

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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.491 of 2011

(Arising out of OIA-136/2011/STC/KANPAZHAKAN/COMMR-A-/AHD dated 20/06/2010 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

N R Engineering & Contractors

.....Appellant

Jupiter Shop No. 1,
B/H, The Grand Bhagawati, Bodakdeo,
AHMEDABAD, GUJARAT

VERSUS

C.S.T.-Service Tax – Ahmedabad

.....Respondent

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

APPEARANCE:

None appeared for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/11394/2022

DATE OF HEARING: 01.08.2022
DATE OF DECISION: 21.11.2022

RAMESH NAIR

Brief facts of the case are that appellant are engaged in providing services under the category of Commercial or Industrial Construction Service. During the course of audit for the period 2004-05 to 2006-07, conducted by the audit party of Service Tax Commissionerate, Ahmedabad, it was observed that the Appellant has issued bill No. 10 dated 10.03.2005 to M/s GEN TEK Technology Pvt. Ltd. for Rs. 1,93,83,131/- and paid Service tax of Rs. 1,78,958/- on labour charges of Rs. 17,54,488/- only and not on the gross value. On being pointed out, Appellant had stated that the government has issued Notification No. 12/2003 dated 20.06.2003 by giving general exemption for all taxable services from levy of Service tax of the value of goods and material sold by the service provider. As they have shown the value of material sold separately in the invoice, service tax is liable to be paid only on labour charges. Whereas, the Notification No. 15/2004-ST dated 10.09.2004 provides exemption to the taxable service

provided by a Commercial concern to any person, in relation to construction service from so much of the Service Tax leviable thereon under Section 66 of the Act in excess of the Service tax calculated on a value which is equivalent to 33% of the gross amount charged from any person by such commercial concern provided the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service. The amended Notification No. 4/2005-ST dated 01.03.2005 cannot be used with a retrospective effect and has always to be taken prospectively. Thus, it was concluded that the Appellant have wrongly availed the benefits of Notification No. 12/2003 –ST .dated 20.06.2003. and thereby not paid /short paid Service tax of Rs. 4,73,444/-. Thus a Show Cause Notice was issued to the Appellant on 10.07.2009 which was adjudicated vide Order-In-Original dated 31.01.2011. The Adjudicating authority confirmed the demand of Service tax of Rs. 4,73,444/- under Section 73(1) of the Finance Act, 1994 and ordered to recover interest under Section 75 and imposed penalty under Section 76 and 78 of the Finance Act. Being aggrieved with the order the appellant preferred the appeal before the Commissioner (Appeals), who vide impugned order-in-appeal dated 20.06.2011 upheld the Order of lower adjudicating authority. Aggrieved by the said order, the appellants are before us.

02. None appeared on behalf of Appellant .

03. Shri R P Parekh, Learned Superintendent (AR) appearing on behalf of revenue supported the findings in the impugned order.

04. We have considered the submission made by the learned AR and also of the appellant made in the appeal memo and perused the records. The following Notification 12/2003-S.T., dated 20-6-2003 is very relevant for the present appeals and hence, the same is reproduced below :

Valuation (Service Tax) – Goods and materials sold by service provider to recipient of service – Value thereof, exempted

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 so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition

that there is documentary proof specifically indicating the value of the said goods and materials.

2. This notification shall come into force on the 1st day of July, 2003.

[Notification No. 12/2003-S.T, dated 20-6-2003]

In terms of the above Notification, the value of the goods and materials sold by the service provider to the recipient of the service is to be excluded for the purpose of calculating the Service Tax. However, the Notification is subject to the following condition :-

"There should be a documentary proof specifically indicating the value of the said goods and materials."

4.1 In the present matter Learned Commissioner (Appeals) by referring the invoice No RA 10 dated 10.03.2005 concluded that the nature of work indicated is not in the nature of sale of any material. The rate is charged on cubic meter/ square meter. This shows that the description of work shown, are in the nature of service rendered and not material. The Appellant are not eligible for the benefit of Notification No. 12/2003-ST as they could not provide any evidence regarding sale of material used in providing construction service. Whereas appellant in their submission contended that only by referring the invoice No. 10 dated 10.03.2005. Learned Commissioner (Appeals) conveniently ignored the entire invoice and has picked up the part of the invoice. As per the appellant, the said invoice also revealed the cost of material and cost of labour separately.

4.2 We are of the considered view that the condition in the Notification is only production of documentary proof indicating the value of the goods and materials supplied. This does not in any manner mean that the goods have to necessarily be supplied under invoices. Therefore, evidence was produced before the authority and the sufficiency of it has to be examined. If the appellant is able to show from the documents *i.e.* contract read with other documents including its R.A. Bills (Running Account Bills) ,books of accounts and returns filed with the Sales Tax Authorities, the value of goods sold and supplied to the satisfaction of the authorities, it would be compliance with the condition provided in Notification No. 12/2003-S.T., dated 20 June, 2003. In the peculiar facts of this case, it would be appropriate to set aside, and we hereby set aside the impugned order of Learned Commissioner (Appeals) and remand the matter to the Original authority to reconsider the impugned matter afresh and pass order after permitting the appellant to

lead documentary evidence to establish its claim with regard to the value of goods and materials supplied in execution of its contracts for construction services for availing of the benefit of Notification No. 12/2003-S.T., dated 20 June, 2003.

05. We, accordingly remand the matter back to the original authority who will pass afresh order after complying with the principles of natural justice. Appeal is disposed of by way of remand to the adjudicating authority.

(Pronounced in the open court on 21.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul