

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 208 of 2012

[Arising out of OIA-COMMR-A-/39/VDR-I/2012 dated 20/01/2012 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Chashmita Engineers Pvt Ltd

403b, Alkapuri Arcade,
R.C.Dutt Road,
Vadodara, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-i

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara,
Gujarat- 390007

.....Respondent

APPEARANCE:

Shri Abhay Desai, Chartered Accountant for the Appellant

Shri. Vinod Lukose, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A / 11250 /2022

DATE OF HEARING:30.08.2022

DATE OF DECISION:20.10.2022

RAJU

This appeal has been filed by M/s. Chashmita Engineers Pvt Ltd. against demand of Service Tax, interest and imposition of penalties.

2. The appellant are engaged in provision of various services under the head of Management, maintenance and Repair service, and erection commissioning and installation service. The appellants are mainly engaged in Management, Maintenance and repair of Public Address System, AVETCS, of the Commissioner of Transport, Government of Gujarat, Way Bridges and Erection Commissioning and Installation of public Address System and Supply of Manpower for operation of RTO Check Post and to carry out o the repair work on man day basis.

2.1 Learned Counsel for the appellant argued that the appellant had provided services under a contract with Transport Department Government of Gujarat for Repairs and Maintenance service of computerized system installed at the RTO check post from 03.12.2003. He argued that Repairs and Maintenance Services of Computerize System were exempted from Service tax as per notification No. 12/2003-ST dated 20.06.2003. The said notification was rescinded vide Notification No. 7/2004-ST dated 09.07.2004 and therefore the service provided by them became taxable only from 09.07.2004. He argued that the Learned Adjudicating Authority while determining the tax liability for the aforesaid period levy Service tax on the first bill dated 08.03.2004 covered the period from 08.12.2003 to 07.03.2004 but, levied tax on the bill dated 08.06.2004 as well as 08.09.2004. Learned Counsel argued that the service provided by them was exempted under Notification No. 20/2003-ST and therefore, the Service Tax and the interest paid by them be refunded. He also argued that the penalty paid in respect of those clearances may also be refunded.

2.2 Learned Counsel further argued that they had made voluntary payment for the half year ending March, 2007 and for the period amounting to Rs. 1,35,053/- and for the period April, 2007 to June, 2007 amounting to Rs. 3,40,470/- along with penalty under Section 78 amounting to Rs. 4,75,523/. He argued that the payment was made voluntarily and therefore, penalty under Section 78 should be set aside and refunded.

3. Learned AR relying on the impugned order. He relied on para 12 and 12.1 of the impugned order in so far as the liability to tax under Management, Maintenance and Repair Service itself. He relied on para 16 of the impugned order to assert that the duty payment was made after the investigation was initiated by the preventive wing.

4. We have gone through rival submissions. we find that the appellant is seeking benefit of Notification No. 20/2003-ST in respect of the service provided by them in respect of AVETCS system. The nature of the system for which the services were provided was discussed in para 12 of the impugned order in following para:

"In this connection, I find that in the statement given by Shri S. Ramakrishnan, Managing Director of the appellants, with regard to services rendered to Commissioner of Transport, Govt. of Gujarat, he stated that they had entered into a contract dated 03.12.2003 with the Commissioner of Transport for rendering the services of repair & maintenance of Automatic Vehicle Entry Tax Collection System of the computerized check-posts and providing data entry operators (manpower) for operating the check-posts, as per terms & conditions mentioned in the said contract. I also find that he described the services provided for AVETCS as follows:

"The Automatic Vehicle Entry Tax Collection System (AVETCS) of Commissioner of Transport constitutes electronic weigh bridges, CCTV system, computers, servers, LAN & WAN, Electrical systems and related software; that when a vehicle comes. it goes on the weigh bridge after getting green traffic signal. The actual weight of the vehicles comes on the weight indicator connected with the weigh bridge and the same is transmitted to Lane computer provided in the operator cabin. The permissible weight and the vehicle no. are entered by the operator from the RC book. The CCTV camera provided on the lane captures the picture of the vehicle along with the number plates of vehicle and this picture is stored in the video server provided in the check post; that the software already provided in the lane computer calculates the overload penalty and other offences including the entry tax are entered into the payment Challans and the same is handed over to the truck driver for the payment to be made at the check post: that the penalty data is stored in the data server provided at the check post: that the driver makes the payment at the check post and collects his documents and moves out of the check post; that the data and video stored at the check post server are then transmitted to the Central Monitoring Centre on line through Leased Telephone Line of BSNL. And their services in relation to the AVETCS include the comprehensive maintenance of all the hardware like electronic weigh bridges, computers, servers, CCTV system, lighting, DG set including supply of all spares and software; that their services also include supply of data entry operators for operation of the AVETCS; that in short, only the revenue collection is done by RTO officials and all other functions in relation to the check posts of the RTO are carried out by the persons provided by appellants: that besides operators, they have got engineers and technicians at each check post and Central Monitoring Centre for maintenance of the system provided."

4.1 The appellant is seeking the benefit of Notification No. 20/2003-ST, which reads as under:

"In exercise of the powers conferred by Section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to a customer by any person in relation to maintenance or repair of computers, computer systems or computer peripherals, from the service tax leviable thereon under Section 66 of the said Act."

4.2 It is seen that the Notification No. 20/2003-ST provides exemption on;y to maintenance or repair of computers, computer systems or computer peripherals. The AVETCS systems can by no means be called computers, computer systems or computer peripherals. The mere fact that the AVETCS contains computer system does not make it Computers, Computer Systems or Computer Peripherals. In these circumstances, we do not find the appellant is entitled to the benefit of Notification No. 20/2003-ST and consequently, the appeal on this ground is dismissed.

5. The second issue relates to imposition of penalty in respect of payments for the period September, 2006 to March, 2007 and April, 2007 to June, 2007 are concerned. The appellant has claimed that the payments were made voluntarily. Learned AR has pointed out that the payments were made after the inquiry was initiated by the preventive wing. He pointed out the para 16 of the impugned order which reads as follows:

"From the facts and circumstances of the case, it is very clear that the preventive wing had initiated the investigation vide their summons dated 20.07.2007. Perusal of all the challans submitted by the appellants on record, show that they started discharging their service tax liability from 12.10.2007 onwards. I find that the appellants have contended that aggregate payments of 4,75,523/- pertain to taxes paid as per the returns filed and hence they are to be treated as payment made in the normal course (i.e. payment made prior to search) and that they should not have been considered for the purpose of quantification of penalty. They further appealed to reduce the penalty on the same to 25% as service tax was paid in the normal course. In this connection, I

hold that the above payments of service tax were made only after the initiation of preventive inquiry on 20.07.2007 and hence they cannot be treated as payments made during the normal course or prior to search conducted and therefore, the appellant's contention in this regard does not merit consideration. Hence, I uphold the penalties and demand of interest made in the impugned order."

We find that significant force in the argument given by the Commissioner (Appeals) in the impugned order consequently, the appeal filed on this count is also dismissed.

6. In view of above, the appeal is dismissed.

(Pronounced in the open Court on 20.10.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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