

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

REGIONAL BENCH –COURT NO. 01

Service Tax Appeal No. 81 of 2009

[Arising out of OIA-161/2008/STC/LMR/COMMR-A-/AHD dated 12/12/2008 passed by Commissioner of Central Excise-SERVICE TAX - AHMEDABAD]

M/s Mahavir Rolling Mills Ltd
2410,Phase-IV, GIDC, Vatva, Ahmedabad

.....Appellant

VERSUS

C.S.T. & S.T. –Ahmedabad
Central Excise Bhavan, 7th Floor,
Nr. Polytechnic College, Ambawadi,
Ahmedabad-380 015

.....Respondent

APPEARANCE:

Shri. Hardik Modh, Advocate for the Appellant
Shri. L. Patra, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

FINAL ORDER NO. A/ 12222 /2019

DATE OF HEARING/ DATE OF DECISION: 02.04.2019

PER: S.K. MOHANTY

This appeal is directed against impugned order dated 12.12.2018 passed by the Commissioner (Appeals), Central Excise, Ahmedabad.

2. Brief facts of the case are that the appellant is engaged in manufacture of excisable goods and for that purpose, is registered with the central excise department. The appellant is also registered with the service tax department as a recipient of Goods Transport Agency Service, for payment of service tax on the basis of reverse charge mechanism. During the disputed period Jan.' 2005 to Sep.' 2007, the appellant had discharged the service tax liability upon availing the benefit of abatement provided under Notification No. 32/04-ST dated 03.12.2004. The exemption provided under the said notification was a conditional one, which was required to be fulfilled as per the clarification furnished under the CBEC Circular No. B1/6/2005-TRU dated 27.07.2005. Since the appellant did not comply with the requirement of

the said notification, the department initiated show cause proceedings for recovery of the short paid service tax amount. The matter was adjudicated against the appellant, in confirming the adjudged demands.

3. Ld. Advocate appearing for the appellant submitted that as per Notification dated 03.12.2004, it was eligible for the benefit of abatement of 75% from payment of service tax. In this context, he has submitted the certificate issued by the goods transport operator, certifying that no credit on input/capital goods has been taken by them. He further submitted that the transporters engaged by the appellant were not the goods transport agents and mere transport operators and as such, the requirement of issuance of consignment note does not arise. He has relied upon the decision of this Tribunal in the case of S.N.I. Industries Vs. CCE & ST, Salem - 2016 (41) STR 563 (Tri.-Chennai), to state that individual truck operator not registered with the service tax department cannot issue any consignment note and also were not permitted to avail cenvat credit on the input, input services and capital goods.

4. On the other hand, Ld. AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both the sides and perused the records.

6. It is an admitted fact on record that the appellant got itself registered with the service tax department as a recipient of GTA service. The transporters engaged by the appellant were mere goods transport operator/owner of truck and were not registered with the service tax department. Since the transport operators were not goods transport agents, there was not requirement of issuance of any consignment note, as mandated in the service tax statute. Further, since those operators were not registered with the service tax department, there was no question of availment of cenvat benefit in respect of duty/tax paid on the inputs or taxable services. Thus, the conditions of Notification dated 03.12.2004 have been duly complied with by the appellant for the purpose of exemption benefit by way of abatement for payment of service tax. We find that the issue arising out of the present dispute is no more *res integra* in view of the decision of this Tribunal in the case of S.N.I. Industries (Supra). The relevant paragraph in the said decision is extractive herein below:

"6. *Heard both sides. We have carefully considered the submissions and also perused the records. The short issue in these appeals is denial of abatement of 75% availed under Notification 32/2004-S.T., dated 3-12-2004. On perusal of the SCN, OIO and the impugned orders-in-appeal, we find that the assessee engaged individual truck operator/owner for transport of granite blocks from quarry to the factory and from factory to the port of destination and paid service tax on the GTA by availing Notification 32/2004-S.T. Department denied the abatement and demanded differential duty on the ground that the assessee not fulfilled the condition of the notification. It is pertinent to see the relevant Notification 32/2004 which is reproduced as under :-*

"Service tax payable on 25% of the gross amount charged by Goods Transport Agency (w.e.f. 1-1-2005)

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from so much of the service tax leviable thereon under section 66 of the said Act, as is in excess of the service tax calculated on a value which is equivalent to twenty five per cent, of the gross amount charged from the customer by such goods transport agency for providing the said taxable service :

Provided that this exemption shall not apply in such cases where -

(i) the credit of duty paid on inputs or capital goods used for providing such taxable service has been taken under the provisions of the Cenvat Credit Rules, 2004; or

(ii) the goods transport agency has availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503 (E), dated the 20th June, 2003].

2. This notification shall come into force on the first day of January, 2005.

[Notification No. 32/2004-S.T., dated 3-12-2004]"

The proviso to notification stipulates that this exemption is not applicable if the service provider has availed input and capital goods credit for providing GTA service and they should not have availed Notification 12/2003. We find that in the present case the service providers are the transport operators. On perusal of payment vouchers dated 25-4-2005, 3-6-2005 and 26-8-2006 issued by the appellants to various individual truck owners, we find there is no document or any consignment note by the assessee. It is pertinent to state that as per GTA rules, the GTA should issue consignment notes and not the individual truck owners. In the present case, since the individual truck operator is not registered with service tax, the question of availing input credit or capital goods credit does not arise. The Board's circular dated 27-7-2005 and 23-8-2007 are applicable to consignment agents who issue consignment notes to, transporters and they have to declare in the invoice that they have not availed any credit. In this case, transport operators who rendered GTA service to assessee are not registered with central excise or service tax. Therefore, it is evident that once the service provider is not registered with service tax, the fulfilment of condition of Notification No. 32/2004 does not arise. However, we do not agree with appellant's contention that they are not liable to pay service tax as the Hon'ble High Court in the case of CCE Salem v. Suibramania Siva Co-op Sugar Mills Ltd.(supra) clearly held that any person who avails GTA Service from any person including individual truck operators are liable to pay service tax under Section 65(105) of the Finance Act. Therefore, the appellant is eligible to pay service tax as a recipient and

they are eligible for abatement and the appellants have rightly paid 25% service tax on the freight paid. It is pertinent to state that w.e.f. 1-1-2010 both the conditions (i) and (ii) stipulated under the proviso to the said notification were deleted and the abatement is applicable without any conditions. In view of foregoing discussion, we hold that appellants are eligible for the benefit of exemption Notification No. 32/2004. Therefore, question of demanding differential service tax and imposition of penalty does not arise. Accordingly the impugned orders in respect of assessee's appeals are set aside and the appeals are allowed. As regards Revenue's appeals, having held that the appellants are eligible for the notification benefit and consequently eligible for 75% abatement the question of payment of penalty does not arise and the Revenue's appeals are liable to be rejected. Accordingly assessee's appeals are allowed and Revenue's appeals are rejected."

7. In view of above, we do not find any merits in the impugned order passed by the Ld. Commissioner (Appeals). Accordingly, by setting aside the same, we allow the appeal in favour of the appellant.

(Operative portion of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(C.J. Mathew)
Member (Technical)