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

Service Tax Appeal No. 818 of 2012

[Arising out of Order-In-Appeal No. 69/BPL/2012 dated 20.3.2012 passed by Commissioner (Appeals) Central Excise and Service Tax, Bhopal]

M/s. National Information Technologies Ltd.	**Appellants**

Vs.

Commissioner of Customs, Excise & Service Tax, Bhopal	**Respondent**

Appearance:

None for the Appellants
Shri Sanjay Jain, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 09.05.2017

FINAL ORDER NO . 53528 /2017

Per S K Mohanty:

This appeal is directed against the impugned order dated 20.3.2012 passed by Commissioner (Appeals), Customs, Central Excise, Service Tax, Bhopal wherein the benefit of abatement claimed by the appellant under Notification No. 19/2003 -ST dated 15.1.03 and 01/2006-ST dated 1.2.2006 was denied, holding that the appellant has not supplied the plant, machinery, equipment to the customers, while providing erection, commissioning and installation services.

2. None appeared for the appellant, despite several notices. Heard the learned DR for the Revenue.

3. We find that the learned Commissioner (Appeals) has recorded the following findings in the impugned order to hold that the appellant is not entitled for the benefit of abatement provided in the said notification:

> "*The abatement of 67% of gross amount received in relation to "erection commissioning or installation service" was available from 01.03.06 under Notification No. 1/2006-ST dated 01.03.06. A plain reading of the above notifications shows that an abatement of 67% of the gross amount charged from the customer is available in case of "erection, commissioning or installation service" where the contract is for supplying a plant, machinery, equipment and commissioning or installation of the said plant, machinery or equipment, subject to the conditions specified in the notification. I have gone through the sample copies of the contract submitted by the appellant in respect of M/s. Reliance Engineering Associates Private Ld., wherein under the heading 'Material' following is mentioned –*
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> > "*1. Distribution Boards, lighting fixtures and major equipment viz. Main panels, DG sets, Rectifier and Battery banks shall be issued by Reliance as FIM at the site. The material issued by Reliance shall be used*

solely and economically for the work covered by this contract. The material shall be used in such quantities and proportions as specified by the items of work indicated in the schedule, specifications, drawings and as approved by the EIC. Wastage beyond agreed norms and damages to such material in any manner should be avoided. Accounting and reconciliation is also a part of contractors responsibility and should be accessible to Reliance. "

From the above condition of the contract it is clear that the contract is not for supplying plant, machinery, major equipment to the customer and commissioning or installation of the said plant, machinery, equipment but only for erection and commissioning work of the equipment supplied by the customer. I have also gone through the copies of the invoices submitted by the appellant and find that the invoices shows supply of minor items like strip of clamping, GI consumables etc. not plant, machinery or major equipment. In view of these facts, the appellant is not entitled for abatement of 67% of gross amount received in relation to "erection, commissioning or installation service" under notification No. 19/2003-ST dated 21.08.2003 or Notification no. 1/2006-ST dated 01.03.2006. It is also to mention that no abatement of 67% is available in respect of 'Maintenance or Repair services".

4. Since the learned Commissioner (Appeals) upon verification of the contract entered into between the appellant and the service-receiver has held that claim of abatement is not permissible as per the contents of the notification, we are of the view that the impugned

order cannot be interfered with at this juncture, being passed upon verification of the factual aspects.

5. In view of the above, we do not find any infirmity in the impugned order. Accordingly, the appeal filed by appellant is dismissed.

(dictated and pronounced in the open court)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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