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

Appeal(s) Involved:

ST/206/2009-DB

[Arising out of Order-in-Appeal No. 02/2009 dated 09/01/2009 passed by the Commissioner of Central Excise and Service Tax, Bangalore]

Brindavan Threads Pvt. Ltd.
No.214/33, 7th Cross, Cunningham Road, Vasanth Nagar, Bangalore — **Appellant(s)**

Versus

The Commissioner of Service Tax
Bangalore Service Tax- I
1st To 5th Floor,
TTMC Building, Above BMTC Bus Stand, Domlur
Bangalore – 560 071
Karnataka — **Respondent(s)**

Appearance:

Mr. M.S. Nagaraja, Advocate
1010, 2nd Floor, Above Corporation Bank, 26th Main 4th T Block, Jayanagar
Bangalore – 560 041
Karnataka — For the Appellant

Mr. K. Murali, Superintendent (AR) — For the Respondent

Date of Hearing: 30/08/2018
Date of Decision: 30/08/2018

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

Final Order No. 21247 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 09.01.2009 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant. Briefly the facts of the present case are that the appellant is registered under service tax in the category of Goods Transport Agency. They filed the refund claim of excess service tax paid to the Department to the extent of Rs. 88,469/- (Rupees Eighty Eight Thousand Four Hundred and Sixty Nine only) on 31.03.2008 on the ground that they have paid service tax on the goods transferred inadvertently on 100% of the freight charges without availing the benefit of abatement of 75% of freight under Notification No. 32/2004 ST dated 03.12.2004. On these allegation, the Department issued the show-cause notice dated 09.05.2006 proposing to reject the refund claim on various grounds.

After following the due process, the original authority vide order dated 25.06.2008 rejected the refund claim on the ground (i) that the appellants have not produced any documents as to how excess payment of service tax was worked out and how the service tax on 25% of the gross amount was arrived at and (ii) declaration by GTA in the form of mere affixing of rubber stamps on the bills/consignment notes do not fulfill the conditions stipulated under Notification No. 12/2004-ST dated 03.12.2004. Aggrieved by the said order, appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) though has accepted the documents to conclude that the appellants have paid service tax of Rs. 1,47,198/- (Rupees One

Lakh Forty Seven Thousand One Hundred and Ninety Eight only) for the period January 2005 to September 2007 corroborating the details tabulated by the lower authority in the adjudication order. The Commissioner (Appeals) has rejected the appeal of the appellant and held that he is in agreement with the point that mere rubber stamp affixed on the bills does not fulfill the conditions stipulated in the Notification.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the facts and the binding judicial precedent. He further submitted that both the authorities have observed that the declaration in the consignment note in the form of rubber stamp do not fulfill the condition stipulated in Notification No. 32/2004 ST dated 03.12.2004, is not only contrary to law but beyond the grounds and the scope of the show-cause notice. He further submitted that the show-cause notice does not raise such a ground and the impugned order is beyond the scope of show-cause notice and therefore not sustainable. The learned counsel also submitted that the appellant is entitled for interest from the date of expiry of three months from the date of submission of the application for refund till the date of payment of refund amount and for this he relied upon the decision of the Supreme Court in the case of ***Ranbaxy Laboratories Ltd. Vs. Union of India reported in 2011 (273) E.L.T. 3***. He further submitted that the issue involved in the present case is no more

res integra and has been held in favour of the appellant by the following decisions:

a. *Brindavan Phosphates Pvt. Ltd. Vs. CST, Bangalore – 2017-TIOL-2371-CESTAT-BANG.*
b. *Prakash Industries Ltd. Vs. CCE, Raipur – 2015 (40) STR 804 (Tri.-Del.)*
c. *Lykes Line Ltd. Vs. CST, Mumbai I – 2017 (50) S.T.R. 51 (Tri.-Mumbai)*
d. *Indian Oil Corporation Ltd. Vs. CCE, Patna – 2013 (29) S.T.R. 524 (T-Kol.)*

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

5. After considering the submissions of both the parties and perusal of the material on record and the decisions relied upon by the appellant cited supra, we find that the issue is squarely covered by the decision of this Tribunal in the above cited cases relied upon by the appellant. The ratio of the above decisions is applicable to the facts of the case. In the case of Brindavan Phosphates Pvt. Ltd. cited supra wherein the identical issue was involved this Tribunal has held that the declaration contained in the rubber stamp affixed on bills and the consignment notes issued by GTA are valid declaration by GTA and it satisfies requirement of Notification because in Notification no specific format has been prescribed for declaration and it is only the CBEC circular which prescribed such kind of enforcement. Therefore

by following the ratios of the above said decision, we are of the view that the appellants are entitled to the refund of Rs. 88,469/- (Rupees Eighty Eight Thousand Four Hundred and Sixty Nine only) along with interest in terms of Section 11AB of the Central Excise Act 1944 from the date of expiry of three months from the date of submission of the application for refund on 31.03.2008 till the date of payment of the refund amount in view of the judgment of the Hon'ble Supreme Court in the case of **Ranbaxy Laboratories Ltd. Vs. Union of India** cited supra. Consequently appeal is allowed with consequential relief.

(Operative portion of the Order was pronounced
in Open Court on **30/08/2018**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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