

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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10324 of 2022-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-167-2021-22 dated 31.03.2022 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

SAI POOJA ENTERPRISES

.... Appellant

703 Gujarat Housing Board Surti Bhagol
Ankleshwar, Gujarat - 393001

VERSUS

Commissioner of Central Excise & ST, Vadodara Respondent

1st Floo, Room No.101, New Central Excise Building,
Vadodara, Gujarat - 390023

APPEARANCE :

Shri Dhruvank Parikh, Chartered Accountant for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 21.07.2022

DATE OF DECISION: 15.11.2022

FINAL ORDER NO. A/11384 / 2022

RAMESH NAIR :

The present appeal is directed against the Order-in-Appeal No. VAD-EXCUSE-002-APP-167-2021-22 dated 31.03.2022 passed by the Commissioner (Appeals), Vadodara.

2. The brief facts of the case are that the appellant is registered with service tax Department for providing services namely 'Outdoor Catering Services'. Revenue observed that there is difference of value between the Form 26AS and ST-3 return derived for the period 2015-16 and 2016-17 and accordingly documents and clarification was sought from the Appellant. Accordingly, show cause notice dated 30.12.2020 was issued to the

Appellant demanding service tax of Rs. 58,35,451/- which was adjudicated by the Adjudicating authority under the Order-In-Original dated 07.01.2022 *vide* which the demand of service tax of Rs. 58,35,451/- along with interest and penalties was confirmed. Being aggrieved, the appeal was filed before Commissioner (Appeals) who *vide* impugned Order-In-Appeal has also upheld the Order-In-Original. Being aggrieved by the impugned order-in-appeal the appellant is before this Tribunal.

3. Shri Dhruvank Parikh, Learned Chartered Accountant appearing for the appellant submits that they have provided foods/beverages at the designated place of the service recipient companies and from the contracts it is clear that the nature of work is not of an 'Outdoor Caterer' but appellant was actually involved in running and maintaining the Canteens in the Factory premises of the Companies/ Service recipients on which the exemption benefit as allowed under Sr. No. 19A of Notification No. 25/2012-ST dated 20.06.2012 was available. The Ld. Commissioner (Appeals) in impugned order have erroneously mentioned that exemption was granted to those restaurant, eating joint or a mess which do not have facility of air conditioning or central air heating facility and those which do not have a license to serve alcoholic beverages under Serial No. 19 which is not the case with the appellant.

4. He also submits that the Factories Act 1948 indicates that a factory having more than 250 workers shall provide and maintain a canteen for giving subsidized foods to workers. In case of Appellant they provided the services to Company to whom the Factories Act, 1948 apply. The finding of impugned order legally not correct, the language used in the aforementioned exemption Notification entry confers the benefit of exemption based on the

location of the canteen and not to the operation of the canteen. Accordingly the Canteen Services provided within the factory to which the factories Act, 1948 applies and the provisions of canteen facility is mandatory is exempt irrespective of manner of running the canteen by any other person or by the company on its own. He placed reliance on the following judgments.

(i) M/s Bhimas Hotels Pvt. Ltd. vs. Union of India – 2017 Tax Corp(ST) 26216 (HC-AP)

(ii) ICS Foods Pvt. Ltd. vs. Commissioner of Service tax- (2018) TaxCorp(ST) 31933 (CESTAT- Allahabad)

(iii) Shri Mohanan Nambisan, M/s Sodexo Facilities Management Services India Pvt. Ltd. vs. Commissioner of GST, Mumbai – (2021) Tax Corp (ST) 37371 (CESTAT- Mumbai)

(iv) Sai Food Services vs. Commissioner of CGST (2020) TaxCorp(ST) 36682 (CESTAT- Mumbai)

5. In support of the claim he also submits the copies of ledgers and declarations of the service recipient that they are covered under the Factories Act, 1948.

6. He also submits that out of demand of Rs. 58,35,451/- an amount of Rs. 57,35,420 is required to be set aside alongwith interest and penalty thereon as per the above notification and remaining amount of Rs. 1,00,031/- is paid by the appellant alongwith interest and penalty thereon without disputing.

7. On other hand Shri Prakash Kumar Singh, learned Superintendent (AR) appearing for the Revenue reiterated the finding recorded in the impugned order. He also submits that the exemption benefit provided under Entry 19A inserted in the Notification is available only in relation to serving of food by a canteen maintained in a factory and not to the outdoor caterer, the Appellant herein.

8. Heard both sides and perused the records. The point to be decided in the present matter is whether the service provided by the appellant to their customers (factory) is in nature and scope of outdoor catering services attracting the service tax, as claimed by the department or said services is in nature and scope as described at Sr. No. 19A of the Mega Exemption No. 25/2012 –ST dated 17.03.2012 as amended vide Notification No. 14/2013-ST dated 22.10.2013 and therefore exempted from payment of service tax, as claimed by the Appellant.

We find that undisputedly facts of the case are that the appellant has been outsourced by various factories for supply of foods and beverages to the employees of factory as per the agreement between them. In this regard appellant claim the benefit of entry 19A of mega exemption Notification as applicable for the service provided during the period January 2013 to March 2016 and did not discharge the liability of Service tax being considered as exempted from payment of service tax by virtue of said Notification.

9. We observed that the taxable services in relation to provisions of 'Outdoor Caterer' is defined under Section 65 of the Finance Act 1994 and attracting payment of service tax on the provisions of such services. However we find that there is Exemption vide Entry 19 in the Notification No. 25/2012- ST .dated 20.06.2012 that " service provided in relation to serving food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year. The said Notification Entry was amended vide Notification No. 14/2013-ST dated 22.10.2013 by

inserting 'Entry No. 19A' in the basic Notification. The said newly inserted entry 19A reads as under :

"Service provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year".

On plain reading of entry 19A in the Notification dated 22.10.2013 it clearly reveals that the canteen maintained in a factory has been provided with the exemption from payment of service tax. The said Notification nowhere provided that canteen maintained by or run by the factory can only be considered for the benefits of such exemption. Therefore the finding of Ld. Commissioner in the impugned matter that services of canteen is provided by the appellant to factory owners and factory owners provided the same to employees and exemption available to main service provider only is not sustainable. Thus, irrespective of the person, who maintains the canteen in a factory, the service tax exemption as per Entry 19A is available to such person and the benefit cannot be restricted to the owner of the factory alone. Also the words used in the above notification are canteen maintained "in a factory" not "by the factory". In the present case as evident from documents submitted by the appellant, since the appellant had provided the services of serving foods and maintaining the canteen located in the factories, the benefit of service tax exemption as per the above referred Notification should be available to it. Further we also find that the judgments relied by the Appellant also support their arguments. Hence, we hold that the services provided by the appellant to the factories clearly covered under the above Notification and exempted from payment of service tax.

10. In the present matter we also find that appellant provided the list of factories alongwith declaration from the factories that they are covered under the Factories Act. 1948 and copy of ledger in case they claimed the exemption. Out of total service tax demand of Rs. 58,35,451/- an amount of Rs. 57,35,420 is pertaining to the said entities only. Therefore to that extent only we drop the service tax demand alongwith interest and penalty. As regard the rest of service tax demand of Rs. 1,00,031/- we find that appellant agree for the said service tax liability and paid the same alongwith interest and penalty. Hence we uphold the impugned order –in-appeal to the extent of service tax demand of Rs. 1,00,031/- alongwith interest. However in the facts and circumstances of this case, appellant has made out a fit case for waiver of penalty, hence the penalty is set aside.

11. The impugned order is modified to the above extent. The appeal is partly allowed in the above terms.

(Pronounced in the open court on 15.11.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)