CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. IV

Service Tax Appeal No.51339 of 2016-DB

[Arising out of Order-in-Original No. 04-05/PC/ST/BPL-II/2016 dated 29/01/2016 passed by the Commissioner of Customs, Central Excise & Service Tax-Bhopal]

M/s H E G Limited **.......Appellant**
Plot No. 61,62, 67 and 68 Sector A
Industrial Area, Mandideep, Dist-Raisen
MP

Versus

Commissioner of Customs, Central Excise
And Service Tax, Bhopal **........Respondent**
Commissioner of Customs Central Excise
& Service Tax, 48
Administrative Area, Arera Hills,
Hoshangabad Road, Bhopal (MP)

<u>Appearance</u>
Shri B L Narsihman, Advocate for the appellant
Shri Vivek Pandey, Authorized Representative for the respondent

CORAM:
Hon'ble Mr. Bijay Kumar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing/Decision: 02.07.2019

<u>FINAL ORDER NO. 50888 /2019</u>

<u>Per Rachna Gupta:</u>

1. The appellant, herein are engaged in the business of export of goods they are having service tax registration for providing/receiving various taxable services such as 'Business Auxiliary Services', 'Goods Transport Agency Service', 'Banking and Financial Service', 'Cargo

Handling Services', 'Consultancy and Engineering Services, 'Legal Service' and 'Renting of Immovable Property Service' . The appellant with an intention to avail exemption from service tax under Notification No. 18/2009-ST dated 07/07/2009 which was superseded by Notification No. 42/2012-ST dated 29/06/2012, in respect of aforesaid four services, had filed EXP-1 on 2nd April, 2012 in the office of Deputy Commissioner Central Excise, Bhopal. EXP-2/EXP-4 form had also subsequently been filed. However, vide the impugned order under challenge bearing No. 04-05 dated 29/01/2016 the benefit of aforesaid Notification has been denied to the appellant on the ground that the appellant has not filed the return in form EXP-4 in due time. Being aggrieved the appellant is before this Tribunal.

2. It is submitted that all the conditions of the impugned Notification Nos. 18/2009-ST dated 07.07.2009 and 42/2012-ST dated 29/06/2012 have been complied with by the appellant and there has been no dispute *qua* the same on part of the Department except that the condition C and D of proviso to said Notification of submitting the half yearly return in original within 15 days of completion of six months of respective Financial Year has been complied with as there is delay of further 15 days in filing the same. It is impressed upon that said delay was beyond the control of the appellant as it was on the part of Bombay Customs i.e. backlog at their end resulted into late availability of the shipping bills. Though one copy of shipping bills was available to the appellant and could have been filed along with EXP-2/EXP-4 still the delay of 15 days where all earlier conditions duly been met with by the appellant for seeking exemption under the said notification, is not that grave to deny the substantial benefit arising out of the

Notification. The said bills were mandatorily to be annexed with the EXP-4 thereby causing the impugned delay. It is also impressed upon that the substantial benefit cannot be denied to the appellant in the given circumstances, especially when the non-compliance is merely of procedural nature. Order under challenge is, therefore, prayed to be set aside.

3. Ld. Counsel has also brought to the notice that the same issue stands already settled in favour of the assessee/exporter he has relied upon various case laws;

(i) **M/s Metro & Metro vs. Commissioner, 2018 (12) TMI 257 (Tri.-All)**
(ii) **Praj Industries Ltd. vs Commissioner, 2017 (3) GSTL 341 (Tri.-Mum)**
(iii) **M/s VST Industries vs Commissioner 2017 (10) TMI 24 (Tri.-Hyd)**
(iv) **M/s Globe India Limited vs. Commissioner, 2016 (10) TMI 242 (Tri.-Chand.)**

4. Ld. DR has impressed upon the justification of order under challenge.

5. We have heard Shri B L. Narsihman, Ld. Advocate for the appellant and Shri Vivek Pandey, Ld. DR for the Department.

6. After hearing both the parties and perusing the appeal records, we are of the opinion as follows;

6.1 The benefit of exemption Notification No. 18/2009-ST and 42/2012-ST has been denied to the exporter by the Department only on the ground of procedural lapse. Apparently and admittedly there is no dispute as far as the compliance of all other conditions of the Notification concerned. Hence the narrow compass of the adjudication is as to:

6.2 Whether the procedural compliance of filing EXP-2/EXP-4 beyond 15 days from the 15 days of completion of six months is sufficient to deny the benefit arising out of said Notification.

6.3 We are of the opinion that it has been the settled principle of law that substantial benefit of a Notification cannot be denied on account of the procedural lapses or infractions. The issue stands already decided in favour of the appellant in the case of **M/s Metro & Metro vs. Commissioner of Central Excise & Service Tax, Kanpur[2018 (12) TMI 257-CESTAT Allahabad].**

> " 6. We find that an identical issue was considered by the Tribunal in the case of Coromandel Stamping & Stones Limited vs. CCE & ST, Hyderabad-II reported at 2016 (43) STR 221 (Tri.-Hyd). It was observed that non filing of EXP-1 and EXP-2 as required under exemption Notifiction No. 18/2009-ST is only a procedural lapse will not result in denial of substantive benefit otherwise available in terms of notification. To the same effect is another decision of the Tribunal in the case of Radiant Textile Ltd. vs. Commissioner of Central Excise, Chandigarh-II reported at [2017 (47) STR 195 (Tri.-Chan.)"

In another case of **Praj Industries Ltd. vs Commissioner of Central Excise, Pune-II [2017 (3) GSTL 341 (Tri-Mum)** has held as under;

> "3. Reading of the notification shows that the above conditions are regulatory in nature and not mandatory to avail the exemption. If the procedure prescribed is not fulfilled there would be no consequence of denial of the benefit of the notification. It is stated that taxing the goods denying the notification benefit shall make the export goods non-

> competitive in the global trade, which is contrary to basic principal of WTO. Accordingly, looking to the gravity of the conditions as well as the WTO agreement, it would not be reasonable to dismiss the appeal."

7. In view of the above observations and finding, we are of the opinion that mere procedure lapse which admittedly is on account of non-availability of shipping bills that too due to delay on the part of customs cannot be the ground to deny the substantial benefit of the Notification. Though one copy of such shipping bill remains with the exporter which could have been annexed with EXP-4 to be filed within time. But delay of 15 days then the prescribed time limit is opined to be insignificant to deny the benefit of the notification especially when all other conditions of the notification are duly complied with by the appellant. The possibility of *bonafide* belief, that custom copy of shipping bill only has to be annexed, also cannot be ruled out. The delay does not appear to be arising out of *malafide* intent. As a result of entire above discussion. We do not find order under challenge as reasonable and justifiable and accordingly, we set aside the same. Consequently, appeal stands allowed with consequential benefit if any.

(Dictated and pronounced in open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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