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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 475 of 2012

(Arising out of OIA-443-444/2012/COMMR-A/RBT/RAJ dated 23.07.2012 passed by Commissioner of Central Excise, Customs (Adjudication),-Rajkot)

RAJ ENGINEERS **.....Appellant**
JAY, 79-CHITRAKUT SOCIETY,
OPP. KHODIYAR COLONY,
JAMNAGAR-GUJARAT

VERSUS

C.C.E. & S.T.-RAJKOT **.....Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:
Shri Karan Bhuva and Moiz Dhangot (Chartered Accountant) appeared for the Appellant
Shri P.K.Singh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10093 /2023

DATE OF HEARING: 21.12.2022
DATE OF DECISION: 23.01.2023

RAMESH NAIR

The brief fact of the case is that the appellant having service tax registration, during 2005-2006 to 2008-2009 have provided composite contract service in Reliance Township Jamnagar. The appellant have paid service tax only on service portion deducting value of material supplied claiming the benefit granted under Notification No. 12/03-ST dated 20.06.2003. The department proposing denial of benefit of Notification No. 12/03-ST dated 20.06.2003 issued a show cause notice dated 01.09.2010 considering the gross value i.e. including cost of material and service provider. The adjudicating authority vide order-in-original dated 08.12.2011 extended the benefit of Notification No. 12/03-ST dated 20.06.2003 and dropped the demand of service tax to the extent of value of material supplied. The department, being aggrieved by the order-in-original dated 08.12.2011 filed an appeal before the

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Commissioner (Appeals)/RBT/RAJ dated 23.07.2012 who set aside the order passed by the adjudicating authority to the extent of service tax on value of material and allowed the appeal filed by the department for disallowing the benefit of notification No. 12/03-ST dated 20.06.2003. Being aggrieved by the order-in-appeal, the appellant filed the present appeal.

2. Shri Karan Bhuva along with Shri Moiz Dhangot, learned Chartered Accountant appearing on behalf of the appellant reiterates the findings of the adjudication order. He further submits that the material cost was clearly declared in each and every invoice raised by the appellant to the service recipient and the same was accepted by the service recipient. Accordingly the material cost is clearly identifiable, therefore, the same is deductible from the gross value in terms of Notification No. 12/03-ST. He submits that the adjudicating authority after considering various documents such as copies of invoices, audited annual accounts, copy of VAT returns, income bills, extended the benefit of Notification No. 12/03-ST, therefore, the finding of the Commissioner (Appeals) that no evidence was produced with regard to fact of value of material is incorrect and not sustainable. He alternatively submits that there is no dispute that the appellant have provided the composite contract which falls under the category of works contract service, which was not taxable till 01.06.2007 and subsequently the service tax was applicable on a concessional rate applicable to composite contract, for this reason also the demand is not sustainable. He further without prejudice to the above submits that it is admitted fact the appellant have provided the service along with material, therefore, the appellant are otherwise eligble for abatement under Notification No. 15/04-ST and 01/06-ST whereunder the abatement of 67% of the value is available and the service tax was payable only on 33%. However in the present case, the appellant have

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paid service tax on the part of gross value which is more than 33%, for this reason also, the demand is not sustainable. He further submits that as regard the Revenue's contention that the service is in the nature of repair and maintenance service, therefore, the appellant is not eligible for any exemption, he submits that as per the Hon'ble Supreme Court, judgement in the case of Safety Retreading Company Pvt. Ltd. Vs Commissioner of Central Excise, Salem Civil Appeal no.(S)641/2012 it was ruled that even if the assessee was engaged in reparing and maintenance service, then also the benefit of Notification No. 12/03-ST could not be denied. He further submits that in the present case, demand for extended period was also raised. Since the appellant have been discharging the service tax bonafidely by claiming the exemption Notification No. 12/03-ST and was paying the service tax, there is no suppression of fact on their part. They were also filing their periodical ST-3 returns, therefore, the demand for the extended period is not sustainable on the ground of limitation. In support of his above submissions, he placed reliance on the following judgements:

- CCE vs Larsen & Toubro & Ors. In Civil Appeal No. 6770 of 2004 & Ors. Dated 20th August 2015
- Appeal No. ST/240/2012 (PC Snehal Construction Co) vide Final Order No. 11094/2022 dated 06.09.2022 (Tri. Ahm.)

3. Shri P.K. Singh, learned (Superintendent) Authorized Representative appearing for the Revenue reiterates the findings of the impugned order. He submits that the appellant have provided the service under the category of maintenance and repair service, therefore, they are not eligible for exemption Notification NO. 12/03-ST.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the limited issue to be

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decided in the facts of the present case is whether the appellant is eligible for exemption Notification No. 12/03-ST which provides the abatement of value to the extent of material cost and whether the demand on service tax is otherwise sustainable on the submission of the appellant that they are eligible for composite contract scheme alternatively abatement Notification No. 15/2004-ST and 01/2006-ST. We find that from the invoices, the appellant have declared the service charges and cost of material separately. The adjudicating authority after considering the invoices, books of accounts, audited annual accounts, copy of VAT returns, income bills etc., came to the conclusion that since the cost of material is identifiable, the same is liable to be deducted from the gross value in terms of Notification 12/03-ST. We find that since the appellant have declared a material cost and the same was accepted by the service recipient, no doubt can be raised that the material cost declared in the invoice is incorrect unless t is proved contrary by the department. It is also not in dispute that the appellant have provided the composite contract to the service recipient which includes service and material. Therefore, in our considered view the appellant is entitled for Notification No. 12/03-ST. The appellant have also argued that since they have provided the composite contract i.e. with material and they have discharged the VAT, their service is classifiable under works contract service. We completely in agreement with the appellant. In such case, firstly the service tax is not payable till 01.06.2007 when the works contract service became taxable. Consequently, for the subsequent period also if the service tax is calculated at the rate applicable to the composite works contract, no demand would arise as appellant have been paying service tax on higher value despite the deduction on account of material cost, for this reason also demand is not sustainable. The appellant also alternatively submitted that since they have provided the services along with material, which is not disputed by

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either side, the appellant is eligible for abatement under Notification No. 15/2004-ST and 01/2006-ST. We find that there is force in this submission of the appellant has admittedly, the appellant have provided the service along with material. Therefore, by identifying the cost of material, the appellant is eligible for deduction of 67% from the gross value of the service and they are leiable to pay service tax on 33% of the gross value. The appellant have submitted a chart as below:

Sr. No.	Year	Material Cost	Service Part	Total Invoice Value	% of the Abatement taken
1	2005-2006	6,9,878	7,10,004	13,89,882	48%
2	2006-2007	69,12,420	87,53,716	1,56,66,136	44%
3	2007-2008	27,42,501	52,46,885	79,89,386	34%
4	2008-2009	13,75,862	31,50,068	45,25,930	30%
	Total	1,17,10,661	1,78,60,673	2,95,71,334	

From the above, it can be seen that as against the abatement of 67% available under Notification No. 15/04-ST and 01/06-ST, the appellant have taken the abatement ranging from 30% to 48%. Thus, despite the availability of abatement as per the above notification, the appellant have paid the service tax on much higher value, for this reason also the demand is absolutely unsustainable. On going through the judgement, we find that judgements cited by the appellant are supportive to the case of appellant.

5. As per our above discussion and finding, the impugned order is not sustainable, hence the order-in-original is upheld and order-in-appeal is set aside. Appeal is allowed with consequential relief.

(Pronounced in the open court on 23.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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