

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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 530 of 2012
Service Tax Miscellaneous (CO) Application No. 39 of 2012

(Arising out of OIO-04/STC/COMMR-I/BRC-I/2012 dated- 31/08/2012 passed by Commissioner of Central Excise, Customs and Service Tax-Vadodara-I)

C.C.E & S.T.- Vadodara -I

.....Appellant

1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat – 390007

VERSUS

M/s Randhawa Construction Company

.....Respondent

203- 204, Shivang, 12- Shivismahal Society,
Old Padra Road, Vadodara - 390007

APPEARANCE:

Shri G. Kirupanandan, Superintendent (AR) for the Appellant
Shri K.J Kinariwala, Consultant for the Respondent

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

Final Order No. A/ 10154 /2023

DATE OF HEARING: 23.09.2022
DATE OF DECISION: 23.01.2023

RAMESH NAIR

The present appeal has been preferred by the Revenue against Order-in-Original No. 04/STC/COMMR-I/BRC-I/2012 dated 31.08.2012 passed by the Learned Commissioner, Central Excise & Service Tax, Vadodara-I, whereby the Learned Commissioner has dropped the service tax demand proposed in Show Cause Notices dated 26-06-2012 issued on M/s. Randhawa Construction Company under the category of "Site Formation and Clearance, Excavation and Earthmoving and Demolition Service.

1.2 Briefly stated, the facts of the case are that during the course of audit of the records of the respondent-assessee, it was noticed by the department that the assessee had entered into an agreement with M/s Reliance Engineering Associates Pvt. Ltd., Navi Mumbai and undertook dismantling activities during the year 2007-08. The assessee, for the year 2007-08 has shown contract receipts for "dismantling" in their ledgers as Rs. 5,38,53,858/- for which they were required to pay Service tax under the category of "Site Formation and Clearance, Excavation and Earthmoving and Demolition" Service amounting to Rs. 66,56,337/-. Accordingly, a show

cause notice dated 26.06.2012 was issued to the assessee proposing the recovery of service tax along with interest. In adjudicating, the Ld. Commissioner vide impugned order dropped the demand of service tax. Therefore, this appeal by the Revenue.

2. Shri G.Kirupanandan, Superintendent (AR) appearing on behalf of Revenue reiterates the grounds of appeal. He submits that demand of service tax has been dropped by the adjudicating authority on the sole ground that the activity "Dismantle" is different from the activity "demolition" and hence the same is outside the scope of the taxable services viz. "Site Formation and Clearance, Excavation and Earthmoving and Demolition." However, in the definition of said services the word 'includes' appears that the list of services given in the definition is merely illustrative and not exhaustive and that services like dismantling is also covered by the definition of "Site formation and clearance, excavation and earthmoving and demolition". The Commissioner while dropping the demand has taken into account the dictionary meaning of words 'demolition' & 'dismantling' and by distinguishing both the words, he has arrived at the conclusion that the activities undertaken by the assessee is not taxable under the category of "Site Formation and Clearance, Excavation and Earthmoving and Demolition". However, the definition is not exhaustive but is illustrative and the end result should be 'site formation'.

2.1 He also submits that Para 2.8 of work order dated 14.04.2007 reads " All equipment, piping and structures shall be weighed at RELIANCE Weigh Bridge free of cost and same shall be basis of measurement". Similarly para 4.4.1 of the same work order which contains the manner/ terms of payment discloses that the same would be made on production of documentary proof of weighment and on site clean up as certified by the EIC. The above clauses give clear picture about the nature of work undertaken by the assessee i.e. site formation and clearance and in the process obtaining the usable scrap only to be weighed later on, instead of valued according to the nature/condition of the items in case of dismantling. This way the activity of so called "dismantling" as undertaken by the assessee was nothing but an activity of "site formation" and "clearance".

3. Shri K.J Kinariwala, Learned Consultant appearing on behalf respondent submits that admittedly as per work order, the activities undertaken by the Respondent was in respect of dismantling of plant and supporting structure

viz. pipelines/ valves by employing man and machinery specified in the work order is not demolition in any manner. The word "on site cleanup" used in the para 4.4.1 of the work order is in respect of removal of man and machinery after completion of the work and it cannot be considered as Site Formation and Clearance Service.

4. We have considered the submissions made by both the sides and perused the records. In the present case, the issue to be decided is that the activity of respondent in question is classifiable under the category of 'Site Formation and clearance, Excavation and Earth Moving and Demolition service' as contended by the revenue or not. For the sake of convenience, Section 65(97a) are reproduced below :-

"Section 65(97a) "Siteformation and clearance, excavation and earth moving and demolition" includes -

- (i) Drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or*
 - (ii) Soil stabilization; or*
 - (iii) Horizontal drilling for the passage of cables or drain pipes; or*
 - (iv) Land reclamation work; or*
 - (v) Contaminated top soil stripping work; or*
 - (vi) Demolition and wrecking of building, structure or road,*
- But does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies*

4.1 We also gone through the work order dtd. 14.04.2007 issued to the respondent wherein in clause 2.0 scope of work provide as under :

2.0 Contractors Scope of Work :

2.1. Tagging and marking of all equipments, piping and structures connected with equipment and pipe supports as per approved philosophy.

2.2. Removal of all auxiliary connection, where required.

2.3 Loosing of foundation bolts, disconnection of piping by unbolting with equipment, valves etc.

2.4 Removal of piping where it is bolted or by cutting the joints at suitable location.

2.5 Dismantling of pipe support, structures for tanks /vessels/Columns /equipments, supporting structures, ladders and platforms.

2.6 Unbolting foundation bolts of equipments, lifting and shifting to la-down area

2.7 Loading all equipment, Piping and structural materials on Reliance supplied trailers/ trucks and lashing properly.

2.8 All equipment, piping and structures shall be weighed at Relene weight bridge free of cost and same shall be basis of measurement.

2.9. All required cranes and trailers for above job shall be supplied by contractor at Relene, Dismantling site.

4.2 On careful consideration of the above extracted definitions, vis-a-vis, the facts of the case and scope of work, we find that the appellant had merely carried out dismantling activity. This activity, in no way, can be considered as a taxable service under the category of "site formation and clearance, excavation and earthmoving and demolition service" inasmuch as the work assigned under the work order for do not attract any of the clauses itemized in the definition provided under Section 65(97a) *ibid*. Thus, in our considered view, the activities undertaken by the appellant will not fall under the taxing net for levy of service tax under the disputed taxable service. There is merit in the finding of the Ld. Commissioner. Therefore, we are of the considered view that the work undertaken by the respondent cannot be termed as an activity of "Site formation and clearance, excavation & earthmoving & demolition".

5. Accordingly, the impugned order is upheld. Appeal filed by the Revenue is dismissed. CO also disposed of.

(Pronounced in the open court on 23.01.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)