

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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.466 of 2012

(Arising out of OIA-174-175/2012/STC/AK/COMMR-A-/AHD dated 13/08/2012 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

M R Patel & Sons

.....Appellant

B-2, Fountain Place Complex, Mithakhali Six Roads,
Navrangpura, Ahmedabad, Gujarat

VERSUS

C.S.T.-Service Tax – Ahmedabad

.....Respondent

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
Ahmedabad, Gujarat-380015

APPEARANCE:

Shri S J Vyas, Advocate for the Appellant
Shri. R P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11338 /2022

DATE OF HEARING: 02.09.2022
DATE OF DECISION: 02.11.2022

RAJU

This appeal has been filed by M/s. M R Patel & Sons against confirmation of demand of service tax and imposition of penalty.

02. Learned counsel pointed out that Order-In-Original confirmed a demand of cenvat credit amounting to Rs.21,11,137/-. The said order also confirmed a demand of Rs.46,453/- under the head of Business Auxiliary Service, penalty of Rs.21,11,137/- was imposed under Section 78 of the Finance Act, 1994. Penalty was also imposed under Section 76, 77 and 78 of the Finance Act. The learned Commissioner (Appeals) however, allowed the appeal in respect of cenvat credit availed by the appellant and also set aside the entire penalty imposed under Section 76 of the Finance Act. The said order imposed a penalty of Rs.46,453/- under Section 78 of the Finance Act. Learned counsel argued that the demand of Rs.46,453/- was confirmed under 'Business Auxiliary Service' without examining the facts and without stating as to how the said service falls under the category of 'Business Auxiliary Service'.

2.1 He argued that the said demand has been raised in respect of amount of Rs.5,02,847/- received by them vide bill dated 15.09.2005. He pointed out that the said bills relates to a contract with GEB and similar contract was also entered by 'KCT & Bros' with GEB. Since both of them did the job for GEB together, a part of proceeds from GEB, which was received by 'KCT & Bros' was shared with them. He pointed out that this does not amount to 'Business Auxiliary Service' in any manner. Moreover, he pointed out that while the Order-In-Original does not impose any penalty under Section 78 in respect of demand of Rs.46,453/-, the impugned order imposed penalty under Section 78. He pointed out that no appeal was filed by the revenue against the Order-In-Original and therefore, imposition of penalty by Commissioner (Appeals) in appeal of the appellant against the said order where no penalty was imposed, is misplaced.

03. Learned AR relies on the impugned order. He argued that an appeal was filed by the department before the Commissioner (Appeals) for imposition of penalty under Section 78.

04. We have considered the rival submissions. We find that the sole demand upheld by the learned Commissioner (Appeals) relates to transaction between 'KCT & Bros' and the appellant. Both of them together had taken up a contract with GEB and the proceeds received from GEB were shared by 'KCT & Bros' with the appellant. The demand of service tax has been made in respect of such receipts. It is seen that the Order-In-Original as well as impugned order has simply rejected the documents produced by the appellant without any reason. Moreover, neither Order-In-Original nor Order-In-Appeal given any reasons as to how the said activity becomes classifiable under 'Business Auxiliary Service'.

05. In this circumstances, the demand cannot be sustained and consequently, penalty also cannot be sustained. Appeal is consequentially allowed.

(Pronounced in the open court on 02.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)