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

REGIONAL BENCH- COURT NO.1

SERVICE TAX Appeal No. 10498 of 2013-DB

[Arising out of Order-in-Original/Appeal No 810-813-2012-COMMR-A-RBT-RAJ dated 05.09.2012 passed by Commissioner of Central Excise-RAJKOT]

Vishram Valji Chotara ...Appellant

8, Bholenath Complex,
Bhuj-Bhachau Bypass, Ta : Anjar,
Kutchh
Gujarat-370110

VERSUS

C.C.E. & S.T.-Rajkot ...Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

APPEARANCE:
Shri R. Subramanya for the Appellant
Sh. Prakash Kumar Singh, Superintendent (Authorized representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. A/ 10186 /2023

DATE OF HEARING:31.01.2023
DATE OF DECISION:31.01.2023

RAJU

This appeal has been filed by Vishram Valji Chotara against demand of Service Tax on site formation & clearance service.

2. Learned Counsel for the appellant pointed out that they were the sub-contractor provided service to the main contractor. He argued that the main contractor has paid the Service Tax and therefore, in terms of the Circular of CBEC they were not required to pay any Service Tax. He further pointed out that in the case of Simplex Infrastructures Ltd.- 2023 (1) TMI 541 CESTAT

New Delhi, it has been held that extended period of limitation cannot be invoked, when the appellant has not paid Service Tax in the capacity of sub-contractor. In view of the circular issued by CBEC to the effect that when the main contractor has paid the service tax no service tax liability would arise on sub- contractor, he argued that in this circumstances extended period could not have been invoked. Learned Counsel pointed out that they had not complied with the requirement of Section 35F and for that reason also the appeal filed by them before commissioner (Appeals) was rejected.

3. Learned AR pointed out that in the instant case no evidence to the effect that the main contractor has paid the service tax has been produced before Lower Authority. This fact is very relevant and therefore without having that fact on record no reliance can be place from the case laws cited by the appellant in the case of Simplex Infrastructures Ltd (supra).

4. We have considered rival submission, we find that the appellant had not complied with the requirement of Section 35F before Commissioner (Appeals), However, when they filed appeal before Tribunal, stay was granted vide Order No. M/12061/WZB/AHD/2013 dated 09.04.2013. Learned Counsel has pointed out that the entire period is before 2014, when amendment was made in Section 35F requiring mandatory pre deposit. This ground is of rejection by Commissioner (Appeals) is set aside in view of the stay order dated 09.04.2013.

4.1 We find that the decision in the case of M/s. Simplex Infrastructures Ltd is based on a finding of fact that the main contractor in the said case has paid the service tax. We also find that the CBEC circular is also relevant only in the circumstances when the main contractor has paid service tax. Since this very fact has not been verified by the lower authority no reliance can be placed on this afore mentioned decision or on the CBEC circular.

In view of the facts of the case we have no option but to remand the matter back to the Original Adjudicating Authority to verify, if the main contractor has paid the Service Tax or not. Thereafter, matter may be decided relying on the case law on the subject. The appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated & pronounced in the open court)

(Raju)
Member (Technical)

(Somesh Arora)
Member (Judicial)

Palak