IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

Appeal No. ST/663/2012

(Arising out of Order-in-Appeal No. 180/2012 ST dated 06.09.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore).

M/s. Pranar Oils and Chemicals India Pvt. Ltd. : Appellant

Vs.

CCE & ST, Coimbatore : Respondent

Appearance

Shri R. Balagopal, Consultant
for the Appellant

Ms. T. Ushadevi , DC (AR)
for the Respondent

CORAM :

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

Date of Hearing/Decision:11.01.2019

FINAL ORDER No. **40064/2019**

Per Madhu Mohan Damodhar

Appellants are manufacturers of final products viz., 'Paint Remover' and imported 'Naphtha', which was transported from Kandla Port, Gujarat, to their unit in Coimbatore. The transporters raised bills towards the freight involved in the transportation. Appellant was required to discharge service tax liability under the category of "Transport of goods by road" (GTA services). Appellant discharged the service tax liability, however after adjustment of abatement of 75% as prescribed under Notification No. 12/2003-ST dated 20.06.2003. Department took the view that such abatement could not have been taken in the absence of proof of non-availment of Cenvat credit by the transporters concerned. It appears that at the adjudication stage appellant did not produce any such proof and hence the said tax liability of Rs. 3,19,251/- with interest thereon and imposition of penalties under Section 77 and 78 of the Finance Act, 1994 was confirmed. In appeal, the Commissioner (Appeals), on the ground that appellants had not produced any documentary proof to the adjudicating authority and holding that belated filing of certificate/proof before the appellate authority is not acceptable, upheld the order of the original authority and rejected the appeal. Aggrieved, appellants are on appeal before this forum.

2. Today when the matter came up for hearing, Shri R. Balagopal, Ld. Consultant appearing on behalf of the appellant submits that although the appellants had produced the necessary proof before the Commissioner (Appeals), the said authority has rejected the appeal without going through the same. He also relies upon the following case laws in support of his contentions:

1. *Likes Line Ltd. Vs. CST, Mumbai*
   2017 (50) STR 51 (Tri.-Mum.)
2. *CCE, Patna Vs. H.T. Media*
   2011 (23) STR 451 (Patna)

3. On the other hand, Ld. DR Ms.T. Ushadevi, DC, supports the impugned order.

4. Heard both sides and have gone through the facts.

5. From the facts on record, we find that the appellant though had not produced the necessary supporting document/s for availing 75% abatement under Notification No. 12/2003-ST, they had submitted the certificate/proof to the Commissioner (Appeals), who has evidently not accepted the same on the ground that they have filed the supporting documents belatedly. In such matters, we are of the considered opinion, that the appellant concerned should be given one more opportunity to prove their case, especially if they claim to have the necessary supporting documents. The Commissioner (Appeals) could have gone through the documents to verify the eligibility or otherwise, remanded the matter back to the original authority for the same exercise. Instead, the lower appellate authority rejected the appeal for belated filing of documents. In the event, we set aside the impugned order and remand the matter to the original authority, who will analyse the documents subsequently submitted by the appellant in support of their eligibility for having under Notification No.

12/2003-ST. In such denovo proceedings, the adjudicating authority also take into account the ratio laid down in the decisions cited by the Ld. Advocate (supra).

6. In the result, appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court)

(P.DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

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