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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10081 of 2021

(Arising out of OIA-BHV-EXCUS-000-APP-047-2020 dated- 17/09/2020 passed by Commissioner of Central Excise, Customs and Service Tax-BHAVNAGAR)

SUKRUT CONSTRUCTION ....**Appellant**
Parimal Shah, Nr. Jain Temple, Lakhupol, Wadhwan
Surendranagar
Surendranagar, Gujarat

VERSUS

C.C.E. & S.T.-BHAVNAGAR ......**Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat - 364001

Appearance:
Ms. Amrin Alwani, Chartered Accountant appeared for the Applicant
Shri Kalpesh P Shah, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNCIAL), MR. RAJU

Final Order No. A / 11789 /2022

DATE OF HEARING: 24.11.2022
DATE OF DECISION: 24.11.2022

RAJU

This appeal has been filed by M/s. Sukrut Construction against denial of exemption claimed by them for construction of educational building as a subcontractor to the main contractor.

2. Ms. Amrin Alwani, Learned Chartered Accountant for the appellant argued that the issue regarding eligibility of subcontractor to the benefit arising as a consequence of section 102 of Finance Act, 2018 cannot be claimed by the subcontractor has been decided by the Tribunal vide Final Order No. A/10545- 10546 /2018 dated 12.03.2018.

3. Learned AR relies on the impugned order.

4. I have considered the rival submission. I find that the issue regarding admissibility of benefit of exemption as a consequence of exemption extended to certain services under section 102 of the Finance Act, 2018 has

been examined in the order of the Tribunal dated 12.03.2018 (Supra). The Tribunal observed as follows:-

> *"5. Heard both sides and perused the records. The short issue involved in the present appeals is: whether the appellants being sub-contractors are entitled to refund of service tax paid on Construction Services used in the construction of the building for institute of Kidney Disease & Research Center, when the original contract awarded to the main contractor, M/s Malini Constructions. I find that by virtue of Sr. No. 12 of the exemption Notification No. 25/2012-ST dated 20.06.2012, the main contractor is eligible to claim exemption from service tax when such services were provided to the Government, a Local Authority or a Government Authority by way of construction, erection, commissioning etc., civil construction or any other construction predominantly to be used other than for commerce, industry or any other business or profession. Consequently, the sub-contractor by virtue of Sr. No. 29(h) also would be eligible to the said exemption, if, the services provided by him to the principal contractor, are also the same service i.e. in the nature of "works contract service". In other words, both the sub-contractor as well as the main contractor engaged in providing works contract service during the relevant period for carrying out the above construction work would be eligible to the exemption. This notification was withdrawn for the period 01.04.2015 to 29.02.2016, but, subsequently it was restored for the said period by virtue of Section 102 of the Finance Act, 2016, consequently, the appellants became eligible to refund of service tax paid during the said period. The Ld. Commissioner (Appeals) upheld the rejection of refund claim on the ground that the appellants had not established the fact that they had provided works contract service to the main contractor i.e. M/s Malini Constructions during the relevant period. The appellants have vehemently argued that during the relevant period i.e. 01.04.2015 to 29.02.2016 as a sub-contractor, they have provided works contract service, i.e. along with service they also supplied materials in carrying out the construction of building meant for institute of Kidney Disease & Research Canter, hence, eligible to the refund of the service tax paid during the relevant period. Thus, the fact remains to be scrutinized is whether the appellants had provided "works contract service" to M/s Malini Constructions, and accordingly, eligible to claim refund of service tax paid during the said period. The Advocate produced the ledger account and communication from the principal contractor claiming that they had provided works contract service to the principle contractor during the said period. These evidences have not been placed before the Adjudicating Authority.*

Therefore, in the interest of justice, it is necessary to remand the matter to the adjudicating authority to ascertain the claim of the appellant. In the result, the impugned orders are set-aside and the appeals are allowed by way of remand to the Adjudicating Authority."

4.1 It is noticed facts in the instant case are identical. The appellant in the capacity of a sub-contractor has provided works contracts service to the main contractor. Since the main contractor is exempt from service tax as a consequence of section 102 of the Finance Act, 2018 the sub-contractor, appellant, also gets exemption in terms of Sr. No 29 (h) of the Notification No.25/2012 - ST dated 20.06.2012 which reads as under:

"29. Services by the following persons in respective capacities –

(a) sub-broker or an authorised person to a stock broker;

*(b) ****;*

*(c) ****;*

*(d) ****;*

*(e) ****;*

*(f) ****;*

*"(g) ****;*

*(ga****;*

*(gb) ****;*

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

5. Relying on the aforesaid decision of the Tribunal, the appeal is allowed.

(Dictated & Pronounced in the open court)

RAJU
MEMBER (TECHNICAL)

Geeta