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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 521 of 2011
(Arising out of OIA-100-101/2011/AHD-III/DSINGH/COMMR-A-/AHD Dated- 01/07/2011 passed by Commissioner of Central Excise-AHMEDABAD-III)

Smita Engineers **........Appellant**
Near Sharda Society, Ambika Nagar Bus Stand, Kalol,
Gandhinagar, Gujarat

VERSUS

C.C.E. & S.T.-Ahmedabad-iii **........Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

WITH
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Ahmedabad, Gujarat-380009

APPEARANCE:
None appeared for the Appellant
Shri. J A Patel, Learned Superintendent (Authorized Representative) for the Respondent

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

Final Order No. A/ 11395-11396/2022

DATE OF HEARING:02.08.2022
DATE OF DECISION:21.11.2022

RAMESH NAIR

These both appeals are directed against the impugned Order-In-Appeal No. 100 to 101 /2011 (Ahd-III)/D. Singh/Commr.(A)/Ahd dated01.07.2011 passed by the Commissioner (Appeals), Ahmedabad whereby the appeal filed by the appellant has been rejected an appeal filed by the department was allowed. Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner (A) vide which he has disposed of the two appeals.

2. Briefly the facts of the present case are that the appellants are engaged in providing the service of laying of pipelines etc., as per the contract/ agreement. It appeared that the Appellant had provided service in relation to laying of pipeline which are taxable under 'commercial and industrial construction service' w.e.f. 16.06.2005. However the Appellant was registered under erection, commissioning and installation services. Appellant had paid the service tax and filed service tax returns from October 2006 onwards. While reconciling the amount received by the said service provider as per the P&L account, Ledger and Bank Statement with amount shown in ST-3 returns, it was observed that the appellant has short paid the service tax of Rs. 22,45,365/ -on the differential gross value of Rs. 2,00,32,797/- for the period from 2005-06 to 2009-10. Further on pointed out by the Audit officers, the Appellant agreed to the objections and made payment of Rs. 3,39,395/-. Accordingly show cause notice dated 19.10.2010 was issued to the appellant demanding Service tax of Rs. 22,45,365/- under "Commercial or Industrial Construction Service. The Adjudicating authority while confirming the demand under "commercial or industrial construction' dropped the demand beyond one year, of issue of notice as time barred and confirmed only demand of Rs. 88,414/- for the period April 2009 to March 2010. Being aggrieved with the order both appellant and revenue filed the appeal before the Commissioner (Appeals). The appeal filed by appellant against the said order stands rejected an appeal filed by revenue was allowed by the impugned order of Commissioner (A). Hence, the present appeals.

3. No one appeared on behalf of Appellant. However we considered their submission made in appeal memo.

4. Shri. J. A Patel, learned Superintendent (Authorized Representative) appearing on behalf of revenue reiterated the findings of impugned order-in-appeal.

5. We have carefully considered the grounds of appeals and perused the records. In the present matter we find that show cause notice was issued to the Appellant for including the value of pipes supplied free of cost by the recipient of service in the taxable value and demanding service tax thereon. The lower adjudicating authority relying upon the decisions of tribunal in the case of Jaihind Projects Ltd. -2010 (18)STR 650 (T) held that the value of pipes supplied by recipient of service is to be included in the value for calculation of service tax. However he dropped the demand on limitation and

confirmed the part demand. In appeals Ld. Commissioner (Appeals) in the impugned order confirmed the service tax demand.

6. After going through the Adjudication order and the show cause notice along with Annexure, we find that the appellant had taken a definite stand before the Original Adjudicating Authority that they are not required to discharge the service tax on the pipe which are supplied by the service recipient during providing of services. Since the original adjudicating authority decided the matter on limitation and dropped the quantum of demand, appellant not challenged the said finding before the Ld. Commissioner (Appeals).

7. First issue is non-inclusion of cost of the material received from the service receivers in the gross value of the services provided. We find that this issue is no more *res integra* in view of the decision of the Larger Bench decision of the Tribunal in the case of *M/s. Bhayana Builders Pvt. Ltd.* v. *CST, Delhi I* - 2013 (32) S.T.R. (49) (Tri.-LB) in favour of the assessee. Hence, the demand of Service Tax on this issue cannot be sustained.

8. However, we find that the Ld. Adjudicating Authority had not given any finding on these issues that whether the value of pipes supplied by the recipient of service is to be included in the value of calculation of service tax or not. In our considered view, the Adjudicating Authority should have examined the matter afresh in detail before passing the impugned order. He is also required to examine the claim of the appellant on limitation also. We remand the matter to the Adjudicating Authority to decide the impugned matter afresh. Needless to say that the Adjudicating Authority shall give proper opportunity for hearing before passing order. Appeal filed by the appellant is disposed of by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 21.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI