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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10269 of 2014-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-564-13-14 dated 16.12.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Shyam Engineers .... **Appellant**
10, Baroda Auto Sales Estate,
Basides Cargo Motors, Chhani, Opp. G S F C,
VADODARA,
GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara .... **Respondent**
1st Floor, Room No.101,New Central Excise Building,
Vadodara,Gujarat-390023

APPEARANCE :

Shri D.D. Rishi, Advocatefor 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 : 07.08.2023
DATE OF DECISION : 05.10.2023

FINAL ORDER NO. 12201/2023

RAMESH NAIR :

The issue involved in the present case is whether the appellant being sub-contractor provided service in SEZ on behalf of the main Contractor, is eligible for exemption from service tax vide Notification No. 9/2009-ST dated 03.03.2009 as amended by Notification No. 15/2009-ST dated 20.05/2009.

2. The case of the department is that only main contractor who is eligible for exemption and the appellant being sub-contractor, not providing service to the SEZ unit or SEZ developer, is not eligible for exemption.

3. Shri D.D. Rishi, learned Counsel appearing on behalf of the appellant submits that it is the service which is provided in SEZ is exempted irrespective who is providing the service whether the sub-contractor or main contractor. He submits that the notification also provided exemption to the service provided for the operation of SEZ therefore, even though the appellant being sub-contractor not provider of service to SEZ unit or to developer but it is undisputed that the service is provided in SEZ which is sufficient requirement for eligibility for exemption under Notification No. 09/2009-ST.

4. Shri P. Ganesan, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that Revenue has denied the exemption on payment of service tax under Notification No. 09/2009-ST only for the reason that the appellant being a sub-contractor, have not provided service directly to the SEZ unit or developer of SEZ. On perusal of notification, we find that notification prescribes that the service which are provided in relation to authorised operation in SEZ and received by a developer or unit of SEZ are exempted from whole of service tax. As per this plain reading of the notification, the only criteria is that the service which is provided, should be in relation to the authorised operations in SEZ and received by a developer or unit of SEZ. In the facts of the present case, there is no dispute that appellant have provided service which are approved by the concerned authority in relation to the authorised operations in SEZ therefore, in our considered view, even the appellant is sub-contractor but the condition of providing service to authorised operation has been satisfied.

Therefore, exemption cannot be denied to the appellant. This issue has been considered by this Tribunal in the following decisions;

(a) Sudhir Chand Jain vs. CCE – 2018 (8) GSTL 302 (Tri. All)

(b) CST vs. Fedco Paints and Contracts – 2017(3) GSTL 364 (Tri.-Mumbai)

From the above judgments and the discussion and findings given hereinabove, there is no doubt in our mind that service provided by the appellant in the capacity of sub-contractor but in relation to the authorised operations in SEZ are clearly eligible for exemption Notification No. 9/2009-ST dated 03.03.2009 as amended. Accordingly, the impugned order is set-aside, appeal is allowed.

(Pronounced in the open court on 05.10.2023 *)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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