

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

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No.10228 of 2013**

(Arising out of OIO-59-COMMR-2012 dated 12/10/2012 passed by Commissioner of Central Excise-RAJKOT)

**B T Patel & Co**

**.....Appellant**

Om Corner, Office No 9,  
Plot No 235-236-237, Ward No 12-B,  
Gandhidham, Gujarat

*VERSUS*

**C.C.E. & S.T.-Rajkot**

**.....Respondent**

Central Excise Bhavan,  
Race Course Ring Road...Income Tax Office,  
Rajkot, Gujarat-360001

**APPEARANCE:**

Shri Amal Dave, Advocate for the Appellant

Shri G. Kirupanandan, Assistant Commissioner (AR) for the Respondent

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

**Final Order No. A/ 10719 /2023**

DATE OF HEARING: 28.11.2022  
DATE OF DECISION: 27.03.2023

**RAMESH NAIR**

The brief facts of the case are that the appellant entered into agreement with M/s. Aquatec Electricals Ltd and M/s. Systematic Conscom Ltd. for carrying out Commercial of Industrial Construction service in Kandla Special Economic Zone. As per the work orders entered into between these parties, the appellant was required to carry out civil construction activities for M/s. Motherson Sumi Systems Ltd. which was located in Kandla Special Economic Zone. The civil construction activities work for authorized operations is in a special economic zone i.e. the contract was for carrying out civil construction activities in the Kandla Special Economic Zone. The appellant have not discharged the service tax on such activity of construction provided for construction of factory building of M/s. Motherson Sumi Systems Ltd which was a unit located within the Kandla Special Economic Zone.

02. The case of the department is that since the appellant have provided the service to M/s. Aquatec Electricals Ltd and M/s. Systematic Conscom Ltd. who are not developer or the unit located in Kandla Special Economic Zone therefore, the notification no. 4/2004-ST dated 31.3.2004 is not eligible to the appellant accordingly, the service tax demand was confirmed vide Order-In-Original which is impugned herein, therefore, the present appeal filed by the appellant.

03. Shri Amal Dave, learned counsel appearing on behalf of the appellant submits that even though the appellant have not directly provided the services to the developer of SEZ i.e. M/s. Motherson Sumi Systems Ltd. but there is no dispute that the services were consumed within Kandla Special Economic Zone therefore, the service exempted under notification no. 4/2004-ST dated 31.3.2004. He placed reliance on the following judgments:-

- FEDCO Paints and Contracts- 2017 (3) GSTL 364 (Tri. - Mumbai)
- Commissioner V/s. M/s. FEDCO Paints and Contracts- 2018 (10) GSTL J207 (S.C.)
- M/s. Sujana Metal Products Ltd. V/s. Commissioner of Central Excise, Hyderabad-2011 (273) ELT 112 (Tri. - Bang.)
- M/s. Vision Pro Event Management V/S. Commissioner of Central Excise & Service Tax, Chennai-2019 (365) ELT 555 (Tri. - Chennai)
- M/s. Metlife Global Operations Support Center (P.) Ltd. V/s. Commissioner, Service Tax, New Delhi-2021 (46) GSTL 418 (Tri. - Del.)
- Sudhir Chand Jain V/s. Commissioner of Central Excise, Ghaziabad-2018 (8) GSTL 302 (Tri. - All.)
- M/s. Hindustan Dorr-Oliver Ltd. and Another V/s. Union of India and Others-1989 (9) TMI 355 - Patna High Court

04. Shri G. Kirupanandan, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that as per the notification, it is clear that only those services are exempted which are consumed in SEZ and provided to the developer of SEZ or to a unit in SEZ. In the present case, the service of construction of factory building was neither provided to the developer of SEZ nor to unit located in SEZ however, the service was provided to the persons who are not falling under these categories.

05. We have carefully considered the submissions made by both the sides and perused the records. We find that the learned Commissioner in denying

the exemption by made a strict interpretation of language of the notification no. 4/2004-ST dated 31.03.2004 though as per the language of the exemption of service provided to SEZ developer or to the unit in SEZ. In the present case admittedly though the service was provided in SEZ but the service recipient who are the main contractor are neither developer of SEZ nor have their unit in SEZ therefore, apparently it appears that the service in terms of notification may not be eligible for exemption. However, after passing the impugned order on the identical issue various tribunals as well as High Courts and Supreme Court delivered the judgment on the identical issue of eligibility of exemption notification no. 4/2004-ST. The fact is that the service provider has not supplied the service directly to the SEZ developer or to the unit of SEZ but the service was indeed provided in the premises of the SEZ. However, the adjudicating authority had no occasion to deal with all the judgments which were delivered subsequently therefore, the entire matter needs to be reconsidered in the light of these judgments cited by the appellant and also considering the facts of this case.

06. Accordingly, we set aside the impugned order and remand the matter back to the adjudicating authority for passing a fresh order in view of our above observations. All the issues are kept open. Appeal is allowed by way of remand.

(Pronounced in the open court on 27.03.2023 )

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**