

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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 12976 of 2019

(Arising out of OIA-RAJ-EXCUS-000-APP-142-2019 Dated- 05.09.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

SHRI RAM LAXMAN STHAPATYA CO.

M.G.ROAD, INT BATTI CHOW,
DEARKA-GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-RAJKOT

CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

.....Respondent

APPEARANCE:

Shri Punit Prajapati (CA) for the Appellant

Shri J.A. Patel, (Superintendent) Authorised Representative for the Respondent

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

Final Order No. A/ 10819 /2022

DATE OF HEARING:28.07.2022

DATE OF DECISION:28.07.2022

RAJU

This appeal has been filed By Shri Ram Laxman Sthapatya Co. against rejection of claim of refund of service tax under Section 102 of the Finance Act, 1994. The said section 102 was introduced by Finance Act, 2016 and it 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; (i) a clinical establishment; or (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.”

2. In terms of the above provision, the appellant claimed refund of tax paid on certain services, that they claimed to have provided to military establishments. Due to the sensitive nature of the contract, the appellant could not produce the full text of the contract before the Revenue authorities and solely for that reason the refund has been rejected. It is seen that the appellant have produced certificates of Garrison Engineers showing the nature of work done and the date of contract, which are two relevant factors needed for processing the claim. Merely because the original contracts could not be produced, due to them being covered by Official Secrets Act, the rejection of refund claim is not correct. The orders of lower authorities do not examine the certificates of the Garrison Engineers which prescribes not only the nature of contract but the date of contract as well. The original adjudicating authority will take the Certificate of the Garrison Engineers on the face value and process the refund claim accordingly, for each contract and give finding. The appeal is partly allowed by way of remand.

3. Learned counsel for the appellant has admitted that in respect of four contracts for which the contract was entered after 2015 they are not entitled to refund claim.

4. The impugned order is set aside and matter is remanded to original adjudicating authority.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Neha