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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.10357 of 2019

(Arising out of OIA-CCESA-SRT-APPEAL-PS-533-2018-19 dated 01/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

N R Agarwal Industries Ltd ……**Appellant**

Unit I Plot No. 169 2nd Phase Gidc
VAPI, GUJARAT

VERSUS

C.C.E. & S.T.-Surat-I ……**Respondent**

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE:

Shri. S Suriyanarayan, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12444 /2021

DATE OF HEARING: 11.10.2021
DATE OF DECISION:11.10.2021

RAMESH NAIR

The issue involved is that whether the remuneration paid by a Company to the managing director and whole time Executive director is liable for Service Tax or otherwise. Both sides have submitted that this tribunal in the identical case of Supreme Treaves P Ltd Vs. CCE, Daman vide order No. A/11891-11892/2021 dated 24.05.2021 remanded the matter to the adjudication authority for afresh de-novo order, after recording certain observations. They have submitted that the matter may be remanded on the same line for passing afresh order.

2. Considering the submission made by both the sides. We find that on the identical issue the matter was remanded to the adjudicating authority by passing the following order:

> *"4. We have carefully considered the submissions made by both the sides and perused the records. We find that the Learned Commissioner despite the submission of the appellants that the remuneration paid by the appellants to the managing director and the executive director of the company was shown as "Salary" and declared in Form- 16 which is a income tax return for the salary income decided that the remuneration*

paid is not a salary but directors remuneration. Therefore, the same is liable to service tax in the hands of the appellant. We find that though in the Income tax return the remuneration was declared as salary income but it is a self declaration. However, whether such income is a salary income or otherwise the same can be established on the basis of employment conditions for employment of directors as company's employees. In the entire proceedings the appellant have not produced the appointment order of the directors as employees containing the terms and conditions of the employment. On the basis of terms and conditions of the employment of directors as employees it can be ascertained whether the directors are employees or otherwise which is the root of the entire issue. Therefore, we are of the view that matter needs to be reconsidered taking into account not only the position of income tax but also on the basis of terms and conditions of the employment. We also find that the learned Authorized Representative has submitted the status of identical issue in case of M/S PCM CEMENT CONCRETE PVT LTD pending in the Hon'ble Supreme Court. The latest order by the Hon'ble Supreme Court is scanned below:

ITEM NO.53 COURT NO.2 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos.5702-5703/2010

M/S PCM CEMENT CONCRETE PRIVATE LIMITED Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE CUSTOMS AND SERVICE TAX Respondent(s)

Date : 10-09-2018 These appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s) Mr. S. Ganesh, Sr. Adv.
Mr. P.K. Das, Adv.
Mr. O.K. Sarkar, Adv.
Mr. Sudarshan Singh Rawat, AOR

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Ms. Nisha Bagchi, Adv.
Ms. Sunita Rani Singh, Adv.
Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

List the matters for final disposal on a non-miscellaneous day in the month of January-2019.

(POOJA ARORA)
COURT MASTER

(ASHA SONI)
ASSISTANT REGISTRAR

4.1 From the above status we find that the matter is coming up for final disposal. The Adjudicating Authority may take cognizance of Hon'ble Supreme Court judgment in the above case while passing a de-novo order depending on the facts of the case. All the other issues are kept open.

5. The appeals are allowed by way of remand to the adjudicating authority for passing a fresh de-novo order by following the principles of natural justice."

3. Since on the identical issue we have taken the stand as ordered above, this matter also needs to be remanded to the adjudicating authority. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing afresh order, taking into consideration the observation made in the order referred above. All the issues are kept open.

(Dictated and Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi