

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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11702 of 2014-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-COM-072-13-14 dated 17.02.2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Isgec Unit Dahej

Plot No. 13-b, GIDC Industrial Estate, Dahej,
BHARUCH, GUJARAT

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Vadodara-ii

1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

.... Respondent

APPEARANCE :

Shri Jigar Shah & Shri Amber Kumrawat, Advocates for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 09.08.2023

DATE OF DECISION :12.09.2023

FINAL ORDER NO. 12008/2023

RAMESH NAIR :

The issue involved in the present case is that whether the Adjudicating Authority is correct in holding that an amount of Rs. 60,30,561/- paid by the assessee to be deposited and appropriation of the same in terms of Section 73A(2) of Finance Act, 1994, on the ground that appellant was not required to pay service tax on the job work as per exemption Notification No. 8/2005-ST dated 01.03.2005, therefore the amount paid on such activity is not a service tax but deposited and appropriated under Section 73A of Finance Act, 1994.

2. Shri Jigar Shah, learned Counsel appearing on behalf of the appellant submits that in the present case the appellant have charged service tax to

the service recipient and the same was paid to the government exchequer therefore, in any circumstance the proposal to treat the amount under Section 73A is not applicable in the present case. Alternatively, he submits that the Adjudicating Authority has contended that since the amount was not payable in terms of Notification No. 8/2005-ST, the payment made by the appellant to be treated as deposit and appropriated under Section 73A(2), is not correct as Notification No. 8/2005-ST is a conditional one and it is open to the assessee to avail the same or not. Therefore, there was no compulsion on the appellant to avail the notification. Accordingly the payment made by the appellant is correct and legal.

3. Shri P. Ganesan, learned Superintendent (AR) appearing on behalf of the Revenue 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 in the impugned order the learned Commissioner treated the amount of service tax paid by the appellant as deposit and the same was appropriated under Section 73A(2) of the Finance Act, 1994. For the ease of reference, the same is reproduced below:-

“73A. Service tax collected from any person to be deposited with Central Government.

(1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.

(3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice

requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.

(5) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).

(6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 (1 of 1944) or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount."

5. From the sub Rule-2, it is clear that even if any amount of service tax is not required to be paid and the same is collected, it needs to be credited in the Central Government account. In the present case, there is no dispute whether or not service tax payable by the appellant and if the same is collected by the service recipient, it was admittedly deposited to the Central Government. Therefore, no further appropriation under Section 73A(2) is required. Section 73A(2) is required only when the assessee, if not required to pay any service tax but collected from the service recipient and not deposited to the Central Government, same needs to be recovered. In the present case, there is no dispute that the appellant have deposited service tax recovered from the service recipient to the central Government. Therefore, no further action is required. Without prejudice to the above, we find that entire case has been made out as the appellant was not supposed to pay service tax in terms of Notification No. 8/2005-ST. On this ground, it is not disputed that the service provided by the appellant is taxable service but by virtue of Notification No. 8/2005-ST, since the Notification No. 8/2005-ST exempts but the same is admittedly on certain conditions and is not absolutely exemption notification and in terms of Section 5A of Central Excise Act, 1944 which is applicable to the service tax matters. It is option for the assessee to avail or not to avail the conditional exemption, therefore, the appellant opted not to avail Notification No. 08/2005-ST is not illegal or

incorrect. For this reason also the entire proceedings against the appellant is not sustainable. As per the above discussion and findings, we are of the view that issuance of show cause notice and adjudication thereupon vide the impugned order was not correct. Accordingly, we set-aside the impugned order and allow the appeal of the appellant.

(Pronounced in the open court on 12.09.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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