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

Appeal No. ST/365/2009

[Arising out of Order-in-Appeal No.49/2009-SLM (ST) dt. 2.3.2009 passed by the Commissioner of Central Excise (Appeals), Salem]

K.K.S.K. Leather Processors Pvt. Ltd. — Appellant

Versus

Commissioner of Central Excise & ST,
Salem — Respondent

Appearance:

Shri T. Ramesh, Advocate
For the Appellant

Shri K.P. Muralidharan, 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 : 02.08.2017

FINAL ORDER No. 41491/2017

Per Bench

The facts in brief are that the appellant is paying service tax on GTA after availing abatement under Notification No.35/2004-ST dt.3.12.2004. During the period from 01-01-2005 to 31-08-2007, it appeared that appellant failed to pay service tax correctly on the actual value of freight expenses incurred adopting a lesser value after wrongfully availing abatement from the gross freight paid on their own. Hence, show cause notice dated 03-01-2008 was issued to the appellant proposing denial of ineligible abatement claimed by the appellant, demand differential service tax of Rs.1,97,442/- under Section 73 of the Finance Act,1994 read with Rule 6 of Service Tax Rules,1994 along with interest under Section 75 and penalty under Section 76 & 78 of the Finance Act, 1994. After due process of law, the original authority passed an order confirming the proposed demand of service tax on the grounds that the condition for availing abatement in terms of the said notification was not fulfilled and hence the abatement claimed was not allowable. In appeal, Commissioner (Appeals) upheld the order of the original authority. Aggrieved, appellants are before this forum.

2. Today, when the matter came up for hearing, on behalf of appellant, Ld. Advocate Shri T. Ramesh takes us to para 5.4 of the impugned order where a reference to communication dt. 2.3.2009 from the jurisdictional Range Officer has been referred to, stating that appellant had not produced wanted documents, hence for want of proper documents called for, the freight actually paid and availment of abatement and like details as against payment of service tax relating

to the appellant cannot be verified; that in absence of any corroborative evidence claim of the appellant cannot be accepted. Ld. Advocate also takes us to para 5.2 of the impugned order wherein it has been noted that appellants have produced xerox copies of declaration from transporters certifying that they have not availed cenvat credit on inputs/capital goods and that they are not availing Notification No.12/2003-ST dt.20.6.2003 has been taken note of. Ld. Advocate concedes that required documents had not been produced during adjudication, however order of original authority was an ex-parte order. Ld. Advocate submits that they have all the required documents at this stage and if given another opportunity they would be able to produce the same before the adjudicating authority. He also contends that SCN had been issued to them on 3.1.2008, whereas the entire disputed tax liability has been paid by them on 06.12.2007 and on this ground, the penalties imposed / upheld in the impugned order cannot be sustained.

3. On the other hand, Ld.A.R supports the impugned order.

4. After hearing both sides and going through the facts, we are of the considered opinion that the entire resolution of the dispute will hinge on the documents that the appellant should have produced to prove their case but which, as per the impugned order, they did not. In the circumstances, we are of the opinion that the matter requires to be remanded back to the adjudicating authority for de novo

consideration. In such de novo proceedings appellant shall be given an opportunity to produce all necessary documents and evidence to establish their case that they are eligible for 75% abatement on the taxable service of GTA service and that they are required to discharge tax liability only on 25% thereof. In case, they are able to establish this fact adjudicating authority will therefore calculate the tax liability only on 25% of the taxable value. It is not clear from the annexure to the SCN indicating the tax liability of Rs.1,97,442/- as to whether appellant had discharged any duty liability at all in respect of the GTA service. Hence all the issues are kept open to enable the de novo adjudicating authority to be able to decide the issue of duty liability if any, and consequential interest and penalty, if any. Appeal is allowed by way of remand in these terms.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai