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

REGIONAL BENCH-COURT NO. 3

SERVICE TAX Appeal No. 10887 of 2015 - DB

(Arising out of OIO-VAD-EXCUS-002-COM-011-014-14-15 dated 20/02/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Inox Air Products P Ltd ....**Appellant**
Village : Juni Jithardi,
Vemardi Road, Karjan,
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii ......**Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Jigar Shah & Shri Amber Kumrawat, Advocate for the Appellant
Shri Mihir G Rayka, Addl. Commissioner for the Respondent

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

Final Order No. 11535/2024

DATE OF HEARING: 13.03.2024
DATE OF DECISION: 11.07.2024

RAMESH NAIR

The issue involved in the present case is that whether the activity of leasing of Air Separation Plant by the Appellant to its customers for manufacturing industrial gases such as oxygen and nitrogen amounts to 'Supply of Tangible Goods Service' or 'Deemed Sale'.

2. Shri Jigar Shah, Learned Counsel along with Shri Amber Kumrawat, Advocate appearing on behalf of the appellant at the outset submits that the appellant have supplied cryogenic Air Separation Plant and the same was installed in the lessee's premises. For this lease contract the appellant have received lease rent on which the VAT has been paid being a deemed sale. While supplying the said plant the appellant have transferred the right

to possession and effective control to their customer, therefore, the lease of the plant does not fall under category of "supply of tangible goods for use services". He submits that under the similar facts, this issue has been decided in various judgments therefore, the issue is no longer res-integra. He placed reliance on the following judgments;-

- *Air Liquid India Holdings Pvt. Ltd. v. CCE & ST, Vadodara-I, 2023 VIL 919 CESTAT AHM ST*
- *Quippo Energy Pvt. Ltd. v. CST, Ahmedabad, 2022-VIL-937-CESTAT-AHM-ST*
- *Air Liquide North India Pvt. Ltd. vs. CCE, Jaipur, 2017 (4) GSTL 230 (Tri-Del.)*
- *M/s Express Engineers & Spares Pvt. Ltd. V. Commissioner, CGST, 2022 (1) TMI 564-CESTAT Allahabad*
- *Power Mak Pvt. Ltd. v. CCE, C&ST, 2018 (2) TMI 1415-CESTAT Hyderabad*
- *Bharat Sanchar Nigam Limited v. Union of India, 2006 (2) STR 161*
- *Subhash Light House v. Commissioner, CGST, 2022-VIL-106-CESTAT-DEL-ST*

2.1 He further submits that apart from the deemed sale of the plant installed in the customer's premises, the appellant have entered into a contract for management, maintenance or repair services in respect of leased plant. However, the demand was raised on this amount under the category of 'supply of tangible goods services' which is absolutely illegal and incorrect.

2.2 He further submits that a common order was passed in respect of four show cause notices. However in respect of three show cause notices no hearing was conducted and ex-parte order was passed. Therefore, the adjudicating authority decided the matter without giving any opportunity thus clearly violated the principles of natural justice. He placed reliance on the following judgments:-

- *Shantilal v. UOI, 2010 (252) E.L.T. 326*
- *CCE v. PSA SICAL Terminal Ltd., 2011 (23) STR 157 (T)*
- *Zuari Agro Chemicals Ltd. & Shri R.Y. Patil v. Union of India- Civil writ Petition No. 11794 of 2013*
- *Lupin Ltd. v. CCE, Bhopal, 2011 (266) ELT 141 (T)*
- *Ambika Engineering Works v. Union of India, 2013 (289) ELT 447 (Guj.)*
- *Bellary Steels & Alloys Ltd. CCE, 2005 (180) ELT 343 (T)*

2.3 Shri Jigar Shah has submitted a synopsis on the date of hearing, the same is not repeated here however, the same is taken on record and carefully gone through.

3. Shri Mihir G Rayka, Learned Addl. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders.

4. We have carefully considered the submission made by both the sides and perused the record. We find that out of four show cause notices, in three show cause notices dated 26.07.2013, 18.11.2013 & 16.10.2014, the Adjudicating Authority has not granted the personal hearing and passed the ex-parte order. It is also observed that in the show cause notice dated 16.10.2014, there is an additional issue that whether the activity of management, maintenance and repair service can be categorized as supply of tangible goods service or otherwise. Therefore, by passing a common

order in respect of all these show cause notices where the effective hearing was not granted, in our view the order is suffered from principles of natural justice. Therefore, the whole issue needs to be reconsidered after granting the sufficient opportunity of personal hearing.

5. The impugned order is set aside. Appeal is allowed by way or remand to the adjudicating authority.

(Pronounced in the open court on 11.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha