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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.13069 of 2018

(Arising out of OIA-BHV-EXCUS-000-APP-165-2018-19 dated 06/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Nirubha Mangalsinh Gohil & Co ………**Appellant**
309, Nirmal Plaza, Talaja Road, Bhavnagar, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar ………**Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

APPEARANCE:
Shri. Sarju Mehta, Chartered Accountant for the Appellant
Shri. Vinod Lukose, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12281 /2021

DATE OF HEARING: 18.03.2021
DATE OF DECISION: 16.07.2021

RAMESH NAIR

The issue involved is of non– payment of service tax on the taxable service namely Commercial or Industrial Construction Service, Business Auxiliary Service, Erection, Commissioning and Installation Service, Site Formation and Clearance, Excavation and Earthmoving and Demolition Service provided by the appellant to various customers either as Contractor or Sub- Contractor .

2. Shri Sarju Mehta, Learned Chartered Accountant appearing on behalf of the appellant submits that the appellant is not disputing the taxability of service. However, their grievances is that the lower authority has not considered the Cum tax benefit and reduction in penalty in terms of section 80 of the Finance Act, 1994.

3. Shri Vinod Lukose, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of

the impugned order. He also submitted the detailed written submission along with various case laws vide letter dated 07.03.2021 which was taken on record. He further submits that the appellant has not pleaded the claim of cum tax benefit before the Learned Commissioner (Appeals). However, the same was pleaded before the Adjudicating Authority. He submits that the appellant have not yet paid service tax liability even though they are not disputing the taxability of service.

4. I have heard both the sides and perused the records. I find that there is no dispute from either side as regard the taxability of the service in question. However, the appellant have raised the issue that cum tax benefit has not been considered. I find that though the appellant have raised this issue before the Adjudicating Authority but the same was not argued before the Learned Commissioner (Appeals) therefore, I am of the view that in the interest of justice one opportunity can be given to the appellant to put up their case as regard cum tax benefit before the Commissioner (Appeals). The appellant also submitted that the penalty should be waived or reduced by invoking Section 80 of the Finance Act, 1994. Since, the penalty is consequential to the tax amount this issue is also kept open for reconsideration by the Learned Commissioner (Appeals).

5. Accordingly, appeal is allowed by way of remand to the learned Commissioner (Appeals) only to reconsider the quantum of tax by considering the provision related to cum tax benefit and also the penalty.

(Order pronounced in the open court on 16.07.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta