order dated 03.06.2019, accordingly, the demand in the present case also not sustainable.

3. Shri R. K. Bhashkar, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the Impugned Order. He submits that in any case when the outward service is not liable to service tax, they are not entitled for Cenvat credit in respect of Input Service.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the issue involved is that the differential duty demand due to denial of abatement of 76% as provided under various Notification on the ground that the appellant had availed the Cenvat credit in respect of Input Service. The same issue for previous period in the appellant's own case came before this Tribunal and this Tribunal has held that the appellant is entitled for the abatement Exemption Notification subject to reversal of Cenvat Credit. This very order dated 03.06.2019 was challenged before the Hon'ble High Court in Civil Application No. 11513 of 2019 wherein the Hon'ble Gujarat High Court vide order dated 12.03.2020 set aside the Tribunal's order as well as the Show Cause Notice raising the demand on the ground that the service falls under works contract service and demand was raised under Commercial or industrial construction service. Considering the judgment passed by Hon'ble High Court since the same issue involved in the present case and there is only difference of period, the ratio of the Hon'ble High Court Judgment is squarely applicable in the present case. Accordingly, following the Hon'ble High Court judgment dated 12.03.2020, we set aside the demand as well as the impugned order. The appeal is allowed.

(Dictated and Pronounced in the open court)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

Neha