

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SZB, CHENNAI

COURT : Division Bench B1

ST/655/2012

(Arising out of Order-in-Appeal No.173/2012 dated 30.08.2012 passed by the Commissioner of Customs, Central Excise, and Service Tax (Appeals), Coimbatore).

M/s. Kumaran Steels

Appellant

Vs.

CCE, Coimbatore

Respondent

APPEARANCE

FOR APPELLANT : Shri J. Shankarraman, Advocate

FOR RESPONDENT : Shri S. Govindarajan, AC (AR)

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SHRI MADHU MOHAN DAMODHAR, HON'BLE TECHNICAL MEMBER
Shri P.DINESHA, HON'BLE JUDICIAL MEMBER

Date of hearing: **14.03.2019**

FINAL ORDER No. 40519/2019

Per Madhu Mohan Damodhar

After hearing both sides, we find that the dispute in this matter concerns demand of service tax on reverse charge basis on transportation of goods of the appellants for the period 01.01.2005 to 31.01.2009, on the freight expenditure incurred by them to the extent of Rs. 14,03,485/-. Department initiated proceedings vide a SCN dated 03.03.2010 proposing demand of an amount of Rs.1,33,929/- with interest thereon and also imposition of penalties under various provisions of law. In adjudication proceedings, the original authority vide order dated 31.03.2011 confirmed the demand

and also denied the benefit of abatement of 75% under Notification No. 32/2004-ST and No.1/2006-ST, on the ground that there is no documentary evidence to establish that the appellants have not availed the credit of duty relating to the said transportation of goods by road. In appeal, the Commissioner (Appeals) vide impugned order dated 30.08.2012 upheld the order of the original authority. Hence this appeal.

2.1 Today when the matter came up for hearing, Ld. Advocate, Shri J. Shankarraman submits that they had produced declaration from each of the transporters to the effect that they have not availed Cenvat credit of duty for providing taxable service and also benefit of Notification No. 12/2003.

2.2 Ld. Advocate draws our attention to para-6 of the impugned order to submit that while the Commissioner (Appeals) has acknowledged the submission of the said declarations by them, he has however not accepted the same, on the ground that they are not relatable to the consignment note are found signed without name or date. He submits copies of the said declarations under Notification No. 32/2004-ST by the concerned transporters and submits that these documents are all signed by the authorized signatory with stamp of the concern. The only inadvertence is the name of the signatory has not been indicated along with the signature.

2.3 Ld. Advocate submits that the issue is no longer res integra and has been settled in favour of appellants in a number cases viz., as under:-

1. *Boopalan Electronics Vs. CCE, Mysore*
2010 (19) STR 781 (Tri.-Bang.)
2. *Texport Garments Vs. CST, Bangalore*
2010 (18) STR 47 (Tri. -Bang.)
3. *Arani Agro Oil Industries Ltd. Vs. CCE, Visak*
2011 (22) STR 624 (Tri.-Bang.)
4. *Gokul Refoils & Solvents Ltd. Vs. CCE, Rajkot*
2012-TIOL-1965-CESTAT-AHM
5. *Micromatic Grinding Technologies Ltd.*
2012 (25) STR 355 (Tri.-Del.)

2.4 Ld. Advocate also submits that appellants had paid up the tax liability of Rs. 32,564/- after taking 75% abatement under the Notification No. 32/2004-ST and No. 1/2006-ST. The SCN has however demanded service tax liability on the entire 100% value of the taxable service.

3. On the other hand, Ld. AR supports the impugned order.

4.1 After hearing both sides, we find that the Ld. Advocate is correct in his assertions. No doubt, as observed by the lower appellate authority, the name of the signatories who have issued certificates have not been indicated therein. However, there is no allegation made by the department about the genuineness of these documents. A number of Tribunal decisions, some of which have been relied on by the Ld. Advocate, have consistently reiterated that the CBEC Circular cannot prescribe a condition not present in the notification No. 12/2003-ST and exemption under Notification No. 32/2004-ST cannot be denied on such minor discrepancies.

4.2 In the circumstances, the appeal is allowed on the following terms.

- i) Appellants are eligible for 75% abatement in line with Notification No. 32/2004-ST and No. 1/2006-ST.
- ii) The amount of Rs. 32,564/- paid up by the appellants along with interest after availing such abatement of 75% is sustained and no interference is made with the matter.
- iii) However remaining part of the demand in the impugned order cannot sustain and is required to be set aside, which we hereby do.
- iv) Since the matter was one of interpretation, imposition of penalty is unjustified. It is therefore ordered that while the tax liability to the extent of Rs.32,564/- along with interest is sustained, the penalties imposed under Section 77 and 78 are set aside.

5. Appeal allowed on above terms.

(Order dictated and pronounced in the Open Court)

(P. DINESHA)
MEMBER JUDICIAL

(MADHU MOHAN DAMODHAR)
MEMBER TECHNICAL

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