

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

REGIONAL BENCH- COURT NO. 3

**Service Tax Appeal No. 10263 of 2020**

(Arising out of OIA-AHM-EXCUS-003-APP-57-19-20 Dated- 11.02.2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD)

**ANEESH ENGINEERS**

3, AMAN PARK, OPP. ARADHANA SOCIETY, O.P. KALOL  
GANDHINAGAR-GUJARAT

**.....Appellant**

*VERSUS*

**C.S.T.-SERVICE TAX – AHMEDABAD**

7 th Floor, Central Excise Bhawan, Nr. Polytechnic  
CENTRAL EXCISE BHAVAN, AMBAWADI,  
AHMEDABAD,GUJARAT-380015

**.....Respondent**

**APPEARANCE:**

Shri Vipul Khandhar (Advocate) for the Appellant

Shri Pankaj Kumar Singh, (Superintendent) Authorised Representative for the Respondent

**CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**Final Order No. A/ 10811 /2022**

DATE OF HEARING:21.07.2022

DATE OF DECISION:21.07.2022

**RAJU**

This appeal has been filed by M/s Aneesh Engineers against denial of refund of service tax amounting to Rs. 20,22,971/-.

2. Learned counsel for the appellant pointed out that this amount was paid by the appellant under the head of 'Erection Commissioning and Installation Service' however, Revenue issued them a show cause notice seeking to classify this service provided by them under the head of 'Commercial Industrial Construction Service'. Revenue sought to adjust this amount already paid by them under the head of 'Erection Commissioning & Installation' to the 'Commercial Industrial Construction Service'. Revenue further sought to include the value of free supply material in the assessable value and consequently, demand on that ground amounting to Rs. 31,74,721/- was also raised against the appellant in respect of the value of the free supply material. The demand show cause notice was dropped by the

original adjudicating authority on account of limitation.

3. Learned counsel pointed out that Revenue filed this appeal against said order dropping the demand on account of limitation in respect of the demand of Rs. 31,74,721/-, which was in respect of free supply material. The Commissioner (Appeals) allowed revenue's appeal. Learned counsel pointed out that the notice seeking to reclassify activity was not challenged by Revenue before Commissioner (Appeals) and hence Revenue could not have challenged the supplementary demand on account of free supply material. The appellant appealed before Tribunal and succeeded and the demand on free supply material was set aside by Tribunal. Learned counsel pointed out that in the stay order of Tribunal no. 1016/WZB/AHD/2012 dated 12.06.2012, the amount already paid by them, of Rs. 21,32,557/-, was adjusted against the total liability of Rs. 53.06 Lakhs and treated as pre deposit for the appeal. Learned counsel pointed out that in these circumstances, the issue of limitation cannot be invoked by Revenue as the amount being claimed as refund is the amount which was treated as pre-deposit by Tribunal in the stay order dated 12.06.2012.

4. Learned Authorized Representative for the Revenue argued that the Show cause notice demands only an amount of Rs. 31,74,721/-. As regards the amount of Rs. 20,22,971/- the notice only sought to be re-classification and there is no demand of the said amount in the show Cause Notice. Learned Authorized Representative pointed out that the amount claimed as refund has been paid under the 'Erection Commissioning and Installation service' whereas, the demand dropped in respect of said amount is in respect of 'Commercial Industrial Construction Service'.

5. I have gone through rival submissions. I find that the appellant had classified the service provided by them under 'Erection Commission and Installation Service' and had paid service tax amounting to Rs. 20,22,971/-. Later on, Revenue initiated proceedings seeking to classify the service

provided by them under 'Commercial Industrial Service' and also sought to include the value of free supply material in the assessable value for the purpose of tax. The issue was decided by original adjudicating authority in favour of appellant on the grounds of limitation and the demand was set aside. When the matter was agitated before Commissioner (Appeals), the Commissioner (Appeals) reversed the order. Learned Counsel pointed out that the appeal filed by revenue before Commissioner (Appeals) was only limited to the issue of addition of free supply material and no appeal was filed in respect of adjustment of Rs. 20,22,971/- from the head of 'Erection Commissioning and Installation' to the head of 'Commercial Industrial Construction Service'. From the above, it is apparent that while the Revenue's attempt to classify the service provided by the appellant under the 'Commercial Industrial Construction Service' and to include the value of free supply material has failed in the Tribunal, the original self-assessment of the appellant made under the head of 'Erection Commissioning Installation' remained undisturbed.

6. In this background, the claim of refund is in respect of assessment under the head of 'Erection Commissioning and Installation' remains undisturbed. Thus the claim of refund can only be made in respect of original assessment under the head of 'Erection Commissioning & Installation'. In this background, the limitation prescribed under Section 11B would be applicable and consequently, the refund claim filed much after the period of limitation would not be admissible. The appeal is consequently, dismissed.

(Dictated & Pronounced in the open court)

**(RAJU)**  
**MEMBER (TECHNICAL)**