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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 12871 of 2018 - DB

(Arising out of OIA-VAD-EXCUS-001-APP-242-2018-19dated17/08/2018passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Gujarat Co Operative Milk Marketing Federation Ltd ……..**Appellant**
Amul Dairy Road,
ANAND,GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Vadodara-i ……**Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA,GUJARAT-390007

APPEARANCE:
Shri Dhaval K Shah, Advocate, Appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR) Appeared for the Respondent

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

Final Order No.11796/2024

DATE OF HEARING: 05.08.2024
DATE OF DECISION: 27.08.2024

RAMESH NAIR

The issue involved in the present case is that whether the demand of service taxunder Section 66 E of Finance Act for 'tolerating an act' for the Notice Pay i.e. the amount recovered from an employee for quitting a job before the time period prescribed under an agreement/ job letter is sustainable or otherwise.

2. Shri Dhaval Shah, Learned Counsel appearing on behalf of the appellant at the outset submits that the demand is not sustainable as the Notice Pay (tolerating an act) of an employee is not a declared service as it does not fall under the service. He submits that the identical issue has been considered in the following judgments:-

- C.S.T.- Service Tax, Ahmedabad Vs. Intas Pharmaceuticals Order No.A/12265/2012 dated 25/06/2021
- GE T & D India Limited Vs. Deputy Commissioner of C. Ex., Chennai 2020(35) G.S.T.L.89(Mad.)
- Shriram Pistons and Rings Ltd. Vs. CST, Ghaziabad 2020(42)G.S.T.L.79 (Tri. Allz)

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue involved in the present case is no longer res-integra in view of the following judgment:-

- This Tribunal has considered the same issue in the case of Intas Pharmaceuticals (supra) which is reproduced below:-

4. We have considered rival submissions. We find that the issue in hand is if Service Tax can be demanded on amount recovered by the employer from the employee for granting waiver of mandatory notice period prescribed in the agreement. The issue has been settled by the Hon'ble High Court of Madras in the case of GE T & D India Pvt. Ltd. The decision of The Hon'ble High Court deals with all the issues raised in the review order. The Hon'ble High Court of Madras has held as follows:

> *"10. The provisions of Section 66E(e) appear to have given rise to some ambiguity, on this very issue, clarified by the Central Board of Excise and Customs (C.B.E. & C.) in C.B.E. & C.s' Guidance Notes dated 20-6-2012. At para 2.9.3 the Board states as follows :*
>
> > *2.9 Provision of service by an employee to the employer is outside the ambit of service.*
> >
> > *2.9.3. Would amounts received by an employee from the employer on premature termination of contract of employment be chargable to service tax?*
>
> *No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would [not] be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.*
>
> *11. The query raised relates to a contra situation, one, where amounts have been received by an employee from the employer by reason of premature termination of contract of employment, and the taxability thereof. The Board has answered in the negative, pointing out that such amounts would not be related to the rendition of service. Equally, so in my view, the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in Clause (e) of Section 66E as extracted above is not attracted to the scenario before me as, in my considered view, the employer has not 'tolerated' any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard.*
>
> *12. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of noncompete. Notice pay, in lieu of sudden termination however, does not give rise to the rendition of service either by the employer or the employee."*

5. In view of the fact that the issue has been settled by the Hon'ble High Court of Madras, the appeal is dismissed.

- The Allahabad Tribunal has taken the same view in the case of Shriram Pistons and Rings Ltd which is reproduced below:-

> " *After hearing both the sides duly represented by learned advocate Ms. Anshika Agarwal appearing for the appellant and Shri B. K. Jain appearing for the Revenue, we note that in the present case the employer has been served with a show cause notice demanding service tax from that part of the amount which he recovers out of the salary paid to the employee if the employee breaches the contract of total term of employment. From the record, we note that the term of contract between the appellant and his employee are that employee shall be paid salary and the term of employment is a fixed term and if the employee leaves the job before the term is over then certain amount already paid as salary is recovered by the appellant from his employee. This part of the recovery is treated by Revenue as consideration for charging service tax.*
>
> *2. We hold that the said recovery is out of the salary already paid and we also note that salary is not covered by the provisions of service tax. The issue also stands decided by the Hon'ble Madras High Court in the case of GE T & D India Ltd. (Formerly ALSTOM T & D India Ltd.) vs. Deputy Commissioner of Central Excise 2020 (1) TMI 1096 (Mad.). Therefore, we set aside the impugned order and allow the appeal."*

From the above decisions of the Tribunals as well as the Hon'ble High Court of Madras dealing with particularly the provision of 66E read with Section 65 (44) of the Finance Act, 1944. It was held that the amount recovered from the employee for quitting the employment without serving notice during the period the said amount is not liable to service tax.

5. Therefore, in the present case the impugned order is not sustainable, hence the same is set aside and the appeal is allowed.

(Pronounced in the open court on 27.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi