

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

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 213 of 2011

[Arising out of OIA-6-7/2011/COMMR-A-/CMC/RAJ dated 12/01/2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

Jay Gurudev Construction Co

Upasana No. 4, Saurashtra Kala Kendra Society,
Nirmala Convent Road,
Rajkot,
Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

.....Respondent

APPEARANCE:

None appeared for the Appellant

Shri. R. P Parekh, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 11251 /2022

DATE OF HEARING: 29.08.2022

DATE OF DECISION: 20.10.2022

RAJU

This appeal has been filed by M/s. Jay Gurudev Construction Co. against demand of Service Tax, interest and imposition of penalty.

2. When the matter was called out, None appeared on behalf of the appellant. It is noticed that the hearing has been fixed on 29.08.2022, 19.07.2022, 21.03.2022, 24.02.2020, 31.01.2020, 20.12.2019, 15.11.2019, 28.10.2019, 27.09.2019, 28.08.2019, 09.07.2019, 03.05.2019, 02.04.2019, 28.02.2019, but no one has appeared, therefore, the matter has been taken up for decision.

2.1 A perusal of impugned order shows that the issue involved is if the appellants are entitled to benefit of Notification No. 15/2004- ST for the period

2005-06 and 2007-08. It is noticed that the benefit has been denied by the Commissioner (Appeals) on the ground that the appellant has failed to produce any evidence of purchase of material in respect of which deduction has been claimed under Notification No. 15/2004-ST or 1/2006- ST. It is seen that Commissioner (Appeals) has observed as follows:

"14.1 I find that the appellant have mainly filed the appeal for the year 2005-06 and 2007-08 in which the Lower Authority has denied the benefit of Notification No. 15/2004-ST. For the year 2005-06, the appellant in their grounds of appeal as well as written submission dated 30.11.2010 has submitted the similar contention. They stated that in the balance sheet for the year 2005-06, labour charges has been shown as 12,94,190/- which includes material charges of Rs.11,06,190/- and labour charges of Rs.1,88,000/-. On perusal of the document submitted by the appellant, it is noticed that the appellant have submitted the copy of profit and loss account of Shri Ladani Rameshkumar Laxmidas, Proprietor of the appellant under which material purchase has been shown as Rs.12,65,280/- and labour charges has been shown as 28,910/-. Further from the purchase bills of material and labour bills for the year 2005-06 submitted by the appellant, it is noticed that the purchase of material comes to Rs.10,45,341/- and labour charges comes to Rs.2,73,390/-. Hence there is no corroboration between the contention of the appellant and the documents submitted by them during the course of personal hearing. Further from the perusal of the copy of work order No. RGC/1502877 submitted by the appellant, it is noticed that this is nothing but the draft frame order against rate contract No. 174746 which does not bear any date. Further the amount shown in the work order and the amount shown in the invoice No. 2 dated 11.11.2005 and balance sheet of the proprietor of the appellant is not tallied with each other. Hence the impugned order of the Lower Authority succeeds on this count and the arguments put forth by the appellant do not hold any water.

14.3 For the year 2007-08, the appellant, in their grounds of appeal as well as written submission dated 30.11.2010, have submitted the similar arguments. They stated that in the balance sheet for the year 2007-08, direct expenses have been shown as Rs.39,67,210/- in the profit and loss account. However as per Schedule-G of the balance sheet, bifurcation has been show for labour charges of Rs. 33,48,290/- and material purchase of Rs. 6,18,920/-. On perusal of the profit and loss account and schedule forming part of profit and loss account and balance sheet, it is noticed that the amount of Rs.39,67,210/- has been shown in both the documents. In the schedule forming part of profit and loss account and balance sheet, direct expenses have been shown as (1) labour charges 33,48,290/- and material purchase 6,18,920/-. However, from the copies of purchase bills and labour bills submitted by the appellant, it is noticed that the total of

purchase bills comes to Rs.28,50,544/- and labour charges comes to 11,16,827/- and hence there is no corroboration between the bills and profit and loss account. Therefore, the appellant contention does not hold good on this count also and the impugned order of the Lower Authority does not warrant any interference."

From perusal of above observation of Commissioner (Appeals), it is apparent that the appellant has purchased of some raw materials however exact quantum of the same may not be ascertainable. Notification No. 15/2004-ST or for that matter 01/2006-ST, does not require proof of purchase of raw material to the extent of the abatement. In these circumstances denying the benefit of these notifications, for the reason that the quantum of purchase shown profit and loss account does not match invoices produced by the appellant is improper and incorrect. In these circumstances we hold that the appellants are entitled to benefit of abatement under Notification No 15/2004-ST or 01/2006-ST as the case may be.

3. The appeal is allowed by way of remand to the original Adjudicating Authority for the purpose of recalculation of the demand.

(Pronounced in the open Court on 20.10.2022)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**(RAJU)
MEMBER (TECHNICAL)**