

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

REGIONAL BENCH-COURT NO. 3

**Service Tax Appeal No. 54 of 2012- DB**

(Arising out of OIO-02/MP/SURAT/2011 dated 15/11/2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

**Metro Engineers**

F-15 Ravi Complex,  
Valia Cross Road, Gidc, Ankleshwar,  
Bharuch, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Surat-ii**

New C.Ex Building...Opp. Gandhi Baug,  
Chowk Bazar, Surat, Gujarat -395001

**.....Respondent**

**APPEARANCE:**

Shri Hasit Dave, Advocate for the Appellant

Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

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

**Final Order No. A/ 11387 /2023**

DATE OF HEARING: 28.02.2023  
DATE OF DECISION: 28.06.2023

**RAMESH NAIR**

The present appeal is directed against impugned Order-In-Original dated 15.11.2011 passed by Commissioner Central Excise and Service Tax – Surat-II. The impugned order has confirmed service tax of Rs. 75,21,003/- as differential service tax on “Erection Service”, “Pipeline Service” and “Supply of Manpower Service” and also demanded interest and penalty under section 78 of the Finance Act, 1994.

2. Shri Hasit Dave, Learned Counsel appearing on behalf of the appellant submits that an amount of Rs. 39,46,637/- as an excess payment done by them in this case for which they are now eligible for refund from the entire service tax demand amount of Rs. 75,21,300/- already paid by them. Accordingly, their liability to pay differential amount is only Rs.

35,74,366/- against the total demand which already stands paid by them before issuance of show cause notice.

2.1 He submits that on various count the amount of service tax of Rs. 87,807/- , Rs. 37,00,424/- and Rs. 1,58,406/- are not payable therefore, the same should be reduced from total demand. He further submits that larger period of limitation under proviso to section 73 (1) of Finance Act , 1994 is wrongly invoked as there is no element of fraud and mis-statement etc. He further submits that the Joint Commissioner of Customs, Central Excise and Service tax has already issued show cause notice dated 23.10.2007 on identical facts and subject upon the appellant for demand on export service therefore it was already within the knowledge of the department. Hence, the show cause notice could not allege suppression etc. in view of the Supreme Court decision in case of Nizam Sugars Factory vs. Collector of Central Excise – 2006 (197 ) ELT 465 and Southern Structural Limited . He also submits that since there is no mala fide on the part of the appellant, penal provision under section 78 cannot be invoked. He placed reliance on the following judgments:-

- Power Based Electrical Limited Vs. CCE, Calicut – 2008 (9) STR 497 (Tri. Ban)
- Indian Hume Pipe Co. Limited vs. CCE, Thrichy – 2008 (12) STR 363 (Tri. Chennai) confirmed by Hon'ble Madras High Court in 2015 (40) STR 214 (MAD)
- Mass Marketing and Advertising Services Vs. CC Bangalore – 2006 (3) STR 333 (Tri. Bang)

3. Shri Tara Prakash, Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the appellant had admitted the demand of Rs. 35,74,366/-, is sustainable on merit. As regard the appellant's

submission that the amount of Rs. 39, 46,367/- is not payable for various reasons has not been considered by the lower authority. Therefore, this matter needs to be remanded back to the Adjudicating Authority for re-quantification of the demand after considering the submission of the appellant. The Adjudicating Authority also needs to look into the aspect of larger period of demand and imposition of penalty under Section 78 of Finance Act, 1994.

5. With the above observation, we allow the appeal by way of remand to the Adjudicating Authority for passing a fresh order.

(Pronounced in the open court on 28.06.2023 )

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

**C.L. MAHAR**  
**MEMBER (TECHNICAL)**