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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10993 of 2014 - DB

(Arising out of OIO-RAJ-EXCUS-000-COM-149-13-14 dated 06/12/2013 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Apex Logistics ....**Appellant**
10, Manibhadra Complex,
Near Vibhaji School,
Jamnagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Rajkot ......**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

APPEARANCE:
Shri Bharat Raichandani & Shri Rithik Jain Advocate for the Appellant
Shri G Nair, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 10986/2024

DATE OF HEARING: 28.03.2024
DATE OF DECISION: 02.05.2024

RAMESH NAIR

The appellant filed the present appeal against Order-In-Original No. RAJ-EXCUS-000-COM-149-13-14 dated 06/12/2013 whereby demand of Service Tax was confirmed under 'man power recruitment agency or supply services'.

2. Shri Bharat Raichandani, Learned Counsel along with Shri Rithik Jain Advocate appearing for the appellant at the outset submits that the Adjudicating Authority has not considered the entire defense submission made by the appellant before passing the adjudication order. However, the adjudicating authority has ignored all the vital submission. Therefore, the order is not a speaking order and it suffers from violation of principles of

natural justice. He requests that the matter may be remanded to the adjudicating authority with a direction to consider all the submission made by the appellant before him as well as the submission made before this Tribunal.

3. Shri G Nair, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the adjudicating authority has not considered the submission on the following points made by the appellant before him:-

1) The contention of the appellant that the show cause notice could not have been issued in terms of Section 73(3) of Finance Act 1994, as the appellant had already paid entire service tax demand along with interest has not been considered. On this vital legal issue no finding was given by the Learned Commissioner, it is found that this contention has been raised by the appellant which is recorded at para 13.1(a) of page No. 10 of the Commissioner's order.
2) The appellant have also raised issue that the employees in respect of which the demand under 'man power recruitment and supply services' was confirmed are de-facto employees of L & T who advise for vacancy in their factory and plant and selected the employees again this very important submission made by the appellant which was recorded on at para 13.1 (d) of page No. 11 of the Commissioner's order has not been considered.
3) The appellant have also raised that there are reimbursement on account of PF and ESI amount which are not liable to service tax

under section 67 of the Finance Act, 1994. The appellant have also supported this submission by judgments of Hon'ble Supreme Court in the case of Intercontinental Consultants And Technocrats Pvt. Ltd. however, this submission has also not been considered by the Commissionerate in the impugned order.

4) It was also observed that the appellant have raised the issue that they are sub-contractor and since the main contractor being exempted from the service tax, the demand against the appellant being a sub- contractor cannot be confirmed. This submission has also not been appreciated by the learned Commissioner in the impugned order.

In view of the above that multiple important submissions made by the appellant before the Commissioner was not considered, the matter needs to be reconsidered on all the issues. Here we are making it clear that we have not made any observation on all the above submission which was not considered by Commissioner.

5. Accordingly, all the issues are kept open. The impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority for passing a fresh order.

(Pronounced in the open court on 02.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha