

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

APPEAL No. ST/1469/2011

*(Arising out of **Order-in-Appeal** No. 4/2011 (H-III)ST, dated 28.02.2011 passed by CCCE&ST (Appeals-III), Hyderabad)*

ICOMM Tele Limited

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APPELLANT

Vs

CCE, C&ST, Hyderabad-III

..

RESPONDENT

Appearance

Shri B. Venugopal, Advocate for the Appellant.

Shri N. Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 18.12.2018

Date of Decision: 18.12.2018

FINAL ORDER No. A/31609/2018

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Appeal No. 4/2011 (H-III)ST, dated 28.02.2011.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding denial of benefit of Notification No. 19/2003-ST, dated 21.08.2013 and 1/2006-ST, dated 01.03.2006 to the appellant for the services rendered. It is the claim of the appellant that they are eligible for abatement of 67% of the value of the contract entered into while Revenue is disagreeing that the said conditions are based upon some factual agreements.

4. At the outset, we notice that the impugned order which has been contested by the appellant before the Tribunal is an order dismissing the appeal of the appellant for non compliance of the provisions of Section 35F of Central Excise Act, 1944. When the matter was argued before the Tribunal on 01.11.2011, the Bench directed the appellant to deposit an amount of Rs. 10.00 lakhs in order to dispose of the appeal on merits, which has been complied with.

5. We find that the matter needs consideration by the first appellate authority on merits as the appeal is rejected by him on non compliance of pre deposit ordered. We find that the Bench of Tribunal, after considering the issue, directed appellant to deposit an amount of Rs. 10.00 lakhs, which is complied with. In our view this deposit is sufficient to hear and disposal of appeal on merits by the first appellate authority. Accordingly, we hold that as the appellant has complied with the provisions of Section 35F of Central Excise Act, 1944, the impugned order is set aside and the matter is

remitted back to the first appellate authority to reconsider the issue afresh after following the principles of natural justice.

6. Appeal stands disposed of by way of remand to the first appellate authority.

(Dictated and Pronounced in open Court on 18.12.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)