CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. ST/939/2009

(Arising out of Order-in-Appeal No. 95/2009 (V-I) ST dated 24.09.2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Vizianagar Biotech Ltd., ...Appellant(s)

Vs.

Commissioner of Customs & Central Excise, Visakhapatnam -I .....Respondent(s)

Appearance
None for the Appellant.
Shri Dass Thavanam, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 29/10/2018
Date of Decision: 29/10/2018

FINAL ORDER No. A/31387/2018

[Order per: P. Venkata Subba Rao]

This appeal is against Order-in-Appeal No. 95/2009 (V-I) ST dated 24.09.2009. When this appeal was called, none appeared for the appellant. As the appeal is of 2009 and had already been listed several times, we proceed to decide the issue on merits.

2. Heard Learned Departmental Representative and perused the records.

3. The appellant herein is a manufacturer of Starch and gluten. On verification of the records of the appellant by the Anti evasion unit of the Division, the authorities found that the appellant had not discharged the service tax on the transportation of the goods by road under reverse charge mechanism. Accordingly, a show cause notice was issued demanding service tax. It was also proposed to impose penalties under Section 76 & 77 of the Act. The appellant contested the demand on the ground that they are eligible for the exemption Notification No. 34/2004-ST dated 03.12.2004, as they had procured the materials from nearby and around the factory and the amount of charges paid for the transport per consignment was less than Rs. 1500/-. Therefore no tax liability arises and nor is any fine imposable. After following due process, the Original Authority confirmed the demand as proposed along with interest under Section 75 and imposed a penalty under Section 76 of the Act. Aggrieved, they appealed to the First Appellate Authority who upheld the Order-in-Original and rejected the appeal his findings in paragraph Nos. 5-7 of the impugned order are reproduced below:

> ***"5.*** *The Adjudicating Authority on going through the records and the submissions made by the appellant held that they were liable to pay service tax under Notification No. 35/2004 ST dated 03.12.2004 as amended under "GTA service". The Adjudicating Authority further held that the benefit of the Notification No. 32/2004-ST dated 31.12.2004 was available only if the conditions in the Notification are met and as the appellant had not furnished any documents to this effect and therefore concluded that the appellant was not eligible for the abatement as per the Notification. The appellant could not produce any documentary evidence showing that the charges were less than Rs. 1500/- and in the absence of such evidence, the exemption Notification No. 34/2004-ST dated 31.12.2004 was not applicable to them and as the appellant had not disclosed the details to the Department and the*

same was unearthed by the Department on verification of records and hence had suppressed the facts. The impugned order therefore confirmed the demand along with interest and imposed penalty under Section 76 of the Finance Act, 1994. Aggrieved by the order, the appeal is filed before me for relief.

6. *The appellant in his grounds of appeal reiterates the contentions made in their reply to the notice and submissions during the personal hearing before the Original Authority and request for relief. The appellant was heard on 12.08.2009 wherein they again reiterated the same submissions. They have not produced any further evidence except for the written submissions.*

7. *I have gone through the case records and the written submissions made by the appellant on the issue. I find that except for the rhetoric of the appellant at each stage in their submissions, they have not produced any valid documents to substantiate their claim and neither have they produced any ledger accounts for the payments made. Having traversed through the stages of issue of notice and adjudication and having had opportunities to make good the deficiency to claim relief, the appellant does not progress beyond the statements of having paid less than Rs. 1500/- even at this stage of appeal."*

4. Aggrieved by the impugned order the appellant preferred this appeal.

5. The Learned Departmental Representative reiterated the impugned order and submitted that the appellant was claiming the benefit of Notification No. 34/2004-ST dated 03.12.2004 which is applicable if the gross amount charged on consignments transported goods does not exceeds of Rs. 1500/- or the gross amount charged on individual consignments transported goods does exceeds of Rs. 750/-. The appellant has failed to produce any evidence to substantiate their claim that they were eligible for exemption Notification before the Original Authority as well as before the First Appellate Authority. Therefore no benefit can be given to them.

6. We have considered the arguments in the appeal as well as the submissions made by the Learned Departmental

Representative. The only point of contention is whether the appellant is eligible for an exemption Notification No. 34/2004-ST which gives exemption to Service Tax had GTA services subject to the condition the amounts paid do not exceeds the threshold therein. The appellant is claiming the benefit of exemption Notification; it is for them to prove that the benefit of this notification is available to them. In case of any doubt, the benefit of doubt will go to the Revenue as well as the Apex Court and Constitutional Bench in the case of *M/s Dilip Kumar & Co.* [2018 (361) ELT 577 (S.C)]. In this case the appellant has produced no proof to substantiate their claim that they are eligible for the exemption notification either before the Original Authority or before the First Appellate Authority or even in this appeal. We therefore find no grounds to hold that the appellant is eligible for exemption notification. The demand is therefore correctly levied along with the interest and the penalties are correctly imposed. In view of the above, we find that there is no reason to interfere with the well reasoned order passed by the First Appellate Authority.

7. The appeal is rejected.

(Operative part of this order was pronounced in open court on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi....