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

REGIONAL BENCH- COURT NO.3
Service Tax Appeal No.10512 of 2020

(Arising out of OIA-VAD-EXCUS-001-AAP-553-2019-20 dated 30/03/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

ANKUR SCIENTIFIC ENERGY TECHNOLOGIES PVT LTD ......Appellant
Survey No. 1748, 1750, 1751, 1755, Vadodara-Savli Road, Village-Gotha, Taluka- Savli
Vadodara
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-I ....Respondent
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat - 390007

APPEARANCE:
Shri. A. Banerjee, Advocate for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11304 /2022

DATE OF HEARING: 10.10.2022
DATE OF DECISION: 10.10.2022

RAMESH NAIR

The brief facts of the case are that the appellant has paid excess service tax even though for the period post GST regime thereafter they claim refund under section 142 (3), the same was rejected by the Adjudicating Authority on the ground that this payment was made under self assessment basis and only in case payment is made on pursuance by the department, the payment is governed by the section 142 (3) of the GST Act, 2017. The Learned Commissioner (Appeals) in the appeal filed by the appellant rejected the appeal. Therefore, the present appeal.

2. Shri A. Banerjee, Learned Counsel appearing on behalf of the Appellant submits that this refund claim is against the excess payment. This payment is made during the GST Regime i.e. for the period from August 2017- July 2018. He submits that on the same service the GST was paid. The payment of service tax paid is refundable to the appellant. On the query raised by the bench that this claim is governed by section 142 (3) of the GST Act, 2017, he submits that since it is a refund of service tax the same needs to be processed under section 11 B of Central Excise Act.

3. Shri Prakash Kumar Singh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that since the refund claim was made under section 142 (3) of the CGST ACT, 2017 this bench has adjourned the matters sine dine in the light of the referral order of the division bench in the case of the Bosch Electrical Drives India Pvt Ltd vide Interim Order No 40019 of 2021(Tri.-Chennai) dated 22.10.2021

4. I have carefully considered the submission made by both sides and perused the records. I agree with the Learned AR that if the refund claim is governed under section 142 (3) of the CGST Act, 2017 then the matter can be decided only after the larger bench decides the matter however, in the present case the fact remains that the appellant has claimed the refund of service tax which was paid during the GST regime, it is the submission of Learned counsel that the refund should be processed under Section 11 B and he requested to remand the matter. Accordingly, I am of the view that since the claim of refund is of service tax it has to be processed under Section 11 B only.

5. Accordingly, I set aside the impugned order and remand the matter to the Adjudicating Authority to process the refund of Service tax under section 11 B in terms of Central Excise Act. All the issues are kept open.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta