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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10663 OF 2014-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-486-13-14 dated 13.11.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Pakona Engineers India Pvt. Limited .... Appellant
Plot No. 917/2-3, GIDC Estate,
Makarpura, VADODARA, GUJARAT -390010

VERSUS

Commissioner of Central Excise & ST, Vadodara-ii .... Respondent
1st Floor, Room No.101, new central excise building,
Vadodara, Gujarat-390023

APPEARANCE :

Shri Dhaval Shah, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 24.04.2023
DATE OF DECISION: 26.07.2023

FINAL ORDER NO. 11603/2023

C.L. MAHAR :

The brief facts of the case are that the appellant had sold one machine KP-91 Ickenroth in Europe. The machine was sold by the appellant from India to Europe but the Erection, Commissioning and Installation or Management service of said machine was provided by M/s. PSU Europe, Germany.

2. Learned Advocate appearing of the appellant contended that department entertained a view that since the service has been availed by the appellant from abroad, they should have paid service tax amounting to Rs. 81,802/- on reverse charge basis as per the provisions of Section 66A of Finance Act, 1994 read with Rule 2(1) (d) (4) of the Service Tax Rules, 1994

making the service enjoyer responsible to pay service tax on the service provided by any person from a country other than India and received by any person in India under the category of Erection, Commissioning and Installation services or Management, Maintenance or Repair Services as payable under reverse charge mechanism.

3. Learned Advocate further submits that the provisions under Rule 3(2) of Service Tax Rules, 2006 clearly reveals that if services have been performed by a foreign service provider outside India and if the same is not provided even partly in India, it does not qualify import service under Rule 3(ii) of Taxation of Service Rules, 2006. Therefore, the appellant are not liable to pay service tax on reverse charge basis.

4. Learned Departmental Representative Shri Rajesh K Agarwal, Superintendent (AR) reiterates the findings of the impugned order.

5. We have heard both the sides. We find that the matter is no longer res-integra as the matter has already been decided in the case of Crompton Greaves Limited vs. CCE, Cus. & ST, Aurangabad – 2016 (42) STR 306 (Tri. Mumbai). The relevant portion of the decision is reproduced below:-

> **"4.** We note that the service in question is purely a testing service which is performed in the laboratory of M/s. KHVL Netherlands. The certificate from KHVL shows that the test was conducted in their laboratory in Netherlands. Under Section 66(A), any service received by a person in India from out side India shall be treated as if the recipient had himself provided the service. Rule 3 of the Taxation of Services (Provided from Outside India and received in India) Rules, 2006, determine the fact as to when a service is considered to be received in India. In the present case, admittedly during the period in question, the service categorized under Section 65(105)(zz) is covered under Rule 3(ii). The Lower authorities have failed to understand the provisions of Rule 3 ibid, particularly Rule 3(ii). Proviso to Rule 3(ii) states that when a service is partly performed in India, it shall be treated as performed in India. Revenue has not justified how the service is performed partly in India. Service according to us is entirely performed out side India. Therefore it cannot be said that the service has been received in India. The

service tax is clearly not payable by the appellant in the present case. As tax is not payable, the question of interest and penalties and other fees does not arise.**"**

6. Since the facts of the matter are akin to the facts in the above decision, we follow the same and hold that impugned order-in-appeal is without any merits and therefore the same is set-aside. Accordingly, the appeal is allowed.

(Pronounced in the open court on 26.07.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL