

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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 11981 of 2014 – DB

[ST/CROSS/10026/2015]

(Arising out of OIO-SUR-EXCUS-001-COM-084-13-14 dated 31/01/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Commissioner of C.E. & S.T.-Surat-i

.....Appellant

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

VERSUS

J K Motors

.....Respondent

BI No. 388, P P 105, T P No. 114,
Opp. Near Rto Office, Hazira Road,
SURAT, GUJARAT

APPEARANCE:

Shri Rajesh R Kurup, Superintendent (AR) for the Appellant

Shri Rahul Gajera, Advocate the Respondent

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

Final Order No. 10678/2024

DATE OF HEARING: 27.09.2023
DATE OF DECISION: 27.03.2024

RAMESH NAIR

The present appeal has been filed by Revenue against vide Order – in – Original No. SUR/EXCUS/001/COM/084-13 –14 dated 31.01.2014 passed by Commissioner of Customs and Central Excise, Surat.

1.1 Brief facts of the case leading to the present appeal are that the Respondent M/s. J.K. Motors is engaged in providing service under the category of 'Authorised Service Station' for Motor Vehicle servicing and repairing. During the course of audit it was noticed that the they have not added the value of consumable used while providing service to vehicle owners and free service commission in the taxable value and thereby found to have short paid service tax by not including the cost of spare parts

consumed in gross taxable value. The Learned Commissioner vide Order – in – Original No. SUR/EXCUS/001/COM/084-13 – 14 dated 31.01.2014 confirmed the demand of Service Tax amounting to Rs.3,99,413/- along with interest and penalty whilst dropping the demand to the tune of Rs.93,96,763/- as raised in the show cause notice.

2. Shri Rajesh R. Kurup, Learned Superintendent (AR) appearing on behalf of the Department reiterates the grounds of appeal and requests that the matter be remanded to the adjudicating authority for reconsideration. He submits that the Learned Commissioner has erred in extending the benefit of cum-tax to the assessee and thereby erred in less- confirming the demand along with consequential interest and penalty. He submits that the Committee under the provisions of 86(2) of the Finance Act, 1994 directed the Learned Commissioner to apply to this Tribunal for correct determination of the following points arising out of the impugned order:

(i) Whether the Commissioner has erred in dropping the demand of Rs.87,25,472/- with consequential interest and penalty by not following the Circular No. 96/7/2007 – ST dated 23.08.2007 issued by CBEC?

(ii) Whether the Commissioner has erred in dropping the demand of Rs. 6,28,306/- in respect of taxable services of Installation of CNG Kits provided to customers, since sales tax/VAT remained paid on the same?

(iii) Whether the Commissioner has erred in extending the benefit of cum-tax benefit to the assessee, resulting in dropping of demand of Rs. 42,985/- with consequential interest and penalty?

3. Shri Rahul Gajera, Learned Counsel appearing on behalf of the Respondent reiterates the finding of impugned order.

4. We have heard both the sides and perused the records. We find that Revenue is in appeal against OIO No. SUR/EXCUS/001/COM/084-13 – 14 dated 31.01.2014. The Learned Commissioner vide impugned order has upheld the demand pertaining to Rs. 3,99,413/- whereas dropped the demand of Rs. 93,96,763/-. We observe that the Learned AR for the Revenue contends that the third part of the clarification appearing under Column (3) of the Circular No. 96/7/2007 – ST dated 23.08.2007 has not been considered by the Commissioner while applying the clarification under the said circular. We observe that the issue as regards includability of the cost of spares in the gross taxable value is in contradiction as regards Circulars dated 05.03.2003 and 23.08.2007. We observe that positive findings need to be recorded on the basis of factual verification as regards existence of separate bills for spare parts and/ or payment of sales tax/VAT thereon before arriving to the conclusion to drop demand. We find that separate invoices were not found as regards the Assessee having carried out installations on CNG kits that despite the assessee having carried out such installations and paid VAT thereon, it cannot be ipso facto concluded that they have not rendered any taxable service and are not liable to service tax. Therefore we find that in the interest of justice the said issues need to be examined in depth. The issue needs to be remanded to the adjudicating authority for reconsidering the value for demand taking to consideration the dispute raised in the show cause notice and submissions made by both the sides.

5. Thus, appeal is allowed by way of remand to the adjudicating authority to decide the issues de-novo in the light of the foregoing discussions. CO also stand disposed of.

(Pronounced in the open court on 27.03.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha