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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10831 of 2019-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEALS-PS-774-2018-19 dated 31.01.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Hindustan Pencils Pvt Limited **.... Appellant**
Survey No 326/2/2, Bhilad Silvassa Road
Athal, SILVASSA, DADARA AND NAGAR HAVELI

VERSUS

Commissioner of Central Excise & ST, Daman **.... Respondent**
3rd Floor, Adarsh Dham Building, Vapi-Daman Road,
Vapi, Opp.Vapi Town Police Station, Vapi
Gujarat-396191

APPEARANCE :

Shri Raj Kaushik Vyas, Advocate for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

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

DATE OF HEARING/ DECISION : 07.12.2021

FINAL ORDER NO. A/12590 / 2021

RAMESH NAIR :

The brief facts of the case are that the appellant has made double payment of service tax and therefore they seek refund of excess payment of service tax on the works contract service.

2. Shri Raj Kaushik Vyas, learned Counsel appearing on behalf of the appellant at the outset submits that the appellant were not given proper opportunity for filing additional documents and CA Certificate to establish that excess payment of service tax was made as well as the incidence was not passed on to any other person. Now the appellant have produced the certificate from Chartered Accountant.

3. Shri Dharmendra Kanjani, learned Superintendent (AR) appearing on behalf of the appellant reiterates the findings of the impugned order.

3. On careful consideration of the submissions made by both the sides and perusal of the record, I find that the CA Certificate is a vital document in the case of refund, first, for the reason that excess payment was made and second, to prove that incidence of excess payment of service tax was not passed on. However, this certificate was neither submitted nor considered by the Adjudicating Authority. Therefore, in my considered view, the matter needs to be remanded to the Adjudicating Authority for deciding the refund afresh in the light of CA certificate submitted by the appellant and also additional documents, if any to be submitted by the appellant.

4. Accordingly, the impugned order is set-aside, the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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