

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40835 of 2021

(Arising out of Order-in-Original No. 18/2020 (C) dated 04.11.2020 passed by the Commissioner of G.S.T. and Central Excise, Chennai South, 692, M.H.U. Complex, 5th Floor, Anna Salai, Nandanam, Chennai – 600 035)

M/s. EDAC Engineering Limited

88, Anna Salai, Guindy,
Chennai – 600 032

: Appellant

VERSUS

Commissioner of G.S.T. and Central Excise

Chennai South Commissionerate
692, M.H.U. Complex, 5th Floor, Anna Salai, Nandanam,
Chennai – 600 035

: Respondent

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40724 / 2023

DATE OF HEARING: 19.07.2023

DATE OF DECISION: 25.08.2023

Order : [Per Hon'ble Mr. P. Dinesha]

The assessee is engaged in rendering erection, commissioning and installation ('ECI' for short) service, manpower recruitment agency service, management maintenance and repair ('MMR' for short) service, business auxiliary service and transport of goods by road service. There is no dispute that erection, commissioning and installation services are provided to the assessee's clients situated outside India.

2.1 It appears that the Revenue had observed that while providing ECI services to their clients abroad, the assessee had earned in foreign exchange, but however, such earnings could not be repatriated into India by the assessee. It appears that the Revenue asked the assessee to explain as to the repatriation of export proceeds, to which the following explanation was given: -

- Equate Petrochemicals, Kuwait had issued an order to Edac Engineering Ltd., India towards execution of turnaround maintenance contract in Kuwait represented through its local agents in Kuwait namely, Sabila Universal, for services, a company formed under law of Kuwait.
- Edac India in turn has issued a sub-contract work order to Yusuf A. Alghamin & Sons, W.L.L. Kuwait (Group company of Sabila). All material procurements, providing competent and qualified man power, machinery, etc, for execution of work are under the scope of Yusuf A. Alghamin & Sons.
- Invoicing for the jobs will be done directly by both Edac and Sabila on M/s. Equate Petrochemicals, Kuwait. Payments from Equate will be transferred to the account of Sabila in Gulf Bank, Kuwait as per the instructions given by them to M/s. Equate Petrochemicals, Kuwait. As Yusuf A. Alghamin & Sons is entrusted with the task of execution of jobs, Sabila is providing funding facilities for the jobs including material procurement and labor commitments. They had received only part amount and balance was adjusted/recovered by Equate against the receivables for having provided the services and supply of goods by way of invoices on Edac.

2.2 The Revenue appears to have assumed that the assessee did not receive the full amount in convertible foreign exchange within a period of six months from the date of provision of service or within such extended time as approved by the RBI.

By the above, the Revenue appears to have invoked the provisions of Rule 6(8) of the CENVAT Credit Rules, 2004 and further, assumed that if the service provider did not receive full convertible foreign exchange within the time period provided under the statute, then the service could be treated as an exempted service.

2.3 The Revenue also appears to have noticed that the assessee had not maintained separate accounts in terms of Rule 6(3) of CENVAT Credit Rules for the input services used in providing such exempted services, as envisaged under Rule 6(2) *ibid*. It appeared to the Revenue that the importer had claimed exemption for ECI/MMR services in their ST3 returns filed for the period from April 2014 to June 2017, by treating the same as exports. But however, assessee had not received the full amount in foreign convertible exchange, as required. This made the Revenue to believe that though the assessee was aware of service tax procedures, they did not disclose the details of the above non-receipt of foreign exchange from exports, to the Department and hence, the assessee had failed to follow the procedures prescribed under Rule 6A of the Service Tax Rules, 1994. They also appear to have noticed that the assessee had not even made Cenvat debit under Rule 6(1) of the CENVAT Credit Rules, 2004 on non-remittance of foreign exchange, but however had availed the entire CENVAT Credit for discharging Service Tax liability for the taxable output services.

3. Consequently, the Revenue issued a Show Cause Notice dated 08.07.2019 proposing *inter alia* as to why Service Tax should not be demanded under proviso to

section 73(1) of the Finance Act, 1994, read with Rule 14(1)(ii) of the CENVAT Credit Rules, 2004.

4. The assessee appears to have filed a reply to the Show Cause Notice rebutting all allegations levelled against it and thereby justifying its stand.

5. In adjudication, the original authority, after considering the reply and upon hearing the assessee, however, vide Order-in-Original No. 18/2020 (C) dated 04.11.2020, confirmed the proposals made in the Show Cause Notice.

6. Aggrieved by the above demand in the Order-in-Original, the assessee has assailed the same in this appeal before this forum.

7.1 This appeal has been filed on the following grounds:

- i. They did not utilise the inputs for export purposes and that the said inputs were used only for provision of domestic supply.
- ii. They also filed a certificate from a chartered accountant to substantiate their above claim.
- iii. Substantial evidence was not considered by the adjudicating authority.
- iv. They had followed the requirements of Rule 6(8) *ibid.* in entirety.
- v. The impugned order was passed on assumptions and presumptions.
- vi. Extended period of limitation was invoked without any justification.

7.2 They also submitted that the lower authority had not considered the document filed in the form of chartered accountant certificate, which is against the well settled position of law as held by various judicial fora.

7.3 They also urged that the input purely belonged to the supply of taxable services within the taxable territory of India and hence, there was no question of reversal at all. Moreover, the non-receipt of foreign exchange within the time frame would take this service out of the purview of Rule 6(3) and hence no reversal under Rule 6(3) is required. This is the content of the certificate issued by the chartered accountant, but however, the same was not considered by the lower authority.

7.4 Hence, it is their contention that the original authority has passed the impugned order only on assumptions and presumptions, without considering any of the explanations offered by the assessee. Reliance has been placed on the following decision:-

- *Oudh Sugar Mills Ltd. v. Union of India [1978 (2) E.L.T. 1172 (S.C.)]*

8. *Per contra*, the Ld. Departmental Representative relied on the findings of the original authority.

9. We have considered the rival contentions, we have gone through the order of lower authority and we have also gone through the documents relied upon during the course of arguments.

10. The Ld. Commissioner, having afforded an opportunity to the appellant for production of documents in support, has however observed that the certificate of the chartered accountant furnished by the appellant was dated 16.09.2020, from where he has entertained a doubt that whether it was possible to conduct a thorough verification of all the invoices, ledger, etc., pertaining to three financial years in a matter of few hours.

11.1 When there is a doubt, then it is always open for the authority to seek clarification / explanation from the appellant in order to arrive at a proper finding instead of suspecting such document. It is not as though there was a serious error for which reason the certificate of the

chartered accountant was not considered. Coming to a conclusion based on assumptions and presumptions is not proper. Hence, we are of the view that it will be in the interests of justice that the matter be restored to the file of the original authority for *de novo* adjudication. The authority shall therefore follow the principles of natural justice by affording reasonable opportunities to the appellant to produce necessary documents and evidence in support of their stand and the appellant shall also cooperate with the adjudicating authority without seeking unnecessary adjournments.

11.2 The lower authority shall pass a *de novo* speaking order within three months from the date of receipt of this Order by the jurisdictional Commissionerate. All the contentions are left open.

12. The appeal is allowed by way of remand.

(Order pronounced in the open court on **25.08.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)