

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

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 10358 of 2020-DB**

[Arising out of Order-in-Original/Appeal No OIA-KCH-EXCUS-000-APP-003-2020 dated 07/01/2020 passed by Commissioner (Appeal) of Central Excise & ST, KUTCH (GANDHIDHAM)]

**Ratnamani Metals & Tubes Limited**

Survey No. 474, Village, Bhimasar, Anjar Bhachau  
Road, Taluka Anjar, Kutch, Gujarat

**.... Appellant**

*VERSUS*

**CCE & ST, Kutch (Gandhidham)**

Central Excise Bhavan Plot No. 82, Sector 8,  
Gandhidham (Kutch), Gujarat

**.... Respondent**

**APPEARANCE :**

Shri Rahul Gajera, Advocate for the Appellant  
Shri H.K. Jain, Assistant Commissioner (AR) for the Respondent

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

**FINAL ORDER NO. A/10744 / 2021**

DATE OF HEARING : 10.11.2020

DATE OF DECISION : 26.02.2021

**RAMESH NAIR :**

The brief facts of the case are that the appellant had entered into a contract with its suppliers wherein essence of contract was performance i.e. supply of specified material as mentioned in the purchase order and in accordance with the terms and conditions annexed to the purchase order. Certain material supplied under the said contracts were found deficient to the specified quality or in deviation with the specifications agreed upon between the parties to the contract. The appellant thereafter recovered certain amounts from its supplier which in view of the respondent are in the nature of liquidated damages for compensating the appellant against the poor quality of material supplied to the appellant by its supplier on which

service tax is held to be applicable under Section 66(E)(e) of the Finance Act, 1994.

2. Shri Rahul Gajera, learned Counsel appearing on behalf of the appellant submitted a detailed written submission and subsequently filed an additional submission on 20.11.2020. The learned Counsel's main argument is that the amount recovered is liquidated damages against the poor quality of material supplied, has nothing to do with any service and hence, no service provision exists. Accordingly, there is no activity falls under the declared service, hence it is not taxable under the declared service as specified under section 66E(e) of the Finance Act, 1994. He further submits that in the entire transaction there is no service involved. The contract is for supply of goods and due to poor quality, the value of the goods stand reduced to the extent of amount which was recovered by the appellant. Therefore, the transaction is related to sale of goods and not for provision of any service. He also submits that as per the Contract Act, 1872, there are different definitions of term 'liquidated damages' and 'consideration'. In the present case, the amount recovered from the supplier of the goods is not a consideration towards any service but it is liquidated damage due to poor quality of goods. Therefore, being the amount recovered does not fall under the ambit of consideration, it would not attract any service tax. He heavily relied upon the following judgments of this Tribunal:-

- (a) KN Food Industries Pvt. Limited vs. Commissioner of CGST & C. Ex. Kanpur – 2020 (38) GSTL 60 (Tri. All.)
- (b) Amit Metaliks Limited vs. Commissioner of CGST, Bolpur – 2020 (41) GSTL 325 (Tri. Kolkata)

(c) Mormugao Port Trust vs. Commissioner of Customs, Central Excise & ST, Goa – 2017 (48) STR 69 (Tri. Mumbai) which was confirmed by the Hon'ble Supreme Court reported as *Commissioner vs. Mormugao Port Trust – 2018 (19) GSTL J118 (SC)*.

(d) GE T&D India Limited (Formerly Alstom T&D India Limited) vs. Dy. Commr. Of Central Excise – 2020 (1) TMI 1096 – Madras High Court.

(e) CST, Chennai vs. Repco Home Finance Limited - 2020 (7) TMI 472 – CESTAT Chennai.

3. On the other hand, Shri H.K. Jain, learned Assistant Commissioner (Authorised Representative) appearing on behalf of the Revenue submitted a detailed submission on 10.11.2020 and also filed post hearing additional submission dated 12.11.2020. In his submission, he placed reliance on the following judgments:-

(a) Maharashtra State Power Generation Company Limited – 2018 (13) GSTL 177 (AAR-GST)

(b) Commissioner of Income Tax vs. Alpine Solvex Limited – 2004-TIOL-80-HC-MP-IT

(c) Commissioner of Income Tax vs. Saurashtra Cement & Chemicals Industries Limited – 2003-TIOL-476-HC-AHM-IT

(d) Dholera Industrial City Development Project Limited – 2019 (29) GSTL 40 (AAR-GST)

(e) Tuticorin Port Trust vs. CCE, Tirunelveli – 2016 (42) STR 512 (Tri. Chennai).

4. We have heard both sides and perused the record. We find that the facts are not in disputed that amount recovered by the appellant is towards the poor quality of goods purchased by them. The Revenue has demanded service tax, considering the activity in the present case under Section 66E (e), which reads as under:-

*"(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act."*

We find that the appellant have taken the ground before the Adjudicating Authority as well as Commissioner (Appeals) that the amount which they have received is in the form of "liquidated damage" and not in the form of "consideration" towards any service for the reason that the said amount is for supply of lower quality of goods and thus the effect is only reduction in the transaction value of the goods. However, this vital point raised by the appellant has not been considered either by the Adjudicating Authority or by the first appellate authority. Both the authorities also have not dealt with the distinction between the 'liquidated damage' as claimed to have received by the appellant and the 'consideration', which department want to impose. Both the terms have been defined legally separately in the Indian Contract Act, 1872. We also observed that the appellant have relied upon various judgments on the identical issue which Adjudicating Authority and learned Commissioner (Appeals) had no occasion to consider. The judgments relied upon by the appellant shall apply directly only after verifying the facts of each case. As regards the limitation, we observe that the same has also not been considered on its true facts and the legal issue involved in the present case.

5. In this position, we are of the view that since the above issues have not been dealt in a proper manner by both the lower authorities, the matter needs to be reconsidered as a whole. Accordingly, we set-aside the impugned order and remand the matter to the Adjudicating Authority.

*(Pronounced in the court on 26.02.2021)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(Raju)**  
**Member (Technical)**

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