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

REGIONAL BENCH-COURT NO. 1A

Service Tax Appeal No. 11747 of 2017-DB

(Arising out of OIA-VAD-EXCUS-001-APP-70-2017-18 dated 02/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Omega Plasto Compounds Pvt Ltd ....**Appellant**
Tanvika Polymers Pvt Ltd
Plot No.,718-719, G.I.D.C.
Village-Manjusar, Taluka-Savli,
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-I ......**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:
Shri Virendra Nayyar, Chartered Accountant for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10283/2025

DATE OF HEARING: 19.03.2025
DATE OF DECISION: 19.03.2025

SATENDRA VIKRAM SINGH

In the facts of the matter, Department has alleged that remuneration paid to Shri Lalit Chandra Prakash Warde, Shri Kishore Kumar Chandra Prakash Warde and Shri Chandra Prakash Warde to the tune of Rs. 2,66,00,000/- is liable to Service Tax, as the above three persons were Non-Executive Directors of the company i.e. M/s. Omega Plasto Compounds Pvt Ltd, Vadodara. The basis of the department's allegation is that during the Audit conducted in the factory of the appellant, the Auditors found that the above three persons were Non-Executive Directors during the period from 07.08.2012 to 14.03.2014. The department has relied upon Form-32 submitted by the company before the Registrar of companies. Accordingly, Revenue issued a show cause notice dated 19.01.2016, demanding service tax of Rs. 54,38,400/- for the period from August, 2012 to March, 2015 along with interest and penalty under Section 77 and 78 of the Finance Act, 1994.

1.1 The matter was adjudicated vide order dated 21.12.2016 wherein the adjudicating authority confirmed the service tax demand of Rs. 32,87,750/- upon the appellant and dropped the demand of Rs. 21,50,640/-. He also imposed penalty of Rs. 10,000/- under Section 77 and penalty of Rs. 32,87,760/- under Section 78 of the Finance Act, 1994. The reason for dropping the demand was that the SCN has worked out demand for the period after 14.03.2014 also which according to him was non-sustainable as the above three persons were appointed as Executive Directors w.e.f. from 14.03.2014. The appellant filed the appeal before Commissioner (Appeals) who vide impugned order dated 02.05.2017, dismissed the appeal and upheld the OIO. Hence, the present appeal.

2.1 The learned Advocate on behalf of the Appellant mentioned that all the three persons namely Shri Lalit Chandra Prakash Warde, Shri Kishore Kumar Chandra Prakash Warde and Shri Chandra Prakash Warde were Directors of the company since incorporation i.e. from 27.04.2010. In support, he enclosed the Extract of Board Resolution towards their appointment. The appellant also enclosed Certificate dated 04.03.2017 issued by Shah Sanghvi & Co., Chartered Accountants, certifying that the remuneration paid to above three persons as directors has been reflected in their Audited Financial Statements for the concerned years. He also submitted that the above three directors were issued Form-16 like other employees of the company and TDS was deducted from their remuneration under section 192 of the Income Tax Act, which deals with salary paid to the employee. Further, they have not paid any director's sitting fees to the above three persons. The appellant enclosed Income tax returns filed by these three directors in their individual capacity for the concerned financial years 2012-13 and 2013-14, showing such remuneration as income form salary. The appellant also cited CBIC Circular No. 115/09/2009-ST dated 31.07.2009 wherein it has been clarified that the Managing Director/ Directors being part of the Board of Directors, perform management functions and they do not perform consultancy or advisory functions. And therefore, remuneration paid to Managing Director/Directors of the company whether whole time or independent when being compensated for their performance, could not be liable to service tax.

2.2 The appellant relied upon the following decisions: -

a) Hon'ble Ahmedabad CESTAT in **Alchemie Organics v CCE & ST (Valsad) (2024) The CESTAT clarified that remuneration paid to Managing Director/Director whether whole-time or independent, when compensated for their performance, would not be liable to service tax**.

b) Hon'ble Ahmedabad CESTAT in **Falcon Pumps Pvt. Ltd. v CCE & ST- Rajkot (2024) CESTAT remarked that there is no dispute that appellant have paid to their directors the remunerations which is in form of salary. There are Board resolutions resolving that these directors are appointed as employees of the appellant company and payment of remuneration was made in the form of salary which is evident from TDS records, the TDS was deducted under Section 192 of the Income Tax Act. Therefore, the relationship between the appellant and their directors are of employer and employee. Hence, the same is not taxable in terms of Section 66(B) (44) of the Finance Act, 1994.**

c) Hon'ble Ahmedabad CESTAT in **Supreme Treves Pvt. Ltd. v CCE & ST (Daman) (2023)**

d) Hon'ble Mumbai Tribunal in **Allied Blenders & Distillers Pvt. Ltd. v CCE & ST (Aurangabad) (2019)**

e) Hon'ble Mumbai Tribunal in **Rent Works India Pvt. Ltd. v CCE (Mumbai) (2016)**

On the basis of above, learned Advocate submitted that their existed employer-employee relationship between the appellant company and three directors and thus, no service tax is leviable on the appellant under reverse charge basis for the disputed period.

3. Learned AR on the other hand reiterated findings of the lower authority specially emphasising para 5.2 and 5.3 of the impugned order. He emphasized that IT returns filed by the directors do not show whether they were whole time Directors/Managing directors or independent directors. Further, Form-32 filed by the company under Companies Act, 1956 showed that above three persons namely Shri Lalit Chandra Prakash Warde, Shri Kishore Kumar Chandra Prakash Warde and Shri Chandra Prakash Warde were non-executive directors prior to 14.03.2014. However, in the same submission, he says that new form-32 available in records show that these three persons were appointed as whole-time directors w.e.f. 27.04.2010. He challenges new Form-32 as totally incorrect and contrary to the material facts.

4. We have heard the rival submission and also gone through the facts of the case. We find that in response to the department's inquiry vide letter dated 06.04.2015 and 22.04.2015, the appellant had submitted Form-32 w.e.f. August,2012 which showed the aforesaid three persons as Non-Executive Directors and not their employees. However subsequently, the appellant has submitted new Form-32 (showing them Directors w.e.f. 27.04.2010) before the adjudicating authority as mentioned in the original order but the adjudicating authority accepted them Directors only w.e.f. 14.03.2014 and not for the prior period. Thus, the whole issue in the matter revolves around the fact whether the above three persons namely Shri Lalit Chandra Prakash Warde, Shri Kishore Kumar Chandra Prakash Warde and Shri Chandra Prakash were non-executive directors during the period from August, 2012 to 14.03.2014, or whole-time director of the company. As of now, there exist two Form-32, one submitted during enquiry showing these persons as non-

executive directors upto 14.03.2014 and other one (submitted during adjudication process) showing that they were whole time directors of the company w.e.f. from 27.04.2010 itself. Which Form 32 is genuine, can be resolved only with help of suitable certificate or letter from the Registrar of the companies as to what was the factual status of these three persons in the company during the impugned period. Accordingly, we remand the matter to the adjudicating authority with direction to both the department as well as appellant to produce a confirmatory letter from the jurisdictional Registrar of companies about status of Shri Lalit Chandra Prakash Warde, Shri Kishore Kumar Chandra Prakash Warde and Shri Chandra Prakash Warde in the company of the appellant during the period from 07.08.2012 to 14.03.2014. The matter may be decided accordingly. If it comes out that these three persons were whole time directors of the company during this period, then the demand of service tax and consequentially interest and penalty do not survive.

5. Appeal is allowed in above terms by way of remand.

(Operative portion pronounce in the open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha