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

Date of hearing/decision: 12.12.2017

S.T. Stay No. 53269 of 2014 and S.T. Appeal No. 52913 of 2014
(Arising out of order in original No. 10/ST/COPMMR/DM/RTK/2013-14 dated 09.05.2013 passed by the Commissioner, Central Excise, Rohtak)

M/s ETA Engineering Pvt. Ltd. Appellant

Vs.

CCE, Rohtak Respondent

Appearance:

Sh. S. Ghosh, C.A. for the appellant
Sh. Sanjay Jain, AR for the Respondent

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 58777/2017

Per: **S. K. Mohanty**:

The Appellant has filed this application, seeking waiver of pre-deposit of the adjudged demand confirmed vide the impugned order dated 10.05.2013, passed by the Commissioner, Central Excise, Rohtak. Denial of benefit of Notification No. 01/2006 dated 01.03.2006 is the subject matter of present dispute. The appellant submits that after availing the benefit of abatement under Notification dated 01.03.2006, it had deposited an amount of Rs.78,18,401/- towards service tax alongwith interest and penalties confirmed in the impugned order. Considering the fact that substantial amount towards the adjudged demand has already been deposited by the appellant, we waive the balance amount as a condition of pre-deposit. Accordingly, the stay application filed by the appellant is allowed.

2. Since the issue involved in this appeal stands in a narrow compass, with the consent of both sides, we are taking up the appeal for final hearing and disposal today.

3. The appellant is registered with Service Tax department under different category of taxable services. During the disputed period, the appellant claimed abatement under Notification No. 01/2006-ST dated 01.03.2006, which was disallowed by the adjudicating authority on the ground that the conditions itemized in the said notification have not been fulfilled.

4. Ld. Consultant appearing for the appellant submits that the adjudicating authority has taken entirely a new ground for denying the benefit of Notification dated 01.03.2006. He submits that the appellant had never availed the Cenvat credit and also did not claim the benefit of Notification No. 12/2003. Thus, the benefit of Notification No. 01/2006 should be available to the appellant.

5. On the contrary, the ld. AR appearing for the Revenue reiterates the finding in the impugned order and further submits that since the appellant did not produce any documentary evidence to show fulfillment of condition of Notification No. 01/2006, denial of benefit available to the appellant by the original authority is proper and justified.

6. We find that the adjudicating authority has denied the benefit of Notification No. 1/2006 on the sole ground that the appellant did not produce

any evidence, showing its entitlement for the benefit. Further, the benefit of Notification No. 12/2006 was also denied to the appellant. Since the appellant, at this juncture, submits that it can produce the evidences in support of claim of the benefit of exemption notification, we are of the view that the matter should go back to the original authority for verification of the documentary evidences to be produced by the appellant. Therefore, after setting aside the impugned order, we remand the matter to the original adjudicating authority for passing the speaking order in respect of the entitlement of the benefit of Notification No. 01/2003 to the appellant. Needless to say that opportunity of proper hearing should be granted to the appellant, before deciding the issue afresh.

7. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

(S. K. Mohanty)
Member (Judicial)

Pant