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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10190 of 2021-DB
(Arising out of OIA-VAD-EXCUS-002-APP-145-2020-21 Dated-04.12.2020 passed by Commissioner of Central Excise, Customs and Service Tax-Vadodara-II)

C.C.E. & S.T.-Vadodara-II **........Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

VERSUS

RIDDHI PHARMA **........Appellant**
PLOT NO A-2/2509-10-11 GIDC ANKLESHWAR
BHARUCH-BHARUCH-GUJARAT

APPEARANCE:
Shri. V.G. Iyengar, Superintendent (Authorized Representative) for the Respondent
None appeared for the Appellant

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

Final Order No. A/ 10033 /2023

DATE OF HEARING:02.01.2023
DATE OF DECISION:02.01.2023

RAMESH NAIR

This appeal was filed by Revenue, even though the amount involved is less than 50 Lakhs, on the ground that the issue involved is constitutional validity of levy of service tax on ocean freight.

2. Shri V.G. Iyengar, learned (Superintendent) Authorized Representative appearing for the Revenue reiterates the grounds of appeal.

3. No one appeared on behalf of the Respondent.

4. On careful consideration of the submission made by learned Authorized Representative and perusal of records, I observed that in the present case, the fact remains that the Respondent has paid the service tax on ocean freight on pointing out by the audit party during EA-2000 audit of the respondent. Since the respondent was eligible for cenvat credit but due to GST Regime, instead of cenvat credit they were eligible for refund in terms of Section 142(3) of CGST Act, 2017, they claimed the refund and the same was

sanctioned. In this fact, the issue of Constitutional validity on levy of service tax on ocean freight does not exist as the respondent has not challenged the levy whereas the refund was sanctioned in terms of Section 142(3). Accordingly, the appeal of the Revenue is not maintainable, as per the Government's Litigation Policy in Circular F. No. 390/MISC./163/2010/JC dated 17.08.2011. Accordingly, the appeal is dismissed.

(Dictated and Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Neha