IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/29/2012

(Arising out of Order-in-Appeal No.340/2011 dated 18.11.2011 passed by the Commissioner of Central Excise (Appeals), Maudrai)

M/s. N.C. John &Sons Pvt. Ltd. Appellant

Vs.

CCE, Tirunelveli Respondent

Appearance

None for the Appellant
Shri S.Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **27.04.2018**

Final Order No. **41412 / 2018**

Per Bench

Brief facts are that the appellants are 100% EOU engaged in manufacture of excisable gods. It was noticed that for the period 1.1.2005 to 30.9.2005, they did not pay service tax on the freight paid to transporters under GTA service. Show cause notice was issued proposing to demand service tax along with interest and for imposing penalties. After adjudication, the original authority confirmed the demand after adjusting the amount paid by the Head Office. Penalties under sections 76 and 77 were also imposed. Appellant filed appeal before Commissioner (Appeals) whereby the same was remanded with direction to pass fresh speaking order on the denial of granting abatement of 75% as per Notification No. 32/2004 dated 3.12.2004. In denovo adjudication, the original authority confirmed the demand of Rs.14,443/- and also appropriated the service tax already paid by the appellant to the tune of Rs.3,636/-. Penalty under sections 76 as well as 77 were imposed. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. None appeared for the appellant however, written submissions have been filed. On perusal of the written submissions, it is seen that the appellant is aggrieved by the denial of abatement under Notification No. 32/2004. The authorities below have rejected the request for abatement for the reason that the appellant has filed the declaration to the effect that the service provider has not availed CENVAT credit. Along with the written submissions, the assessee has furnished a certificate along with all the details of consignments note/invoices. He has pleaded to set aside the demand for the reason that the appellant has discharged the service tax

liability after considering the abatement eligible to the appellant.

3. The ld. AR Shri S. Govindarajan reiterated the findings in the impugned order.

4. Heard both sides.

5. On perusal of the declaration produced by the appellant along with written submissions, we are convinced that the appellant has complied with the procedure required under the Notification No. 32/2004. We therefore find that the denial of benefit of abatement is unjustified. The appellant has already paid the service tax after deduction of the abatement. Under such circumstances, the demand cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

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

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex