CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70093 of 2021

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APPL-MRT-179-2020-21, dated-27/11/2020 passed by Commissioner (Appeals) CGST, Meerut)

Commissioner, CGST, Ghaziabad **.....Appellant**
(CGO Complex-II, Kamala Nehru Nagar, Ghaziabad)

VERSUS

M/s M M Metacraft Pvt. Ltd. **....Respondent**
(40/1,-C, Site-IV, Industrial Area,
Sahibabad, Ghaziabad
Uttar Pradesh 201010)

<u>APPEARANCE:</u>

Shri Santosh Kumar, Authorized Representative for the Appellant
Absent for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO<u>.-70946/2024</u>

DATE OF HEARING : 29.11.2024
DATE OF DECISION : 29.11.2024

<u>P. K. CHOUDHARY:</u>

The present appeal has been filed by the Revenue assailing the Order-In-Appeal No.GZB-EXCUS-000-APPL-MRT-179-2020-21, dated-27/11/2020 passed by the learned Commissioner (Appeals) CGST, Meerut.

2. The facts of the case in brief are that on the basis of an audit objection it was alleged that during the period from 23.04.2017 to 30.06.2017, the Appellant had imported various consignments of raw materials at CIF value but had not paid Service Tax on Ocean Freight which was payable under Reverse Charge in terms of Rule 2 (1) (d) (i) (EEC) of the Service Tax Rules, 1994, read with Notification 30/2012-ST dated

20.06.2012 as amended vide Notification No. 16/2017-ST dated 13.04.2017 read with Notification No. 14/2017-ST dated 13.04.2017, Notification No. 15/2017-ST dated 13.04.2017, and Board's Circular No. 206/4/2017 dated 13.04.2017. The Appellant was, thereafter, issued a Show Cause Notice dated 04.09.2019 for demand and recovery of service tax of Rs. 6,42,666/- along with interest with proposal to impose penalty under Section 78 of the Finance Act, 1994(hereinafter referred to as the "Act"). The adjudicating authority vide the impugned order confirmed the demand alongwith interest, and imposed equal penalty under Section 78 of the Act.

3. Being aggrieved, Appellant filed appeal before the learned Commissioner (Appeals) and the learned Commissioner (Appeals) vide the impugned Order-In-Appeal has allowed the appeal of the Assessee before him by observing as under:-

> *6. I have carefully gone through the facts and records of the case and submissions made by the Appellant. I find that the issue involved in the present appeal stands decided by the Hon'ble High Court of Gujarat, vide their Judgment dated 06.09.2019, in respect of R/Special Civil Application No. 20785 of 2018, 3123 of 2018, 20791 of 2018 and 20796 filed by M/s SAL Steel Limited and Others Versus Union of India. The Hon'ble High Court [2020-TOIL-163-HC-AHM-ST], in the said judgment has, inter-alia, held that-*
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> *"58. In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification No. 15/2017-ST and 16/2017-ST making Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules and inserting explanation-V to reverse charge Notification No. 30/2012-ST in stuck down as ultra vires Section 64,668,67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice enquiries for collecting service tax from them as importers on sea transportation service in CIF contracts are hereby quashed and set aside with all consequential reliefs and benefits."*
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> *There is nothing on record that the said judgment dated 06.09.2019 of the Hon'ble High Court of Gujarat, has either been stayed or set aside. Therefore, the impugned order confirming the demand of service tax on ocean freight, is not sustainable. As the demand itself is not sustainable, penalty imposed upon the Appellant is also not sustainable.*

7. In view of the above discussion and findings the impugned order is set aside, and the appeal bearing No. 49-ST/APPL-MRT/GZB/2020-21 dated 24.09.2020, filed by M/s M.M. Metacraft (P) Limited, 40/1-C, Site-IV, Industrial Area, Sahibabad, Ghaziabad, is allowed.

4. Being aggrieved by the impugned Order-In-Appeal, Revenue has filed the present appeal before the Tribunal.

5. None appeared on behalf of the Respondent-Assessee. Since the matter lies in a very narrow compass, the same is taken up for hearing with the consent of the learned Departmental Representative.

6. Heard the learned Departmental Representative and perused the appeal records.

7. We find that the issue in the present appeal is no more *res integra*. We find that in its judgment dated 6.9.2019, Hon'ble High Court of Gujrat in the case of Sal Steels Ltd. Vs. Union of India has held that levy of service tax on "Ocean Freight", in case of import from foreign countries, as "ultra vires" and Notification Nos. 15/2017-S.T. and 16/2017-S.T. making Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules and inserting Explanation-V to reverse charge Notification No. 30/2012-S.T was struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994.

8. Operative part of the said judgment of Hon'ble High Court is as under:

58. In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification Nos. 15/2017-S.T. and 16/2017- S.T. making Rule 2(1)(d)(EEC) and Rule 6(7CA) of the Service Tax Rules and inserting Explanation-V to reverse charge Notification No. 30/2012-S.T. is struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice and enquiries for collecting service tax from them as importers on sea transportation service in CIF *contracts are hereby quashed and set aside with all consequential reliefs and benefits.*

9. In view of the aforesaid decision of the Hon'ble High Court, Gujarat we find that since the notifications on the basis of which service tax was imposed on the said Ocean Freight under reverse charge mechanism have been struck down as ultra vires, Respondent was not liable to pay service tax @ 1.4% of CIF on Ocean Freight.

10. We find that in the grounds of appeal filed by the Revenue it is mentioned that the Department is proposing to file Civil Appeal/SLP before the Hon’ble Supreme Court against the judgment of the Hon’ble High Court, however, there is nothing on record to show that the judgment of the Hon’ble High Court of Gujarat has been stayed or set aside.

11. It is not even the case of the Revenue that order of Hon’ble Gujarat High Court has been stayed or modified by the Hon’ble Supreme Court in the SLP filed by the Revenue. No evidence is available to show that after the issuance of notice of SLP filed by the Revenue has been admitted or not after issuance of the notice. That being so order of Hon’ble Gujarat High Court in the Service Tax Appeal No.70221 of 2020 case of Sal Steel Ltd. 2020 (37) GSTL 3 (Guj.) would be binding precedence and has been followed in the impugned order.

12. It is also brought to our notice that Ahmadabad- Bench of this Tribunal in the case of Commissioner Vs M/s Kiri Dyes & Chemical 2023 (10) Centax 134 (Tri.-Ahmd) on the same issue, has dismissed the appeal filed by Revenue observing as follows:

“4. I have carefully considered the submissions made by both the sides and perused the record. I find that the issue whether Ocean Freight/ Sea Transportation service is liable to service tax or otherwise has been decided by jurisdictional High Court of Gujarat in the case of SAL Steel Limited. As regards the Revenue’s appeal pending before the Hon’ble Supreme Court against the aforesaid decision, I find that there is no stay against the said High Court judgment. In view of this position, I find no infirmity in the impugned

> *order which was passed relying on the jurisdictional High Court judgment in the case of SAL Steel Limited. Accordingly, following the Hon'ble Gujarat High Court decision in the case of SAL Steel Limited, the impugned order is upheld and the Revenue's appeal is dismissed. Cross objection is also disposed of."*

The above decision of Ahmedabad Bench has been affirmed by the Hon'ble Supreme Court as reported at [2023 (10) Centax 135 (SC)].

13. Accordingly, in view of the above discussion, we do not find any infirmity in the impugned order. The same is sustained. The appeal filed by the Revenue is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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