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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10372 of 2014
(Arising out of OIA-RJT-EXCUS-000-APP-484-13-14dated 31.10.2013 passed by Commissioner of Central Excise& Service Tax-Rajkot)

MUNDRA INTERNATIONAL CONTAINER TERMINAL PVT LTD ....**Appellant**
NEW MUNDRA PORT,
NAVINAL,P.O. BOX NO.8,
KUTCH-GUJARAT

VERSUS

C.C.E. & S.T. RAJKOT ....**Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:
Shri Abhishek Doshi, Chartered Accountant appeared for the Appellant
Shri Himanshu P. Shrimali, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12781/2023

DATE OF HEARING: 28.11.2023
DATE OF DECISION:28.11.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for cenvat credit in respect of maintenance or repair service and land scaping for residential quarters of the staff.

2. Shri Abhishek Doshi, learned Chartered Accountant appearing on behalf of the appellant submits that though the issue in hand has been decided against the appellant in the case of GHCL reported at 2011 (22) STR 610 (Guj.) by the Hon'ble Gujarat High Court but the Show Cause Notice has invoked the extended period. It is his submission that this is the third show cause notice wherein the extended period was invoked. Since there are contrary judgments on the issue, he referred to the Hon'ble Andhra Pradesh High Court judgment in the case of ITC Ltd. 2012-TIOL-199-HC-AP-ST, wherein the cenvat credit on the very

same service related to residential quarters have been allowed therefore, there is no malafide on the part of the appellant. He also submits that in their own case the demand was dropped on the ground of time bar by this Tribunal in the final order No. A/10376/WZB/AHD/2013 dated 08.03.2013, therefore, he submits that the demand for extended period may be dropped.

3. Shri H.P. Shrimali, learned (Superintendent) Authorized Representative appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, I find that the limited issue to be decided in this case is that whether demand is time bar or otherwise. The issue on merit has been decided against the assessee by the Hon'ble High Court in the case of GHCL (supra). As per the admitted fact this is third show cause notice dated 12.04.2012 issued for the period of April 2008 to March 2011 invoking extended period. It is a settled legal position as per the Hon'ble Supreme Court judgment in the case of Nizam Sugar Factory reported at 2006–TIOL-56-SC-CX that on the same issue in the subsequent show cause notice, the extended period cannot be invoked. Moreover, in the appellant's own case by this Tribunal in final order No.A/10376/WZB/AHD/2013 dated 08.03.2013, the demand for extended period was set aside. It is also undisputed that issue was not free from doubt and there are contrary judgments of different High Courts itself.In the case of ITC Limited (supra), the cenvat credit on the service related to residential quarters of the staff was allowed, therefore, taking stock of all the factors as discussed above no malafide can be alleged against the appellant. Therefore, in my considered view, the demand for the extended period will not survive. Hence, the

demand for the extended period, corresponding interest and entire penalty is set aside. The impugned order stand modified to the above extent. The appeal is partly allowed in above terms.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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