CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 751 of 2012

(Arising out of Order-in-Original No. 06/2012/ST/JPR-II dated 30.01.2012 passed by the Commissioner of Central Excise, Jaipur)

DATE OF HEARING : 23.06.2017
DATE OF DECISION : 23.06.2017

M/s Patel Phoschem Pvt. Ltd. …. Appellants
(Rep by Sh. Rachit Jain, Adv.)

VERSUS

CCE, Jaipur-I …. Respondent
(Rep. by Sh. Amresh Jain, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 54523/2017

PER B. RAVICHANDRAN :

The present appeal is filed by the assessee-Appellants against the order-in-original no. 06/2012/ST/JPR-II dated 30.01.2012 passed by the Commissioner of Central Excise, Jaipur.

2. The assessee-Appellants are engaged in the manufacture of machinery and machinery parts liable to Central Excise Duty. They were also rendering taxable services under various categories. The dispute in the present appeal relates to – first, eligibility of assessee-

Appellants for abatement in the value of taxable service in terms of Notification No. 1/2006-ST dated 01.03.2006 and second, inclusion of free supplied material by the recipient of service in the valuation of taxable service. The Revenue held a view that the assessee-Appellants are not eligible for Notification No. 1/2006-ST and they have also short paid Service Tax by not including the free supplied raw material in the valuation.

3. The original authority on conclusion of adjudication, confirmed the Service Tax demand of Rs. 60,91,351/- and imposed equal amount of penalty under Section 78 of the Finance Act, 1994 and further penalty under Section 76 of the Act.

4. The learned counsel for the assessee-Appellants submits that, insofar as the issue relating to non-includibility of free supplied items in the gross value for the purpose of availing abatement, while calculating the tax liability has been settled by the Tribunal in the case of **Bhayana Builders Pvt. Ltd. vs Commissioner,** 2013 (32) STR 49 (Tri-LB). The said ratio has been followed by the Tribunal subsequently in various decisions. On the second issue regarding their entitlement for Notification No. 1/2006-ST, it is submitted that the denial of exemption is on the ground that they have availed the Cenvat Credit on input services and as such barred from such exemption. It is submitted that they have reversed the entire credit of Service Tax demand on input services along with applicable interest; hence they have complied with the condition of the said Notification. He also placed reliance on the various decisions of the

Tribunal to state that such reversal, even made subsequently, will satisfy the condition of the Notification.

5. The learned DR for the Revenue reiterates the findings of the original authority.

6. We have heard both sides and perused the record. We are in agreement with the submission made by the assessee-Appellants relying on the said case law applicable to the facts of the present case in **Bhayana Builders Pvt. Ltd.** (supra) wherein the Larger Bench of the Tribunal held that the items supplied free of cost by the recipient of service have no relevance to consider the gross valuation of the taxable service for the purpose of Notification No. 01/2006-ST. On the second issue, we note that the assessee-Appellants have reversed the entire disputed input service credit which acted as a bar for their claim of abatement under Notification No. 01/2006-ST. We also note that such reversal, even later, will satisfy the condition of the Notification. It is also held in various decisions of the Tribunal that subsequent reversal of credit will remove the bar in availing such exemptions. The observations of the Tribunal in **M/s Old World Hospitality Limited vs CST, New Delhi,** 2017-VIL-97-CESTAT-DEL-ST, are as below :

> **"10. Regarding the eligibility of the appellant for abated service tax liability for Mandap Keeper service in terms of the notification no. 1/06-ST, admittedly, the appellant availed cenvat credit during the material time. However, we note that the appellants have reversed the whole of the cenvat credit availed during the material time along with applicable interest. We also note that the cenvat**

credit availed was recorded in the original order but at that time, reversal was not made by the appellant. They have made the reversal of availed credit along with applicable interest on 20.09.2013. Following the ratio of the Hon'ble Supreme Court in Chandarpur Manget (supra) and Hon'ble Allahabad High Court in Hello Mineral Water Pvt. Ltd. (supra) and the Tribunal's decision in Franco Italian Co. Pvt. Ltd., we find that the appellant is eligible for abated rate of duty as they have reversed the cenvat credit availed during the material time, fully. As such, the bar on claiming on such exemption is no more applicable. Accordingly, we hold that the impugned order of denial of exemption is to be set aside."

7. In view of the above settled legal position, we find that the impugned order is not sustainable. Accordingly, we set aside the same and allow the appeal.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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