CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 10409 OF 2019

(Arising out of OIA-VAD-EXCUS-001-APP-389-2018-19 Dated- 03/10/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

ANUPAN MH1 INDUSTRIES LTD **Appellant**
Plot No 893,894 And 897, Nadiad-dakor Highway, Salun
Anupan Mh1 Industries Ltd,
Nandiad, Kheda, Gujarat

Vs.

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

Appearance:
Shri Saurabh Dixit, Advocate for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 13165/2024

Date of Hearing : 03.12.2024
Date of Decision : 10.12.2024

RAMESH NAIR

The brief facts of the case is that the appellant had received services of transportation of cranes by vessel from Pipavav port to JNPT port (transport of goods by national / inland waterway) and the appellant had initially not paid service tax thereon, since the same is merely transportation of goods through inland waterway, and which was not liable to service tax. The appellant did not pay service tax on Rs. 10 lakhs reimbursement towards hotel accommodation as well as. It is pertinent to mention that the appellant had under a mistaken belief, already paid an amount of Rs. 40,36,275/- vide e-challan No. 01609 dated 27.03.2015, on the aforesaid service by claiming abatement of 60% as per SI.No. 10 of Notification No. 26/20120ST dated 20.06.2012 as amended. The rate of abatement was increased from 50% to 60% w.e.f. 01.10.2014 vide Notification No. 08/2014-ST dated 11.07.2014. For the records, considering the point of taxation Rules, 2011, the service tax being paid on March'15 was correctly paid by adopting 60% abatement, by the appellant.

1.1 The case of the department is that the appellant have wrongly availed the abatement accordingly there is a short payment of service tax hence the demand is confirmed.

2. Shri Saurabh Dixit learned counsel appearing on behalf of the appellant at the outside submits that the service per se was not taxable in fact. The appellant had under mistaken belief had paid the service tax on the abated amount therefore the demand is not sustainable. He submits that the appellant's this submission was rejected by the adjudicating authority on the ground that since the appellant have paid the service tax at the initial time now they cannot claim that service tax is not payable. He submits that once the service tax itself is not taxable neither the part demand nor full demand can be confirmed. He placed reliance on the following judgments.

- Merck India Ltd., 2009 (238) E.L.T 386 (SC).
- Ishaan Research Lab (P) Ltd, 2008 (230) ELT 7 (SC).
- P.R. Rolling Mills Pvt. Ltd 2010(249) ELT 232(Tri-Bang)
- P.R. Rolling Mills Pvt. Ltd 2010(260) ELT A84(SC)
- NEXCEL INFRA 2022 (12) TMI 1145 - CESTAT AHMEDABAD
- Laxmi Exports 2021(44) GSTL 284 (Tri-Ahmd)
- Emerson Process Management I Pvt. Ltd. 2024(2) TMI 911 – CESTAT Ahm
- Nayara Energy Limited 2023(12) TMI 252- CESTAT Ahm.

3. Smt. Sunita Menon learned Superintendent AR appearing for the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of the records, we find that the appellant have vehemently

argued that the service on which the present demand was confirmed itself was not taxable, this claim was made by the appellant before the adjudicating authority, however, the adjudicating authority has not given the relief on the ground that at the time of payment of service tax they have not claimed the exemption from service tax from the service in question therefore at this stage they cannot make their claim. We are completely disagree with the adjudicating authority on this contention as it is a settled law that any benefit available under the law can be claimed at any stage by an assessee. Therefore, if the appellant's service is exempted or non taxable the present demand will not sustain however, we are not examining whether the exemption claimed by the appellant is admissible to them or not and the same is left open for the adjudicating authority to reconsider the matter.

5. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing a fresh order keeping in view our above observation.

(Order pronounced in the open Court on 10.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

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