

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

REGIONAL BENCH- COURT NO.3
Service Tax Appeal No.10021 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-287-2018-19 dated 30/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Sud Chemie Pvt Ltd

A-1/2/3, Gidc, Nandesari,
Vadodra, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-I

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

.....Respondent

APPEARANCE:

Shri Saurabh Dixit, Advocate for the appellant

Shri R.K Bahshkar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12349 /2021

DATE OF HEARING: 02.09.2021
DATE OF DECISION: 02.09.2021

Raju

This appeal has been filed by M/s Sud Chemie Pvt Ltd against the demand of service tax and imposition of penalties.

2. Learned counsel for the appellant pointed out that there are two issue involved. The first issue relates to the payment of service on the reverse charge basis on GTA services received by them. He pointed out that the demand pertains to the period April 2005- March 2006. The appellant has discharged the duty liability through their Cenvat credit on 1st December, 2006 along with interest. However, when the revenue pointed out that this amount should be paid in cash, the appellant discharge the duty in cash on 27th December, 2006. Learned counsel pointed out that they are not contesting for payment of duty and interest. Learned counsel pointed out that they are entitled for the benefit of section 73(3) of the Finance Act,

1994. He pointed out that the revenue has denied the benefit of the said section because section 73(3) was introduced in 2010 much after the disputed period. The learned counsel relied upon the decision in the case of M/s SKY AUTOMOBILES -2018 (12) TMI 74- CESTAT KOLKATA to claim that the section 73(3) was clarificatory in nature.

2.1 The second issue relates to the demand of service on reverse charge basis in respect of commission paid by the appellant to a foreign entity. The period of the second dispute is 16th June 2005 to March 2006. He pointed out that the said period is prior to the introduction of section 66A. He pointed out that prior to the said period the levy itself was not leviable. He argued that during that period there was lot of confusion in the trade regarding leviability of the said duty on reverse charge basis. He also claimed that they are not demanding any refund of duty but only setting aside of penalties imposed under section 76 and 78. He also claimed that their specific claim under section 80 was not considered.

3. Learned AR relied on the impugned order. He argued that section 73(3) introduced much after the disputed period and therefore, has no application in the instant case.

4. I have gone through rival submissions. I find that the first issue is involved relates to the payment of service on reverse charge basis in respect of GTA services received by appellant. The appellant has paid the service tax as soon as it was pointed by the auditor and again in cash when it was pointed out that it has to be paid in cash. In these circumstances, I do not find any that there was any malafide on the part of the appellant. Therefore, benefit of section 80 should be extended for the appellant and penalty under section 76 and 78 are set aside. The appellant have already conceded that they are not contesting the payment of duty.

4.1 The second issue relates to demand of service tax of reverse charge basis in respect of commission to a foreign entity. The period is prior to introduction 66A when the duty is not leviable. In this circumstance, I do not find any justification in imposition of penalty under section 76, 77 and 78. The penalty imposed under section 76, 77 and 78 are set aside. The appellant has already conceded that they are not contesting payment of duty. The appellant has however conceded payment of penalty under section 77 in respect of first charge.

5. The appeal is partly allowed in above terms.

(Dictated and pronounced in the open court)

Geeta

(RAJU)
MEMBER (TECHNICAL)