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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10081 of 2018 - DB

(Arising out of OIA-AHM-EXCUS-002-APP-140-17-18 dated 26/10/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Kloeckner Desma Machinery Pvt Ltd **.....Appellant**
Plot No., 10, Road No.,
01, Kathwada G.i.d.c, Kathwada,
AHMEDABAD,
GUJARAT

VERSUS

Commissioner of C.E.-Ahmedabad-ii **.....Respondent**
CUSTOM HOUSE... FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD,
GUJARAT-380009

APPEARANCE:
Shri Hitesh Jagetiya, Deputy General Manager (Finance) Appeared for the Appellant
Shri Anand 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.12051/2024

DATE OF HEARING: 01.07.2024
DATE OF DECISION: 18.09.2024

RAMESH NAIR

The brief facts of the case are that the appellant are the manufacturer of Rubber Injection Moulding Machines and parts thereof falling under Central Excise Tariff Heading 84. The appellant are also engaged in providing taxable services, falling under the category of (i) Maintenance and Repair Services, (ii) Erection, Commissioning & Installation services and are also receiving taxable services, falling under the category of (i) consulting engineers, (ii) intellectual property, (iii) business auxiliary services, (iv) transportation of goods by road services and are holding service tax registration. During the period 2008-2009, 2009-2010 the appellant have shown expenditure in foreign currency related to training of their staff in the foreign country by the appellant's principal company and there are some expenditures related to the training of their staff. The case of the department is that the said expenditure towards training received by their staff is towards consulting engineers

services, hence the same is taxable in the hands of the appellant being recipient of service under reverse charge mechanism. In the adjudication order part amount of the demand raised in the show cause notice has been set aside. However, on the training reimbursement expenses amounting to Rs.16,99,260/-for the financial year 2019 the service tax was confirmed treating the same as Consulting Engineers' Services as per Section 65(105)(g) of the Finance Act, 1994. Service tax of Rs.1,75,024/- was confirmed along with the interest thereon and penalties under Section 77(2) and Section 78 of Finance Act, 1994, therefore present appeal is filed by the appellant.

2. Shri Hitesh Jagetiya Learned Deputy General Manager-Finance of the appellant company appearing on behalf of the appellant submits that admittedly expense was made towards the training of the appellant's staff in foreign country with the principal of appellant company. Therefore, the training and related miscellaneous expense does not fall under the Consulting Engineers' Services. Therefore the demand raised under the said category will not sustain. He further submits that the show cause notice is barred by the limitation as for the period 01.04.2008 to 31.02.2010 the show cause notice was issued on 26.12.2013. He submits that the appellant was assessee not only under Central Excise but also service tax and they were filing their periodical return. The value of training expenses was not declared under a bonafied belief that the same are not taxable. However, this cannot be the reason to allege the suppression of facts. Hence the demand is barred by the limitation, for the same reason penalty is not imposable. He placed reliance on the following judgments:-

- Parekh Plast (India) Pvt Ltd vs. Commissioner of Central Excise, Vapi, 2012 (25) S.T.R.46 (Tri-Ahmd.)
- Nizam Sugar Factory vs. Collector of Central Excise, A.P., 2006 (197) E.L.T. 465(S.C.).
- Board Circular No.5/92-CX.4 dated 13.10.1992
- C.C.E., & C.E., AURANGABAD, VERSUS WOCKHARDT LTD 2009-TIOL-1308-CESTAT-MUM
- COSMIC DYE CHEMICAL VERSUS C.C.E., BOMBAY, 2002- TIOL-236-SC-CX-LB
- C.C.E., GHAZIABAD, VERSUS, EXPLICIT TRADING & MARKETING (P) LTD. 2004 (169) ELT 205 (T-.Del.)
- TAMILNADU HOUSING BOARD VERSUS C.C.E., (1994 (74) ELT 9 (S.C.)]
- PADMINI PRODUCTS VERSUS C.C.E. 1989 (43) E.L.T. 195 (S.C.)

- GOPAL ZARDA UDYOG VERSUS C.C.E. 2005 (188) E.L.T. 251 (S.C.)

3. Shri Anand 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 record. We find that the service tax demand was confirmed on the expenditure paid by the appellant to their foreign principal towards the training of their staff and related expenses. However, the service tax demand was confirmed treating the activity as consulting engineers' services. We find that the department's claim is prima facie wrong as taking training for the staff cannot be classified as consulting engineers' services. However, we are leaving this issue open. The present case can be decided only on the limitation. In this regard we find that the appellant are registered under Central Excise as well as service tax, they are filing their periodical return. They are also subjected to the departmental audit. As regard the foreign remittance made towards the training of their staff the same has been shown in their profit and loss account. We also find that even if the appellant is liable to pay the service tax the same is available as Cenvat credit to the appellant as they are provider of service as well as manufacturer and they are discharging service tax in respect of various service and payment of excise duty on their excisable final product. Therefore, the entire exercise of payment of service tax as demanded by the department and availability of the Cenvat credit of the same amounts to situation of Revenue neutrality. Taking into stock of all the above undisputed fact, suppression of fact cannot be alleged against the appellant with intention to evade the payment of service tax for a meager amount of Rs.1,75,024/-. Therefore, for the demand which is during the period 2009-2010 the show cause notice issued on 12.03.2014 is clearly time barred.

5. Therefore, in our considered view, the demand of service tax and consequential interest and penalty is not sustainable only on the ground of time bar. Accordingly, impugned order is set aside, appeal is allowed.

(Pronounced in the open court on 18.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

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