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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11761 of 2018

(Arising out of OIA-AHM-EXCUS-003-APP-0227-17-18 dated 27/03/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Bhoomi Construction Co **.........Appellant**

939/2, SECTOR 4-D, NEAR G-2 CIRCLE,
GANDHINAGAR, GANDHINAGAR, GUJARAT

VERSUS

C.C.E. & S.T.-AHMEDABAD-III **.........Respondent**

CUSTOM HOUSE... 2ND FLOOR,
OPP. OLD GUJARAT HIGH COURT, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

APPEARANCE:

None appeared for the Appellant
Shri J A Patel, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10078 /2022

DATE OF HEARING: 03.02.2022
DATE OF DECISION:03.02.2022

RAJU

This appeal has been filed by Bhoomi Construction Co. against the rejection of refund claim filed by them under Section 102 of Finance Act, 1994. The Section 102 of Finance Act, 1994 reads as under:-

> **SECTION 102. Special provision for exemption in certain cases relating to construction of Government buildings**. –
>
> (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –
>
> (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;
>
> (b) a structure meant predominantly for use as –
>
> (i) an educational establishment;
>
> (ii) a clinical establishment; or 2 SERVICE TAX Appeal No. 10439 of 2019-SM
>
> (iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

In the instant case, the refund claim was not filed within a period of six months as provided in sub Section (3) of Section 102 of Finance Act, 1994. The Finance Bill was granted assent on 14.05.2016. Refund claim has been filed on 05.09.2017.

2. None appeared on behalf of the appellant. The matter was earlier listed on 16.09.2021, 21.10.2021, 02.11.2021 and 18.11.2021 but no one appeared for the appellant.

3. Shri J.A. Patel, learned Superintendent (AR) pointed out that matter has been decided by the Hon'ble High Court of Madhya Pradesh in the case of MDP Infra (India) Pvt. Limited – **2019 (29) GSTL 296 (MP)**, wherein the Hon'ble High Court after examining the Section 102 of the Finance Act observed as under:-

"14. The appellant has proposed the following substantial questions of law :-

"(A) Whether on facts and in the circumstances of the case and in law, an amount paid under the mistaken belief that the service is liable to service tax when the same is actually exempt, be considered as service tax paid?

(B) Whether on facts and in the circumstances of the case and in law, the Tribunal was justified in rejecting appellant's refund claim as time barred without appreciating the fact that delay in filing the refund claim was beyond the control of the appellant inasmuch as the construction service covered in the refund claim is actually exempt of service tax was itself disputed by the authorities as the same was under investigation?

> (C) Whether service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law?"

> 15. As regard to substantial questions of law as proposed at 'A', we are not commended to any cogent material that the amount of Rs. 25,49,317/- towards service 3 SERVICE TAX Appeal No. 10439 of 2019-SM tax and the penalty thereof Rs. 57,716/- for the period 1-3-2015 to 30-9-2015 was deposited under misconception. Evidently, the works contract undertaken by the appellant during said period was not exempted. Therefore, the question that, the service tax and interest was paid under misconception does not arise, as would give rise for the proposed substantial question.
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> 16. As regard to substantial question of law at 'B', the said question in given facts of present also does not arise for consideration. The appellant was under legal obligation to deposit the service tax in respect of the service rendered qua non-exempted service. The contentions that it was beyond the control of the appellant to deposit the service tax on exempted service is misconceived. Evidently, the Notification No. 12/2012 & 25/2012 ceased to exist w.e.f. 1-4-2015. The exemption was revived by notification dated 1-3-2016. But since it was prospective in effect, the appellant was not entitled for any exemption, which the appellant was aware of and with open mind and eyes deposited the service tax due with interest. It was only by virtue of subsequent legislation the notification was made effective from retrospective date with the stipulations that refund can be claimed within specific time provided. There was thus no ambiguity nor any dispute as would have prevented the appellant from seeking refund within the period of limitation. On these given facts the substantial question at 'B' also does not arise for consideration."

Learned Authorised Representative pointed out that appeal against the said decision of Hon'ble High Court dismissed by the Hon'ble Apex Court, reported as – MDP Infra (India) Pvt. Limited vs. Commissioner – **2021 (48) GSTL J49 (SC)**.

4. I have considered the submissions made by learned Authorised Representative and in the grounds of appeal mentioned in the appeal memo. I find that the issue has been settled by the decision of Hon'ble Madhya Pradesh High Court in the case of MDP Infra (India) Pvt. Limited (supra), which was approved by the Hon'ble Apex Court.

5. Therefore, relying on the decision of the Hon'ble Apex Court MDP Infra (India) Pvt. Limited vs. Commissioner (supra), the appeal is dismissed

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Neha