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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/767 /2007 - CU[DB] Date **23/08/2011**

ST/76/08

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S TRIVENI ENGG. & INDUS. LTD.

KHATAULI DISTT., MUZAFFARNAGAR

M/S TRIVENI ENGG. & INDUS. LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/367-68 2011 CU[DB]** dated 18.08.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 767 of 2007
Service Tax Appeal No. 76 of 2008

[Arising out of Order-in-Appeal No. 185/CE/APPL/MRT-I/2007 dated 30.10.2007 passed by the Commissioner of Central Excise (Appeals), Meerut I]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Service Tax Appeal No. 767 of 2007

M/s. Triveni Engg. & Industries Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut I — Respondent

Service Tax Appeal No. 76 of 2008

Commissioner of Central Excise
Meerut I — Appellants

Vs.

M/s. Triveni Engg. & Industries Ltd. — Respondent

Appearance:
Shri Rajesh Chibber, Advocate for the Appellant
Shri Sonal Bajaj, SDR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing : 02.08.2011
Date of decision : 18.08.2011

Final **ORAL ORDER NO. ST/367-368/11**

Per Archna Wadhwa (for the Bench):

1. Both the appeals, one filed by the assessee and the other by the revenue are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner (Appeals).

2. We have heard Shri Rajesh Chibber, Advocate appearing for the assessee and Shri Sonal Bajaj, SDR for the revenue.

3. As per facts on record M/s. Triveni Engineering & Industries Ltd. are engaged in the manufacture of sugar and were availing services of 'Goods transport agency by road'. They were duly registered with the service tax department and were ~~availing~~ discharging Service Tax liability as recipient of the said services in terms of provisions of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, by which the liability of payment of Service Tax in respect of GTA services stands shifted to the recipient of the said services.

4. While discharging their service tax liability on the GTA services, the appellant availed the benefit of Notification No. 34/2004 ST dated

3.12.2004. The said notification exempted the taxable service provided by a 'goods transport agency' to customers in relation to the transport of the goods by road in a goods carriage, from the whole of the Service Tax leviable thereon, where the gross amount charged on consignments transported did not exceed Rs.1500/- and the gross amount charged on an individual consignment transported did not exceed Rs.750/-.

5. The appellant was also availing the benefit of abatement upto 75% of value of the taxable service under Notification No. 32/2004 ST dated 3.12.04, wherever they were discharging their duty liability.

6. Revenue felt that the exemption under Notification No. 34/04 ST is not available to the assessee inasmuch as the same exempts the services provided by the goods transport agency. Inasmuch as the assessee was not providing any services of goods transport agency, they cannot avail exemption. Accordingly, the proceedings were initiated against the appellant by way of issuance of show cause notice dated 18.4.06 alleging that inasmuch as the assessee is not 'goods transport agency', the exemption availed by them in terms of Notification No. 34/04 ST dated 3.12.04 was not available to them. Accordingly, the notice proposed to confirm the demand of Service Tax of Rs. 1,32,176/- and education cess of Rs.2,644/- along with imposition of penalty. The said show cause notice was adjudicated by the Assistant Commissioner confirming the demand as proposed in the notice along with confirmation of interest along with imposition of identical penalty in terms of Section 76 of the Finance Act, 1994. It may be clarified that demand

was raised against the appellant only on 25% of the value of the service by extending the abatement of 75% in terms of notification No. 32/04 ST.

7. The said order was appealed against by the appellant. The Commissioner (Appeals) observed that the issue for determination was whether the concession / exemption provided under Notification No. 32/2004-ST and 34/2004-ST both dated 3.12.2004 is available to the appellant or not. As regards the Notification No. 34/2004-ST, it was observed by the appellate authority that as in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the liability of payment of Service Tax in respect of certain services like GTA services having been shifted to certain categories of persons and the appellants having made payment of Service Tax on receipt of such services, the notification ibid exempts the instant services from payment of Service Tax irrespective of the person made liable to pay the service tax. She further observed that :-

> "In this context, it may also be mentioned that in regard to availment of exemption under both the notifications i.e. 32/04-ST & 34/04 ST ibid, the wordings in the opening para of each of the notification are the same and read as "In exercise of the powers conferred by sub section (1) of section 93 of the Finance Act, 19094 (32 of 1994), the Central Government, 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 a customer, in relation to transport of goods by road carriage, from so much of the service tax leviable thereon under section 66 of the said Act". Vide para 4 of the Circular No.51/2007 ST dated 12.3.07, it has been clarified that these notifications (32/2004 ST

& 1/2006 ST) exempt taxable services from so much of service tax as specified therein, irrespective of the person made liable to pay service tax. ”

8. As is seen from the above, the Commissioner (Appeals) held in favour of the assessee on notification No. 34/2004 ST with the above findings of the Commissioner (Appeals), the matter would have ended and the appeal was required to be allowed.

9. However, it is seen that inspite of holding that the appellant was entitled to the benefit of notification No. 34/2004, the appellate authority, under a mistaken belief that Notification No. 32/2004 is also involved, denied the benefit of the same on the ground that the abatement to the extent of 75% of the value of taxable service cannot be extended inasmuch as there is no declaration by the service provider to the effect that credit has not been availed. As such, she held that benefit of Notification No. 32/2004 is not available. However, in respect of penalty, she reduced the penalty from Rs. 1,34,820/- to Rs.50,000/-.

10. The common grievance of both the sides is that the adjudicating authority has wrongly considered the notification No. 32/2004 which was not the subject matter of the appeal before him. Infact while proposing to deny the benefit of Notification No. 34/2004, the benefit of duty was proposed to be confirmed only on 25% of the value of taxable service, after extending the benefit of notification No. 32/2004. The appellate authority having held in favour of the assessee on the issue of

availment of notification No. 34/04-ST, there was no further requirement of considering the Notification No. 32/2004-ST.

11. In view of the above discussion, the appeal filed by the appellant is required to be allowed. We order accordingly and set aside the confirmation of demand and imposition of penalty on the assessee.

12. As regards the revenues' appeal, we find that apart from contending that Commissioner (Appeals) has wrongly considered the notification No. 32/2004, there is no other plea that the benefit of notification No. 34/04 ST dated 3.12.04 is wrongly extended to the assessee. Having held that the appellants is not required to pay any service tax and that exemption in terms of notification No. 34/04 is available to the assessee as it was the assessee who was discharging the duty liability as service recipient and the exemption, if any, would be available to the person who is under legal obligation to discharge the tax, we find that eligibility to Notification No. 32/2004-ST cannot alter the liability of the assessee and therefore, the Appeal of Revenue is rejected.

13. Both the appeals are disposed of in the above manner.

(Pronounced in the Court on 18/8/11

(Ar~~hana~~ Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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