CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/19/2009-DB

[Arising out of Order-in-Appeal No. 242-2008 dated 29/08/2008 passed by CCE(Appeals-II), Bangalore]

TEXPORT GARMENTS
NO.154, A/B, 3RD CROSS, 5TH MAIN,
YESWANTHPUR INDUSTRIAL SUBURB,
BANGALORE

Appellant(s)

Versus

Commissioner of Service Tax
BANGALORE SERVICE TAX- I
NULL 1ST TO 5TH FLOOR,
TTMC BUILDING, above BMTC BUS STAND,DOMLUR
BANGALORE, - 560071
KARNATAKA

Respondent(s)

Appearance:

Shri Rajesh Kumar, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor(Above Corp.Bank) 26th Main, 4th T Block, Jayanagar,
BANGALORE - 560041
KARNATAKA

For the Appellant

Smt. Kavitha Podwal, Superintendent(AR)

For the Respondent

Date of Hearing: 31/07/2018
Date of Decision: 31/07/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21075 / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 29/08/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly, the facts of the present case are that the appellants are manufacturers of excisable goods and have received the services from transport agency. Since they are the service receiver, they are eligible for the exemption / abatement under Notification No.32/2004-ST dt. 03/12/2004. Vide the impugned order, the exemption / abatement was denied to the appellant for the reason that the appellant has not provided the declaration from GTA as observed by the Commissioner(Appeals).

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the binding judicial precedent on the same issue. He further submitted that the appellant has submitted the declaration from the GTA for non-availment of CENVAT credit on inputs and capital goods by them. The appellant has also brought on record the declaration from various Goods Transport Agencies (GTA) and has annexed with the appeal papers. He further submitted that once the GTA gave the declaration that they have not availed the CENVAT credit on inputs and capital goods, the service receiver is eligible for the abatement under Notification No.32/2004-ST. The declaration may be in general or in their letter head and it need not be in each consignment note. In this regard, he relied upon the following decisions:-

a. CCE, Patna Vs. HT Media [2011(271) ELT 362 (Pat.)]

b. Commissioner Vs. Sirhind Steel Ltd. [2016(44) STR J284 (Guj.)]
c. Lykes Line Ltd. Vs. CST, Mumbai [2017(50) STR 51 (Tri. Mum.)]
d. Commissioner Vs. Advance Diesel Engineering Pvt. Ltd. [2008(10) STR 201 (Tri. Ahmd.)]
e. Prakash Industries Ltd. Vs. CCE, Raipur [2015(40) STR 804 (Tri. Del.)]
f. IOCL Vs. CCE, Patna [2013929) STR 524 (Tri. Kolkata)]
g. CST, Ahmedabad Vs. Cadila Pharmaceuticals Ltd. [2012(27) STR 127 (Guj.)]
h. CCE, Rajkot Vs. Sunhill Ceramics Pvt. Ltd. [2008(9) STR 530 (Tri. Ahmd.)]
i. Venkateshwara Distributors (P) Ltd. Vs. CCE, Delhi-I [2013(31) STR 469 (Tri. Del.-I)]

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both parties and perusal of records, we find that the appellant has given the declaration from the GTA for non-availment of CENVAT credits on inputs and input services which is on record and therefore in view of the decisions cited supra, we find that the appellants being service receiver are eligible for CENVAT credit on the service tax paid by them. Consequently, we set aside the impugned order by allowing the appeal of the appellant by relying upon the ratios of the above said decisions.

(Operative portion of the Order was pronounced
in Open Court on **31/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S. GARG
JUDICIAL MEMBER

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