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

REGIONAL BENCH : COURT NO - 1

Service Tax Appeal No. 139 of 2011-DB
(Arising out of OIA no. COMMR-A-/226/VDR-I/2010 dated 06/09/2010 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I)

Express Tours & Travels Pvt. Ltd. Appellant

Express Hotel Building,
R C Dutt Road, Alkapuri,
Vadodara,
Gujarat
390007.

-VERSUS-

C.C.E. & S.T.- Vadodara-i Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat
390023

Present For the Appellant : None

Present For the Respondent : Shri Gobind Jha, Authorised Representative

CORAM:

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

ORDER NO. A/ 12231 / 2019

Date of Hearing: 18/10/2019

Date of Decision: 22/11/2019

RAJU

This appeal has been filed by M/s Express Tours & Travels against confirmation of demand of Service Tax and imposition of penalty. The matter was listed on 16 May, 2019, 25 June, 2019 and 18 October, 2019 but nobody appeared. Consequently, the matter is taken up for disposal ex-parte.

2. A perusal of the impugned order shows that the demand of Service Tax has been made seeking to deny the benefit of notification 01/2006-ST dated 01 March, 2006. The said notification provided for concessional rate of duty subject to the following conditions:

"Provided that this notification shall not apply in cases where:

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

(ii) The service provider 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 20th June, 2003)"

2.1 The Show Cause Notice was issued to the appellant asserting that during April 2006-September 2006, they had availed Cenvat Credit and therefore, benefit of the said notification no. 01/2006-ST dated 01 March, 2006 is not available. Accordingly, a demand of Service Tax was raised. In defense, appellants claimed that they have not availed the benefit of Notification 01/2006-ST with effect from July, 2006 to September, 2006 and they paid full Service Tax during the said period. It was also argued that during the period April 2006 to June, 2006 they had not availed any Cenvat Credit and, therefore, they were entitled for benefit under notification no. 01/2006-ST dated 01 March, 2006. In view of above, it has been argued that demand cannot be sustained.

3. Learned Authorised Representative relies on the impugned order.

4. We have considered rival submission. The notification no. 01/2006-ST dated 01 March, 2006 prescribes that the benefit of notification is available subject to non availment of Cenvat Credit. The appellant have clearly stated that they had availed Cenvat Credit, during the period from July 2006 to September 2006 and they have not availed the benefit of notification no. 01/2006-ST dated 01 March, 2006. They also claimed that they have not availed Cenvat Credit from April 2006 to June, 2006 and availed benefit of notification no 01/2006-ST. We find nothing has been brought to contradict these factual claims made by the appellant. Therefore, we find that appellants have fulfilled the condition and are eligible for the benefit of notification during the period from April 2006 to June, 2006. Since the appellant has already paid Service Tax for the period July 2006 to September, no demand survives. The appeal is consequentially allowed.

(Pronounced in the open court on 22/11/2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha