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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10996 of 2015-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-61-2015-16 dated 29.04.2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Friends Electricals .... **Appellant**
B-3, Janki Chamber, Near Baroda Peoples
Bank, Palace Road, VADODARA
GUJARAT -390001

VERSUS

Commissioner of Central Excise & ST, Vadodara-i .... **Respondent**
1st Floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri Dhaval Shah, Advocate for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 01.03.2024
DATE OF DECISION: 28.06.2024

FINAL ORDER NO. 11456/2024

RAMESH NAIR :

The brief facts of the case are that the appellant are engaged in the business of Erection, Commissioning and Installation Service provided to Gujarat State Police Housing Corporation Limited (GSPHCL). The appellant are not paying service tax on the amount received by them against such service provided by them to Gujarat State Police Housing Corporation Limited/ private firms. Accordingly, show cause notice dated 15.10.2012 was issued wherein demand of service tax amounting to Rs. 1,21,064/- was proposed to be demanded along with interest and penalty. The Adjudicating Authority has confirmed the demand vide order-in-original dated 27.12.2013. Being aggrieved by the said order-in-original, the appellant filed appeal before Commissioner (Appeals) which was rejected therefore, the present appeal.

2. Shri Dhaval Shah, learned advocate appearing on behalf of the appellant at the outset submits that in the identical facts that the service

was provided to Gujarat State Police Housing Corporation Limited, in many judgments the same has been decided in favour of the assessee. He placed reliance on the following judgments:-

(a) Paresh H. Thakkar vs. CCE&ST – (2023) 11 Centax 170 (Tri. Ahmd)
(b) RD Contractor & Company vs. CCE & ST, Anand – 2023 (2) TMI 946 – CESTAT Ahmedabad
(c) C R Patel vs. CCE & ST, Surat – (2023) 5 Centax 1 (Tri. Ahmd.)

He also submits that the appellant have provided Work Contract service the same was not considered by the lower authorities.

3. On the other hand, Shri P. Ganesan, Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that lower authorities have discarded the submission of the appellant whereby they submitted that the nature of contract is falling under Works Contract service as they have provided the service along with the material. We find that the lower authorities have not accepted the same as the appellant have not produced evidence of VAT payment. We find that payment of VAT is not a criteria to decide the classification of Works Contract under the Finance Act, 1994 and whether the payment of VAT was not made or wrongly not paid is the area of State Government. For the purpose of Works Contract, the only criteria is that the service should be provided along with material and property in such material should be transferred to the service recipient. Therefore, both the lower authorities have not considered this issue in proper perspective. Without prejudice, we also find that service was provided to Gujarat State Police Housing Corporation Limited and there are many judgments on the issue of service provided to Gujarat State Police Housing Corporation Limited. However, this aspect has not been considered by the lower authorities in the light of law developed on the fact involved herein, the matter needs to be reconsidered.

5. Accordingly, we set-aside the impugned order and remand the matter back to the Adjudicating Authority for passing a fresh order.

(Pronounced in the open court on 28.06.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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