CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50338 of 2019 [SM]

[Arising out of Order-in-Appeal No. 460 (SM) ST/JPR/2018 dated 09.10.2018 passed by the Commissioner, CE & CGST, Jaipur]

M/s Ronak Steel Industries
F-289, Ajaymeru Industrial Areal,
Palra,
Ajmer. **...Appellant**

Vs.

The Assistant Commissioner
Central Excise & Service Tax
Ajmer (Rajasthan) **...Respondent**

APPEARANCE:

Ms. Priyamvada Joshi, Advocate for the Appellant
Shri Yashvir Singh, Authorised Representative (DR) for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 30.10.2019
DATE OF DECISION : 30.10.2019

FINAL ORDER No. 51493/2019

RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 460/JPR/2018 dated 05.10.2018. The relevant factual matrix which has triggered the impugned adjudication is that the appellant, M/s Ronak Steel Industries, are registered with respect to Goods Transport Agency Services under Reverse Charge Mechanism. On the basis of an intelligence, department observed that the appellant is not paying Service Tax in the proper manner. Hence, vide letter dated 03.03.3017 bearing No. V(16)09/antevasion/2245, the appellant was called upon to explain. Being not satisfied with the explanation qua the total carriage inwards charges of Rs. 10,69,397/- during the financial year 2012-13 to 2015-16 short payment of Service Tax to the tune of Rs. 1,38,466/- was alleged. Resultantly, a show cause notice No. 4159 dated 31.05.2017 was served upon proposing the recovery of the aforesaid short paid amount along with the interest at appropriate rate and the proportionate penalty. The proposed recovery was confirmed initially vide Order-in-Original No. 17/2017 dated 25.07.2017. The appeal thereof has also been rejected by Commissioner (Appeals) vide the impugned order-under-challenge. Being aggrieved the appellant is before this Tribunal.

2. I have heard Ms. Priyamvada Joshi, learned Advocate for the appellant and Mr. Yashvir Singh, learned DR for the department. It is submitted on behalf of the appellant that the only ground for alleging the Service Tax payment of the appellant as a short payment is that the appellant has not filed the declaration about not availing Cenvat credit while availing the benefit of Notification No. 13/2008 dated 01.03.2008. Learned Counsel has also laid emphasis upon the amendment in the definition of output service in the year 2008, as defined under Rule 2(p) of Cenvat Credit Rules, 2004 as came into effect from 01.07.2012, submitting that the G.T.A is no more an output service.

It is impressed upon that the clarification has been given by the department vide Circular No. DOF334/1/2008 dated 29.02.2008 that the Goods Transport Agency are liable to pay Service Tax only @ 25% of the amount of freight and the 75% thereof is exempted from the payment of Service Tax, unconditionally. It is submitted that emphasis of the declaration as a condition for availing the said exemption is beyond the statute as well as the Board’s own circular. The order-under-challenge is, accordingly, prayed to be set aside and appeal is prayed to be allowed.

3. While rebutting these arguments, learned D.R. has laid emphasis upon para-8 of the order-under-challenge i.e. Order-in-Appeal No. 460, it is submitted that filing of declaration is necessary in furtherance of Board’s

order No. 166/13/2006 dated 12/03/2007 as has been issued under Section 37 B of Central Excise Tariff. It is impressed upon that the said order clarifies that though the Central Government has exempted the taxable service provided by a Goods Transport Agency who are customer from so much of Service Tax leviable thereon as is in excess of the Service Tax calculated on the value which is equivalent to 25% of gross amount charged from the customer by such Goods Transport Agency but the said exemption is subject to two conditions, one whereof is about the declaration that the G.T.A has not availed the benefit under Notification No. 12/2003-ST dated 20.06.2003. Justifying the said order and impressing upon that there is no infirmity therein that the appeal in hand is prayed to be dismissed.

4. After hearing both the parties, perusing the entire record as well as the Order-under-Challenge, I observe and hold as follows:

4.1 That the Appellant is the service recipient of the Goods Transport Agency Services who has to discharge the Service Tax liability as contrary to the general notion of the said liability to be discharged by the provider. Admittedly, the Appellant has availed the benefit of the exemption provided with respect to Goods Transport Agency Service to the extent of 75% of the gross amount charged by the G.T.A for providing the said service, in furtherance of notification No. 13/2008-ST dated 01.03.2008. It is observed that the sole ground for the denial of the benefit of the said notification by the department is that the requisite declaration acknowledging that no Cenvat credit has been availed by the Appellant with respect to the exempted amount of service tax has not been filed. Thus, the narrow compass of the present adjudication is as to whether such declaration is mandatory for seeking the benefit of the exemption notification.

5. As pointed out by learned DR that Commissioner (Appeals) has relied upon the notification No. 13/2006 dated 12.03.2007 which requires that the exemption of service tax with respect to GTA Service is subject to two conditions one being the impugned declaration. However, as pointed out by the learned Counsel for the Appellant and acknowledged by the department, the said notification of 2006 notified in March, 2007 stands amended by virtue of notification No. 13/2008 dated 01.03.2008. The said notification is reproduced as follows :

> *G.S.R. (E)- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to any person in relation to transport of goods by road in a goods carriage, referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act, from so much of the service tax leviable thereon under section 66 of the Finance Act, as is in excess of the amount of service tax calculated on a value equivalent to twenty five per cent. Of the gross amount charged by the goods transport agency for providing the said taxable service.*

Subsequent to this notification there has been department's own clarification vide Circular No.334/1/2008 dated 29.02.2008 which reads as follows:

> *In the case of services provided for the transport of goods by road in a goods carriage, service tax is required to be paid by certain categories of persons who pay the freight instead of the service provider namely Goods Transport Agency. The actual amount of service tax payable is 25% of the amount of freight i.e. 75% of amount of freight is provided as abatement, subject of condition that no Cenvat credit of the duty paid has been availed of under Cenvat Credit Scheme. It has been represented that fulfilment of the condition of non-availment of Cenvat credit by the service provider is, at times, difficult to prove, when the service tax is required to be paid not by the service provider but by the consignor or consignee who pays the fright. Taking into account the special nature of the goods transport agency (GTA) service, it is being exempted from the payment of service tax unconditionally to the extent of 75% of the freight. In other words, service tax is required to be paid only on 25% of the freight irrespective of who pays the service tax. Simultaneously, the benefit of Cenvat credit has been withdrawn to GTA service*

under Cenvat Credit Scheme by deleting the said service from the scope of output service in the Cenvat Credit Rules, 2004. Henceforth, the person who is required to pay service tax under reverse charge method on GTA service can pay service tax on 25% of the freight unconditionally. Recipient of GTA service paying service tax under reverse charge method is no more required to prove non-availment of Cenvat credit by GTA service provider.

Both these notifications and classiffication which are subsequent to the notification relied upon by Commissioner Appeals while denying the benefit to the Appellant are sufficient to hold that no declaration as is impressed upon by the department and based whereupon the benefit of exemption is denied to the Appellant is any required.

6. Further, it is observed that both these notifications are in very much confirmity with the statute which has amended the definition of output service in Rule 2 (p) of Cenvat credit Rules, 2004. The definition of output service w.e.f 01.07.2012 is as under:

(p) "Output Service" means any service provided by a provider of service located in the taxable territory but shall not include a service –
(i) specified in Section 66D of the Finance Act, 1994.
(ii) where the whole of service tax is liable to be paid by the recipient of service.
Provider of output service is eligible to avail cenvat credit/service tax credit in respect of input service, inputs or capital goods used for providing output service. But in this case the GTA service was kept out of the purview of output service in terms of definition provided under clause (p) of Rule 2 of Cenvat Credit Rules, 2004 being payment of service tax by the service recipient. Thus, I observe that the notice as service recipient is eligible for abatement in terms of Notification No. 26/2012-ST dated 20.06.2012. I find that the abatement for the period upto 2014-15 was 75% which was reduced to 70|% during the year 2015-16. Thus, the notice was liable to pay service tax only on 25% value of services during the year 2012-13 to 2014-15 and on 30% value of services of GTA during the year 2015-16.

6.1 This definition clarifies that the GTA Services stands excluded from the definition of output service w.e.f 01.07.2012. No question of availability of Cenvat credit is any more available to the recipient of GTA Services. The demand of declaration about not availing the Cenvat credit stands redundant in view of the said amendment.

7. Above all, the notifications are extending substantial benefit to the assessee. The same cannot be denied for want of meagre procedural lapse. The above discussion rather clarifies that in the present case there is not even the said procedural lapse. Denying the benefit of the impugned notification for alleging the payment by the Appellant as short is, therefore, opined to be a wrong finding. Adjudicating authority below are required to be updated with respect to the latest laws and the respective amendments while adjudicating the respective issues.

8. Coming to the aspect of the limitations, it is held that the above discussion clarifies about the entitlement of the Appellant for exemption to the extent of 75% of the gross value of GTA Services with no condition to be applicable for availing the said exemption. Department could not have proved the mandate of any such declaration. Accordingly, no question of suppression of facts on part of Appellant at all arises as is otherwise alleged by the department. The adjudicating authority is held to have erroneously formed the opinion about mis-representation and suppression on part of the Appellant. The said findings are also liable to be set aside.

9. As a result of entire above discussion, the order under challenge is hereby set aside appeal stands allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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