

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

**Appeal No.ST/592/2012**

[Arising out of Order-in-Appeal No.137/2012 dt. 20.07.2012 passed by  
Commissioner of Central Excise (Appeals), Coimbatore]

A. Manian

Appellant

Versus

Commissioner of Central Excise,  
Coimbatore

Respondent

Appearance :

Shri J. Shankarraman, Advocate  
For the Appellant

Shri B.Balamurugan, AC (AR)  
For the Respondent

**CORAM :**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**  
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of hearing / decision : 01.01.2019

**FINAL ORDER No. 40004 / 2019**

**Per Shri Madhu Mohan Damodhar**

After hearing both sides, we find that the core dispute involved in this appeal pertains to whether payment of service tax effected by the appellant in the month of June 2009 would deprive them all the benefit of threshold exemption limit of Rs.10 lakhs for the rest of the financial year. We find that the Larger Bench of the Tribunal in the case of *Ankit Packaging Ltd. Vs CCE Hyderabad* -

2004 (165) ELT 228 (Tri.-LB) had occasion to consider a parallel situation in respect of SSI manufacturer availing excise duty exemption. The issue as considered by the Larger Bench was as under :

“Whether an assessee who paid the duty at the normal rate at the commencement of the financial year under the provisions of Notification 1/93 and thereafter was eligible to avail the benefit of Notification 1/93 during the same financial year if he satisfies other conditions?”

We find that the Larger Bench has held that few clearances at the beginning of the financial year could not be considered as defacto opting out of exemption. The relevant portion of the Tribunal’s Larger Bench decision is reproduced below :

“5.A perusal of the proviso to the notification leaves no doubt that it relates to a manufacturer who has opted “for not availing the benefit of the exemption”. In the present case, the assessee M/s. Ankit Packaging Ltd. did not opt for not availing the benefit. Instead, it wrote on 10-4-1998 stating that it was availing the benefit of the exemption and was clearing the goods in terms of the notification. Therefore, the finding of the lower authority is contrary to the appellant’s option. The only question is whether payment of duty on some goods cleared in the beginning of the financial year could be considered as *de facto* opting out of the benefit of the exemption notification. We find no warrant for such a view. The notification calls for specific opting out by a manufacturer. There was no requirement to opt in. In the present case, the assessee has also written to the department informing that it was wanting to avail the exemption notification. In the face of such opting in, there was no justification for interpreting the payment of duty on some goods as opting out. Moreover, the assessee has also explained his reason for clearing some goods on payment of duty at the beginning of the financial year; it required some time to compute the aggregate value of the clearances made during the preceding financial year, so as to be sure that it had not exceeded the qualifying value limit during the preceding financial year. Thus, paying duty on the goods cleared during the opening days of the Financial Year was only erring in favour of the revenue and not foregoing an exemption. Such caution in an assessee cannot be turned against him. We find that a similar issue had come up before us in the case of *C.C.E., Coimbatore v. Marutham Textiles (P) Ltd. and Others* [[2003 \(153\) E.L.T. 219](#) (Tri. - LB)] and we took the view that clearance of some goods in the beginning of the financial year on payment of duty was no ground for holding that the assessee who was an entitled small scale unit, has opted out of the benefit of Notification No. 1/93. In Para 12 of our Larger Bench order, we observed as under :

“12. A small scale manufacturer of cotton yarn automatically came within the realm of operation of Notification No. 1/93-C.E., dated 25-4-1994, the date on which cotton yarn was specified for the purpose by the Central Government under Notification No. 90/94-C.E. None of the respondents opted out of the operation of the notification at any time thereafter. Therefore, the clearances of cotton yarn from 25-4-

1994 in chronological order, whether made on payment of duty or not, up to the aggregate value of Rs. 30 lacs would constitute the first clearances in the financial year. The aggregate value has to be reworked and any demand of duty requantified accordingly.”

The above decision applies equally to the present case, since in the present case, the assessee had not opted out of the benefit of Notification No. 1/93. Instead, it had only opted for availing of the benefit.

6. In view of what is stated above, the reference is answered in favour of the assessee. Registry shall forward the appeal files to Bangalore for being placed before that Bench for passing orders on the appeal.”

We find that the Larger Bench decision, although rendered in respect of Notification No.1/93-CE, is applicable on all fours to the threshold limit under service tax law. In the event, we hold in favour of the appellant. The impugned order to the contrary cannot then sustain and will require to be set aside, which we hereby do. Appeal is allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

**(P. Dinesha)**  
**Member (Judicial)**

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

gs

