CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

**Service Tax Appeal No. ST/60236/2013-ST [DB]**

[Arising out of Order-in-Appeal No. 096/ST/DLH/2013 dated 28.03.2013 passed by the Commissioner (Appeals) Central Excise, Delhi-I]

M/s. P. M. Packers & Movers Pvt. Ltd. ...Appellant

Vs.

C.S.T. Delhi-I …Respondent

**Appearance:**

Ms. Ripu Sudan, (Authorized Officer) for the Appellant
Mr. 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.16.05.2017

**Final Order No. 56451 /2017**

**Per S.K. Mohanty**:

This appeals is directed against the impugned order dated 28.03.2013 passed by the Commissioner (Appeals) Customs and Central Excise, New Delhi.

2. Brief facts of the case are that the appellant is registered with the service tax Department for providing/ receiving taxable services namely storage & warehousing and goods transport

agency service. On scrutiny of the ST 3 return filed by the appellant for the period April 2006 to September 2007, the Department observed that the appellant had availed and utilized cenvat credit amounting to Rs. 97,383/- for payment of service tax on the GTA service. Since the appellant was not eligible for the exemption provided under Notification No. 1/2006 –ST dated 1.03.2006, show cause proceedings were initiated for confirmation of the service demand. The matter was adjudicated against the appellant vide order dated 19.10.2010, wherein the benefit of Notification dated 01.03.2003 was denied and also service tax demand of Rs. 1, 11, 602/- was confirmed along with interest. Besides equal amount of penalty was imposed under Section 76 of the Finance Act, 1994. On appeal, the ld. Commissioner (Appeals) vide impugned order has upheld the adjudication order.

3. Heard both sides and perused the case records.

4. Notification No. 1/2006-ST dated 01.03.2006 provides the exemption from payment of service tax, subject to fulfillment of certain conditions. One of the conditions itemized in the said notification is that no cenvat credit of duty/ service tax paid on inputs, capital goods and input services used for providing the taxable service shall be taken under the Cenvat Credit Rules, 2004. We find from the impugned order that the ld. Commissioner (Appeals) has denied the exemption benefit contained in the said notification on the ground that the appellant had availed cenvat credit in respect the service tax indicated in

some of the bills. Since cenvat credit in the present case has been taken by the appellant, we are of the view that the benefit contained in the notification dated 01.03.2006 is not available for non-fulfillment of the condition mentioned therein.

5. Therefore, we do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). Accordingly, the appeal filed by the appellant is dismissed

(Operative Portion pronounced in open court)

(**V. Padmanabhan**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi