CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 11.05.2017

ST Appeal No. 58011 of 2013-SM

(Arising out of order-in-appeal No. 205/BPL/2012 dated 08.10.2012 passed by the Commissioner (Appeals) Customs, Central Excise & Service tax, Bhopal).

M/s Sona Engg. Equipment Mfg. Co. Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Sh. Sanjay Tiwari, Advocate for the appellant
Sh. G. R. Singh, AR for the Respondent

Coram:

Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53292/2017

Per: **B. Ravichandran**:

The appeal is against order dated 11.12.2012 of Commissioner (Appeals), Bhopal. The appellant are engaged in the repair and maintenance of electrical transformers for M. P. Electricity department. They have received consideration from the client for rendering such service. They have discharged service tax on the labour charges only. They claimed the exemption from service tax on the value of materials supplied to the client during the course of service, in terms of Notification No. 12/2003-ST dated 20.06.2003. The revenue felt that the appellant are not eligible to the said exemption and that they have not discharged the service tax on proper value of taxable service. Accordingly, proceedings were initiated against the appellant to demand and recover short paid service tax of Rs.10,89,538/-. The original authority held that the appellant are liable to pay the said service tax amount alongwith interest. He also imposed penalty under Section 76 and 77 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) upheld the original order with modification of setting aside the penalty imposed under Section 76 of the Act.

2. Ld. Counsel for the appellant submitted that the bills raised by the appellant for their work, will clearly indicate that they are showing repair and service charges and supply of material charges separately. They were paying applicable VAT on materials supplied and service tax on service portion, separately shown in various bills. In support of the contention, ld. Counsel drew my attention to various bills raised by the appellant. They have not artificially bifurcated the consideration. Wherever there is a supply of material, the same is identified and applicable VAT has been paid. Regarding allegation of availing of cenvat credit during the material time, ld. Counsel submitted that the appellant never claimed any credit on any inputs during the material time. In ST-3 return (relied upon in the show cause notice), they have mentioned that the tax already paid in lumpsum so that the said amount could be adjusted for the liabilities of the current period for which the return is filed. However, there is no specific column for the said amount, so they have shown cenvat credit entry in the return. This has given impression to the department that they have availed credit on inputs which will bar them from availing the exemption under Notification No. 12/2003-ST. He submitted that they can categorically demonstrate the fact that they have never

availed any credit under Cenvat Credit Rules and entries made in ST-3 are not to be taken to show availment of any credit.

3. Ld. AR reiterated the finding of the lower authorities.

4. I have heard both the sides and perused the appeal records. I have perused various invoices submitted by the appellant which were subject matter of dispute. These invoices categorically indicate repair and service charges and supply of material charges separately. The VAT payable and service tax payable as per the applicable rates are shown separately. In view of these factual finding, I note that the eligibility of the appellant for concession under Notification No. 12/2003 cannot be denied. However, regarding availment of cenvat credit during the particular period, the claim of the appellant requires verification with supporting evidence. The ld. Counsel for the appellant submits that they can establish with all supporting evidence that they never availed cenvat credit, to make them ineligible for such exemption. This aspect can be verified by the jurisdictional officer to satisfy the fulfilment of such condition. On merit, the appellant's claim for the concession under Notification No. 12/2003 cannot be denied. The verification of cenvat non-availment as claimed by the appellant, can be made by the jurisdictional authority. If the claim of the appellant is found to be correct based on recorded evidence then there is no bar in granting the benefit of notification to the appellant. The impugned order is set-aside. The appeal is allowed in these terms.

(Dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

Pant