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

REGIONAL BENCH-COURT NO. 3

SERVICE TAX APPEAL NO. 11007 of 2014-DB

(Arising out of OIA-RAJ-EXCUS-000-COM-181-13-14 dated 31/01/2014 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Rekha Construction ....**Appellant**
806, Dhanrajni Complex,
Dr. Yagnik Road,
Rajkot, Gujarat

VERSUS

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

WITH

- **(i) SERVICE TAX Appeal No. 11210 of 2014-DB (Standard Buildcon)**
- **(ii) SERVICE TAX Appeal No. 11214 of 2014-DB (Ashish Construction)**
- **(iii) SERVICE TAX Appeal No. 11496 of 2014-DB (Arpita Build Craft)**
- **(iv) SERVICE TAX Appeal No. 13864 of 2014-DB (Gayatri Engineering Co)**
- **(v) SERVICE TAX Appeal No. 10139 of 2015-DB (A K Brothers)**
- **(vi) SERVICE TAX Appeal No. 11276 of 2015-DB (Bhavna Property Developers Ltd)**
- **(vii) SERVICE TAX Appeal No. 11573 of 2017-DB (A K Brothers)**

[(Arising out of OIO-RAJ-EXCUS-000-COM-145-132-13-14 dated 29/11/2013 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT), (Arising out of OIA-VAD-EXCUS-002-APP-555-13-14 dated 13/12/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II), (Arising out of OIA-RJT-EXCUS-000-APP-710-13-14 dated 18/02/2014 passed by Commissioner of Service Tax-RAJKOT),), (Arising out of OIA-VAD-EXCUS-002-APP-375-2014-15 dated 03/09/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II), (Arising out of OIA-VAD-EXCUS-002-APP-543-2014-15 dated 10/11/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II), (Arising out of OIO-AHM-EXCUS-003-COM-039-14-15 dated 30/03/2015 passed by Commissioner of Central Excise-AHMEDABAD-III), (Arising out of OIA-VAD-EXCUS-001-APP-629-2016-17 dated 06/03/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)]

APPEARANCE:

Shri Dhaval K Shah, Shri Jigar Shah, Shri Amal Dave, Shri Hardik V Vora, Shri Parth Rachchh, Shri Amber Kumrawat, Advocate & Shri Sanju Mehta , Shri Kaushani Shah, Chartered Accountant appeared for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR), appeared for the Respondent

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

Final Order No. 11989-11996/2024

DATE OF HEARING: 13.03.2024
DATE OF DECISION: 11.09.2024

RAMESH NAIR

The brief facts of the case are that appellants are engaged in the business of civil construction/ repair works for various State Government authorities like Road & Buildings Dept, Madhaya Gujarat Vidyut Corporation Limited (MGVCL), M/s IOCL, Western Railway Division, Health department of the Gujarat Government, M/s GMDC, M/s Vadodara Municipal Seva Sadan (VMSS), the M S University of Vadodara and Gujarat State Police Housing Corporation (GSPHC), BSNL etc. The department initiated an inquiry against the appellants stating that the appellants were providing taxable services under the category of (1) Construction of Complex Service (2) Commercial or Industrial Construction Service but not discharging service tax liability on the services rendered by them. On further inquiry, during the scrutiny of documents submitted by the appellants it was found that appellants are engaged in providing services related to construction works and activities related to repairs/ renovation for M/s GSPHCL, M/s IOCL, Western Railway Division, Health department of the Gujarat Government, M/s GMDC, VMSS, etc. All the materials, labours etc. are supplied by the appellants and the government departments for whom they carry out the work do not supply any materials like cement, steel, sand, bricks etc. After the detail investigation, appellants were issued show cause notices for demanding service tax under proviso to Section 73(1) of the Finance Act, 1994 and also proposing imposition of penalties under Section 76, 77 & 78 of the Finance Act, 1994. In adjudication, demands were confirmed by the Ld. Adjudicating authorities and in some cases the order-in-appeal were upheld by Commissioner (Appeals). Hence, the appellants filed the present appeals are filed before this Tribunal against the impugned orders.

2. Shri Jigar Shah, Learned Counsel along with Shri Dhaval K Shah, Shri Amal Dave, Shri Hardik V Vora, Shri Parth Rachchh, Shri Amber Kumrawat, Advocates & Shri Sanju Mehta , Shri Kaushani Shah, Chartered Accountant submits that Service provided by the appellants to the education institutions, Governments Road and Building Divisions, Government Primary Health Center, Police Station & Railway etc. for their educational, Public health or philanthropic purposes and the same are non commercial Government Organizations and are not for the purpose of profit. Hence, the services provided by the appellants to the education institutions and Government departments are not taxable as the same are neither for the purpose of commercial or industrial, for this plea they submit that the definition provides that such building or structure shall be used or to be used or occupied or to be occupied or engaged or to be engaged mainly in commerce or industry. Thus, only if at the time of construction the indented use of the building is for commerce or industry, service tax will be leviable.

2.1 They further submits that construction of residential quarters under taking by the appellant for Gujarat State Police Housing Corporation Ltd is not taxable under "construction of complex service" the property constructed by the appellant gets transferred to the concerned department of the Gujarat Government. Therefore, on the basis of principal of accretion the activity is not taxable. They further submit that computation of tax liability is incorrect in as much as the lower authority have not considered the gross value as cumulative price. The extended period of limitation was wrongly invoked as there is no suppression of fact, the appellant cannot be made subject to penalty.

2.2 The Learned Counsels categorically stated in the submission that the adjudicating authority/ Commissioner (Appeals) has completely ignored the submissions made by the appellant before them and confirmed/upheld the huge demand. Therefore they violated the principle of natural justice.

2.3 They further submit that the issue is no longer res-Integra, as the same as been decided in various judgments. They placed reliance on the following Judgments:-

- CR Patel v. CCE & ST- Surat-1 2023 (3) TMI 570-CESTAT Ahmedabad
- Kanubhai Ramjibhai Makwana v. CCE & ST-Vadodara-I-2022 (8) TMI 645- CESTAT Ahmedabad
- RD Contractor & Company v. CCE & ST, Anand 2023 (2) TMI 946-CESTAT Ahmedabad
- DH Patel v. CCE- 2023 (4) TMI 920-CESTAT Ahmedabad
- Riddhi Siddhi Construction v. CCE- 2023 (5) TMI 340-CESTAT Ahmedabad
- RN Dobariya v. CCE- 2023 (2) TMI 779- CESTAT Ahmedabad
- Natvar Construction Co. v. CCE, 2023 (4) TMI 438- CESTAT Ahmedabad
- Shanti Construction Vs CCE- 2023 (7) TMI 1019-CESTAT
- Sh. DH. Patel and Sh. RN Dobariya Vs CCE- 2013 (10) TMI 815-CESTAT
- Amany Vs CCE- 2023 (7) TMI 1021-CESTAT

3. Shri Tara Praksah, Learned Deputy 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 records. We find that the appellant have raised various grounds before us, submitting that the demand of Service Tax is not sustainable.

4.1 We find that some of the vital submissions made before this Tribunal but neither raised before the Adjudicating Authority/Commissioner (Appeals) nor considered by the said authorities. It is observed that the levy of Service Tax under the Construction must be based on the terms of the contract. Therefore, to arrive at a final conclusion of levy of service tax on the services in question the terms of the contract vis-à-vis the judgments delivered which were relied upon by the appellant needs to be considered. However, the adjudicating authority has not properly examined the facts/terms of the contract and he has not seen the light of judgments given subsequently on the identical issue. Since the issue involved is mixed of facts and law it can be ascertained only after considering the condition therein of each case. Therefore, in our considered view the entire matter needs to be relooked and to be decided a fresh.

5. Accordingly, We Set aside the impugned orders and allow the appeals by way of remand to the adjudicating authority, for passing a fresh order. In the light of the fact of each case and considering various judgments relied upon by the appellants. All the issues are kept open. Needless to say that the appellants shall be given sufficient opportunity for defending their case by making submission and appearance for personal hearing. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 11.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi