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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12030 of 2018-SM

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-081-2018-19 dated 31.05.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Gujarat Guardian Limited .... **Appellant**
Village-Kondh, Taluka--Valia,
BHARUCH, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-ii .... **Respondent**
1st Floor Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE :

Shri S.J. Vyas, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 17.05.2022

DATE OF DECISION : **20.05.2022**

FINAL ORDER NO. A/10526 / 2022

RAMESH NAIR :

Brief facts of the case are that the appellant M/s. Gujarat Guardian Limited is member of industries association namely, M/s. Valia Industries Association. Service provider M/s. Shree Rang Services provided the services and issued invoices in favour of M/s. Valia Industries Association. M/s. Valia Industries Association has issued cenvatable invoices in favour of the appellant M/s. Gujarat Guardian Limited accordingly, M/s. Gujarat Guardian Limited availed Cenvat credit on such invoices. The case of the department is that the service recipient is M/s. Valia Industries Association therefore credit cannot be allowed to M/s. Gujarat Guardian Limited who is not a service recipient.

2. Shri S.J. Vyas, learned Counsel appearing on behalf of the appellant submits that though the invoices were issued in favour of M/s. Valia Industries Association but the service was received by the appellant and the proportionate cost of service was borne by the appellant only. Therefore, appellant have rightly availed Cenvat credit. He submits that M/s. Valia Industries Association was founded by its members only for availing common services for the benefit of members as per the deed of association dated 30.06.2008. He submits that the proportionate share of service charges along with service tax was paid by the members. Therefore, they are legally entitled for the Cenvat credit. He further submits that the show cause notice is on the wrong facts inasmuch as it alleges that service was provided to M/s. Valia Industries Association and in fact the service was availed by members of the association. Therefore on this ground itself the adjudication order and the appellate order are not sustainable on the basis of wrong facts in the show cause notice.

3. On the other hand, Shri R P Parekh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have considered the submissions made by both the sides and perused the record. I find that appellant as per Industries Association namely M/s. Valia Industries Association is only an association which includes the appellant also as its member. As per the Deed of Association dated 30.06.2008, the association was founded in the name of M/s. Valia Industries Association for operating water supply for the common benefit of all the members. The association engaged Shree Rang Services to handle the said water supply project. Shri Rang Services issued invoices for

handling the water supply in favour of M/s. Valia Industries Association. M/s. Valia Industries Association proportionately shared the expenditure among the members of the association as per actual use of services. With these facts, it is clear that the appellant is in fact received the services and the expenditure for the same was borne by the appellant only.

5. As regards the objection raised by the Revenue that invoices issued in favaour of M/s. Valia Industries Association is not valid invoice for taking credit, I find that since there is no dispute that Shree Rang Services issued valid cenvatable invoices in favour of M/s. Valia Industries Association and on the basis of proportionate distribution of expenditure the appellant have availed credit. Since the appellant is member of association, as per the judgment of Hon'ble Supreme Court in the case of State of *West Bengal Vs. Calcutta Club Limited - 2019 (29) G.S.T.L. 545 (S.C.)*, there is no difference between the Association and its Members. Accordingly, service provided by Shree Rang Services to M/s. Valia Industries Association is deemed to have been provided to its members.

6. Therefore, in the peculiar facts of the present case, I am of the view that the appellant have received the service and borne the expenditure along with service tax, they are entitled for Cenvat credit. Accordingly, the impugned order is set-aside and the appeal is allowed.

(Pronounced in the open court on **20.05.2022***)*

(Ramesh Nair)
Member (Judicial)

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