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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.10535 of 2013

(Arising out of OIO-15/STC/COMMR/BRC-I/2012 dated 19/12/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Rudra Engineering ..... Appellant
1-A, Ami Society Old Padra Road,
Vidyut Nagar Colony, VADODARA, GUJARAT

VERSUS

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

APPEARANCE:
Shri Anil Gidwani, 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. RAJU

Final Order No. A/ 10063 /2023

DATE OF HEARING: 15.12.2022
DATE OF DECISION: 16.01.2023

RAMESH NAIR

The appellant is in appeal against the impugned order-in-original No. 15/STC/COMMR/BRC-I/2012 dated 19.12.2012 wherein the demand of short payment of service tax has been confirmed against the appellant.

02. The brief facts of the case are that intelligence was received that the Appellant was wrongly availing abatement of 67% for calculating the taxable value for payment of service tax as per the provisions of Notification No. 1/2006-ST dated 01.03.2006 as amended. On this basis inquiry was initiated and documents were scrutinized. On study of work orders and its related invoices pertaining to thermal insulation, it was found that the scope of work of the contract executed by the Appellant are (i) Hot insulation including supply of LRB and Aluminium Sheet (ii) Cold Insulation with Thermocol and Aluminium Sheets (iii) Insulation of pipeline with black superioan sleeve providing and fixing of black superioan sleeve with cellotape (iv) Insulation with black nitrite rubber foam, sheet, etc.. It

appeared that the service provided by the said service provider of supplying and applying of thermal insulation falls outside the purview of eligibility criteria for availing the benefit under Notification No. 1/2006-ST as they were not supplying plant, machinery, equipment or structures but carrying out application of thermal insulation material on plant, machinery, equipment already installed at the factory /business premises of the service receiver. In this connection statement of Shri Viral Harendrabhai Pandya Proprietor of the firm was recorded. It also appeared that Appellant have wrongly classified the service rendered as "Installation of thermal insulation" as Works Contract Service as the condition of transfer of property as per the definition did not exist and also the contract was not leviable to tax as sale of goods. Accordingly, a show cause notice dated 8-10-2012 was issued to the appellant for demand of service tax of Rs. 69,61,972/- on wrong availment of abatement and demand of service of Rs. 24,37,017/- for wrong classification of service and to impose penalty. The matter was adjudicated and the demand of service tax was confirmed along with interest and penalty was imposed. Against this order, the appellant is before us.

03. Shri Anil Gidwani, learned Counsel the appellant submits that there is no dispute over the fact that the Appellant was undertaking "erection, installation and commissioning work", wherein thermal insualting material such as (i) Hot insulation including supply of LRB and Aluminium Sheet (ii) Cold insulation with Thermocol and Aluminium Sheet (iii) Insulation of Pipeline with black superion sleeve providing and fixing of black superion with cellotape (iv) insulation with black nitrile rubber foam, sheet, etc. were being supplied and applied on the equipment, structures etc. The sale price of the material was not being separately shown in the invoice, however, substantial VAT/Sales Tax under appropriate scheme and at appropriate rates were paid. In fact, the approx.. involvement of material in the work undertaken is about 70% of the total cost. There is no dispute over this fact, and this was also specifically mentioned in the statements of Shri Viral Pandya (Proprietor) recorded in the course of the investigation.

3.1 He further submits that the activities undertaken by the appellant would qualify within the scope of the Notification No. 1/2006 –ST , so as to be eligible for abatement benefit. The impugned order has not appreciated this aspect properly, while the appellant has also explained the factual position even by producing photographs for better understating of the issue.

The Notification No. 1/2006 or for that matter the provisions of Finance Act, 1994 do not define what is "Plant" As such the items supplied by the appellant not in the nature of consumable, but an item having fairly high degree of durability. As such, just as in the case of "wires and cables" ,even the present items qualify as "plant" within the meaning of said items. He placed reliance decisions of Jawahar Mills Ltd. – 1999(108)ELT 0047 (Tri. LB) upheld by Supreme Court -2001(132)ELT 3(SC).

3.2 He also submits that items which were sold by the Appellant during the course of executing work, have been actually purchased by the customers/ clients and then supplied to the appellant for application, these items would have definitely qualified as "capital goods" for the customers/clients. There cannot be any dispute over this. If they qualify as "capital goods" they automatically become plant/machinery/equipment and as such, the objection raised in the present matter in this regard cannot survive any more.

3.3 He argued that it is well documented that they were selling material in the course of providing the composite service, and the material component involved therein was approx.. 70% and at the most service tax was to be paid only on 30% of the value, which represent labour component. As against this, the appellant has paid service tax on 33% of the value, which is more than the actual liability. The basic idea behind giving abatement is to ensure that Service tax is not charged on that value of materials, which are used together with labour while providing taxable service. Service tax is a tax on services and not on goods and thus such abatement are given.

3.4 As regards the second issue "works contract service" which is made liable to levy of service tax w.e.f. 01.06.07, he submits that the work undertaken for the clients, which is in dispute, are to be treated as works contract for the purpose of Sales Tax Laws and that the appellant also paid Sales Tax/ VAT on material consumed during the execution of such work in dispute. The CBEC has clarified in its circular No. B1/16/2007-TRU dated 22.05.2007 that all those contracts which qualifies works contract under the Sales Tax Laws equally qualify as work contract for the purpose of levy of Service tax. This is also clear from the definition of taxable service for works contract as appearing at Section 65(105)(zzzza) of the Finance Act, 1994. That the work undertaken by the appellant not only attract VAT/Sales Tax,

but are also qualified as "works contract". The strange reasoning adopted in the impugned order to hold that "there is no transfer of property" on goods involved in execution of works is not legally acceptable. The Appellant is also registered under works contract services and discharging service tax accordingly since long and no further proceedings have been undertaken against them for the same nature of work where they regularly discharge service tax liability under works contract service.

3.5 Without prejudice, he also submits that in any case benefit under Notification 12/2003-ST is available to the Appellant. He placed reliance on the following decisions:-

- WIPRO GE MEDICAL SYSTEMS PVT. LTD.- 2009(14)STR 43
- DELUX COLOUR LAB PVT. LTD.- 2009(13)STR 605
- VAHOO COLOUR LAB.-2010(18)STR 548
- SOBHA DEVELOPERS LTD.- 2010(19)STR 75
- HINDUSTAN AERONAUTICS LTD.- 2010(17)STR 249

3.6 He also submits that in the present matter benefit of "cum-tax" value was not given to the Appellant which is otherwise available as per law.

04. Per contra, Shri Rajesh Agarwal, departmental authorised representative relies on the findings in the impugned order.

05. Heard both sides and perused the records. The first issue involved in the present appeal for determination is whether the appellant are eligible to the benefit of Notification No. 1/2006-S.T., dated 1-3-2006. The relevant entry specified in said notification reads as follows :

S. No.	**Sub-clause of clause (105) of Section 65**	**Description of taxable service**	**Conditions**	**Percentage**
(1)	(2)	(3)	(4)	(5)
5.	(zzd)	Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment or structures and erection,	This exemption is optional to the commissioning and installation agency.	33

		commissioning or installation of such plant, machinery or equipment or structures.	*Explanation.* - The gross amount charged from the customer shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	

The aforesaid exemption entry is applicable on taxable category viz. Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment or structures and erection, commissioning or installation of such plant, machinery or equipment or structures. The Learned Commissioner denied the benefit of said entry to the Appellant on the ground that Appellant is not supplying plant, machinery, equipment or structures, but carrying out thermal insulation and hence benefit of 67% abatement from gross value would not be available to appellant as the condition laid down in the said Notification are not fulfilled by appellant. However, we find that in above column (4) of the table which is related to the "condition" in explanation it clearly used the words "and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service". Hence, in our opinion, it cannot be considered that the said entry is applicable only on the supply of plant, machinery or equipment or structures. Besides, it is also applicable on any other material soLearned In the present matter there is no dispute on the facts that the Appellant is Commissioning and Installation agency and for providing the taxable services appellant has provided the thermal insulating materials i.e. Hot insulation including supply of LRB and Aluminium Sheet, Cold insulation with Thermocol and Aluminium Sheet, Insulation of Pipeline with black superion sleeve providing and fixing of black superion with cellotape , insulation with black nitrile rubber foam, sheet, etc. and on supply of goods appellant also paid sales tax/ VAT. Hence, in our opinion, the Appellant are eligible to the benefit of the Notification No. 1/2006-S.T., dated 1-3-2006.

5.1 The second issue in the present appeal is wrong classification of service under Works Contract Service. As per the revenue the appellant –

service provider has wrongly classified the service rendered as „installation of thermal insulation" as „Works Contract" in as much as the condition of transfer of property as per the definition of „Works Contract" has not satisfied & also the contract is not leviable to tax as sale of goods and appellant only supply the insulation material and used the same towards completion of thermal insulation. We find that the Works Contract Service was introduced by the Finance Act, 2007 w.e.f. 1-6-2007 by insertion of sub-clause (zzzza) in Section 65(105) of the Act. The provision reads as under :

> *(zzzza) to any person, by any other person in relation to the execution of a works contract excluding works contract in respect of roads, airports railways, transport terminals, bridges, tunnels and dams.*
> *Explanation : For the purposes of this sub-clauses, "works contract" means a contract wherein, -*
>
> *(i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*
>
> *(ii) Such contract is for the purposes of carrying out, -*
>
> *(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
>
> *(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
>
> *(c) construction of a new residential complex or a part thereof; or*
>
> *(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
>
> *(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.*

From the definition of Works Contract Service, it is clear that only specified categories of works contract are considered for levy of Service Tax under the said definition. These are enumerated in clauses (a) to (e). We find that in clause (a) thermal insulation also mentioned and in the present matter appellant had also paid VAT/ sales tax on goods which is used in installation of thermal insulation. We find that the impugned activity of the assessee was nothing but "works contract service".

06. In view of the above clear position of law, we do not find any merit in the impugned order demanding service tax from appellant. Therefore, the impugned order is set-aside. The appeal is, accordingly, allowed with consequential relief if any as per law.

(Pronounced in the open court on 16.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul