

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

**REGIONAL BENCH- COURT NO.3
Service Tax Appeal No.25 of 2012**

(Arising out of OIA-CS/77/DMN/VALSAD/2011-12 dated 20/10/2011 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Uniform Enterprise

.....Appellant

Saradi Chambers, Rcm 3/8,
Opp. Ghb Morarji Circle Road, Gidc,
Vapi, Gujarat

VERSUS

C.C.E. & S.T.-Daman

.....Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:

Shri S. Suriyanarayan, Advocate for the Appellant
Shri Rajesh Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR
 Final Order No. A/ 10710 /2023**

DATE OF HEARING: 27.02.2023
DATE OF DECISION: 24.03.2023

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in providing service of painting job in industrial sector which is covered under the category of 'Industrial or Commercial Construction Service' for the purpose of levy of service tax as per the definition provided in Section 65(1) of the Finance Act, 1994. The DGCEI has conducted investigation and on scrutiny of records revealed that the appellant M/s. Uniform Enterprise were engaged in providing the service of industrial painting job which is covered under the category of 'Industrial or Commercial Construction Service' for the purpose of levy of service tax. However, the appellant have not paid the service tax on the taxable value received by them therefore, a show cause notice no. DGCEI/AZU/36-94/2009-10 dated 10.10.2009 was issued to the appellant demanding the service tax of Rs. 11,25,541/- and proposing demand of interest and penalties under Section 77 and 78 of the Finance Act, 1994. The demand of service tax was raised under the head of Industrial or Commercial Construction Service for the period 2006-07 to 2007-08. Being aggrieved by the order in original, the appellant filed appeal

before the Commissioner (Appeals) who rejected the appeal filed by the appellant therefore, the present appeal.

02. Shri S. Suriyanarayan, learned counsel appearing on behalf of the appellant submits that the learned Commissioner (Appeals) held that the demand of service tax is payable under Management, maintenance and repair service. It is his submission that when in the show cause notice as well as the adjudication order, the demand was proposed and confirmed under Commercial or Industrial Construction Service does not lie for the Commissioner (appeals) to change the classification which is not proposed in the show cause notice therefore, the order is not sustainable. He further submits that under the head of Management, maintenance and repair service, the service tax can be chargeable only when such service is under the contract or agreement whereas, in the present case there is no contract or agreement between appellant and the service recipient for the reason that the service tax is otherwise not recoverable under the head of Management, maintenance or repair service. He placed reliance on the following judgments:-

- BALAJI CONTRACTOR Vs. COMMISSIONER OF CENTRAL EXCISE, JAIPUR-II- 2017 (52) S.T.R. 259 (Tri.-Del.)
- CONTINENTAL FOUNDATION JT. VENTURE Vs. COMM. OF C.EX., CHANDIGARH-I- 2007 (216) E.L.T. 177 (S.C.)
- VIJAY KUMAR KATARIA V/s. COMMISSIONER OF CENTRAL EXCISE, DELHI- 2019 (20) G.S.T.L. 292 (Tri-Del)

03. Shri Rajesh Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. On careful consideration of the submission made by both the sides and perusal of records, we find that the show cause notice was issued demanding service tax under the head of Industrial or Commercial Construction Service and in the adjudication order also the service tax demand was confirmed under the same heading. However, the learned Commissioner (Appeals) travelling beyond the show cause notice and adjudication order decided that the service tax is payable under the head of Management, maintenance and repair service. This approach of the learned Commissioner (Appeals) is absolutely illegal and incorrect. The learned Commissioner (Appeals) has no power to create a new case before him which is not flowing from the show cause notice therefore, on this ground alone the impugned order is not sustainable. However, since the learned

Commissioner (Appeals) has upheld the demand under Management, maintenance and repair service and not under Industrial or Commercial Construction Service the matter needs to be reconsidered by the learned Commissioner (Appeals).

05. The learned Commissioner (Appeals) shall decide the appeal considering the service under Industrial or Commercial Construction Service. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the Commissioner (Appeals) for passing afresh Order-in-Appeal preferably within a period of two months from the date of this order.

(Pronounced in the open court on 24.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Mehul