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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10705 of 2021

(Arising out of OIA-CCESA-SRT-APPEAL-PS-521-2019-20 dated 29/11/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

S A DOMADIA **........Appellant**
B-306, Royal Plaza, Apartments, Anand Mahal Road, Adajan
Surat
Surat, Gujarat

VERSUS

C.C.E. & S.T.-SURAT-I **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

APPEARANCE:
Shri S. Suriyanarayanan, Advocate appeared for the Appellant
Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 11155 /2022

DATE OF HEARING: 07.06.2022
DATE OF DECISION: 22.09.2022

RAJU

This appeal has been filed by M/s SA Domadia against confirmation of demand of service tax, interest and penalty.

2. Learned counsel pointed out that the appellant is engaged in providing taxable service to different Government/ State Government authorities and availed exemption under Notification No. 25/2012- ST dated 20.06.2012. The Appellant provided various construction services like construction of roads, laying down of water pipelines, construction of boundary walls, construction work required for erection/installation of road lights etc. Learned counsel pointed out that they are entitled to exemption under Notification 25/2012- ST dated 20.06.2012. The extract of the said service is exempted by Notification No. 25/2012-ST dated 20.06.2012 given below:-

2.1 Learned counsel pointed out that in respect of road the benefit was denied on the ground that roads in the GIDC are not for use for the general public. It was held that people visiting the GIDC are related to the commerce industry, business man, employees , daily wages , government officials , service providers and contractors. It has been held that they cannot be called general public. Consequently the benefit of Notification No. 25/2012- ST dated 20.06.2012 denied in respect of road construction in GIDC.

2.2 Learned counsel pointed out that GIDC has been set up under Gujarat Industrial Development Act, 1962 for the purpose of organizing the industry in an industrial area or industrial estate for establishing the commercial centre. He pointed out that the structures provided by GIDC were for the growth of the industrial unit and commercial establishment. He argued that various construction services like construction of roads, laying down of pipelines, construction of boundary walls, construction work required for erection/installation of road lights etc undertaken by the appellant for GIDC are for use of commercial/industrial/ professional/ business establishment in GIDC. He argued that the general public in an ordinary sense would be people other than special people like VIPs. He argued that while the services in GIDC pre- dominantly used by the industry, the same are also open for the general public and there are no restrictions for the public for entrance in GIDC. He further argued that most of the service provided by them in the capacity of sub –contractors by way of works contract to another contractor who is in turn providing services which are exempted. He argued that the GIDC is state government authority; they are also entitled for exemption under Sr. No. 29 (h) of Notification No. 25/2012.

3. Learned AR relies on the impugned order.

4. We have gone through rival submissions. We find that it is not in dispute how many services like construction of roads, laying down of pipelines etc were provided within the confines of GIDC. It is also not in doubt that GIDC is operated under Gujarat Industrial Development Act, 1962 and is developed by the state government of Gujarat for establishment and for organizing industry in industrial areas. In these circumstances all the services provided by the appellant within the confines of GIDC directly, GIDC would be covered under Sr. No. 12 (a) of Notification 25/2012- ST only if these said civil structure or any other original work meant predominantly for use other than for commerce, industry or other business and in the instant case it cannot be said that GIDC are not meant for promotion of industry or commerce. In these circumstances it cannot

be said that Sr. No. 12(a) of the Notification No. 25/2012 provides any exemption to the work done by the appellant. The Sr. No. 12 (a) of the said Notification No. 25/2012 –ST dated 20.06.2012 reads as under :-

> ***12. 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;***

4.1 The appellant also claimed the benefit of Sr. No. 13(a) of the Notification No. 25/2012- ST dated 20.06.2012 which reads as under :

> **13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -**
>
> **(a)** ***a road, bridge, tunnel, or terminal for road transportation for use by general public;***

4.2 Since GIDC are open to general public also apart from various industry and trade, it can be said that the said services bridges, tunnels in GIDC are open for to general public in that sense the benefit of Sr. No. 13 (a) of Notification No. 25/2012- ST dated 20.06.2012 can be extended to the roads, bridges, tunnels for goods transporting within the GIDC.

4.3 The appellant has also claimed the benefit where he has provided the service as sub contractor to the main contractor in the shape of works contract and where the main contractors are exempted from service tax. The appellant has claimed the benefit of Sr. no 29(h) of Notification No. 25/2012- ST. Sr. No. 29(h) of Notification No. 25/2012- ST dated 210.06.2012 reads as under:

> **29. Services by the following persons in respective capacities-**
>
> (a) ……………………
> (b) ……………………
> (c) ……………………
> (d) ……………………
> (e) ……………………
> (f) ……………………
> (g) ……………………

(h) ***<u>Sub –contractors providing services by way of works contract to another contractor providing works contract services which are exempted.</u>***

4.4 The appellant has not specified the specific details of all the work done by the main contractor and therefore, has not substantiated the claim by the main appellant.

5. In the aforesaid circumstances we come to the conclusion that the appellant is not entitled for any benefit of Sr. No. 12 (a) of Notification No. 25/2012. The appellant can claim the benefit of Sr. No. 13(a) of Notification No. 25/2012 in respect of roads constructed by them in GIDC. The appellant can claim the benefit of Sr. No. 29 (h) in respect of service of works contract provided as sub contractor to the main contractor wherever the appellant is able to establish that the main contractor was exempted from service tax in respect of works contract. We find that no evidence supports the same has been produced and no bifurcation has been given. In these circumstances we are constrained to set aside the impugned order and remand the same to the original adjudicating authority to decide a fresh by examining each case and testing the same on the parameters prescribed above. Appeal is allowed by way of remand.

(Pronounced in the open court on 22.09.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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