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

Division Bench - Court No. – I

Service Tax Appeal No 201 of 2009

(Arising out of **Order-in-Original** No. 15/2008 (ST)(PNR), dated 18.12.2008 passed by Commissioner of Customs, Central Excise and Service Tax, Tirupati)

Amara Raja Batteries Ltd., .. **APPELLANT**
Chakravarthy Associates No.13,
Second Main Road,
C.I.T. Colony,
Chennai-600004.

VERSUS

Commissioner of Central Excise, Customs and Service Tax-Tirupati .. **RESPONDENT**
9/86-A, Behind West Church Compound,
Amaravathi Nagar, M.R.Palli,
Andhra Pradesh – 517502.

Appearance

Shri P.C. Anand, Chartered Accountant for the appellant.

Shri Arun Kumar, Joint Commissioner for the Respondent.

Coram: **Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30528/2019

Date of Hearing:10.04.2019
Date of Decision:10.04.2019

[ORDER PER: MR. P.V. SUBBA RAO]

1. This appeal is filed against the Order-in-Original No. 15/2008 (ST)(PNR), dated 18.12.2008.

2. The issue which falls under consideration in this case is whether the appellant is entitled to the benefit of exemption Notification No. 32/2004-ST dated 03.12.2004 which provided for 75% abatement on service tax paid under reverse charge mechanism on GTA services availed by the appellant based on a general declaration regarding non-availment of CENVAT credit or a declaration has to be made on every consignment note.

3. Heard both sides and perused the records.

4. The appellant here is a manufacturer of batteries and avails services of transporters. On such services he pays service tax under reverse charge mechanism (RCM). An exemption to the extent of 75% is available under Notification No. 32/2004-ST dated 03.12.2004 subject to the condition that no credit of duty paid on inputs or capital goods used for providing such taxable services has been taken under CENVAT Credit Rules, 2004 by the service provider. Subsequently, CBEC issued an order under Section 37B of Central Excise Act vide Circular No. 131/6/2005-TRU dated 27.07.2005 to the effect that the declaration to the effect must made on every consignment note. Accordingly, a show cause notice was issued to the appellant proposing to deny the benefit of abatement under Notification No. 32/2004-ST for the period January 2005 to September 2006. It is also proposed to recover interest and impose penalties under Section 76 and 77 of the Finance Act, 1994. After following due process, the original authority vide the impugned order allowed abatement for the period January 2005 to August 2005 and dropped the demand to that extent. This pertains to the period prior to the Section 37B order issued by the CBEC. He confirmed the demand for a period September 2005 to September 2006 and also imposed penalties under Section 76 and 77 to that extent.

5. Learned Chartered Accountant for the appellant submits that an identical issue was discussed in the case of Arani Agro Oil Industries Ltd., by the Tribunal as reported in [2011 (22) STR 624 (Tri-Bang)] in which it was held that the notification no. 32/2004-ST does not require an endorsement on every consignment note. An order under Section 37B by CBEC cannot prescribe such requirement in the notification. Therefore, the assessee can avail the benefit of this notification even with a general declaration regarding non-availment of CENVAT credit without having a declaration being made on every consignment note. He would further submit that on an identical issue in the case of H.T.Media [2011 (271) ELT 362 (Pat)] the Hon'ble High Court of Bihar has also held that the CBEC Circular does not prevail over the notification and the benefit of abatement is available based on a general declaration. He produces copies of both the judgments.

6. Learned DR reiterates the findings of the lower authority and submits that as an officer, the Commissioner in the impugned order, has correctly followed the instructions given by the CBEC under Section 37B.

7. After considering both sides of the arguments, we find that the Notification No. 32/2004-ST dated 03.12.2004 does not require an endorsement being made on every consignment note regarding non-availment of CENVAT Credit. Therefore, such a requirement introduced by a 37B order by the CBEC service not sustainable and it does not bar the assessee from availing the benefit of exemption notification. Respectfully, following the ratio of the decision of Arani Agro Oil Industries (supra) and H.T.Media (supra), we hold that the impugned order is not sustainable and needs to be set aside and we do so.

8. The appeal is allowed and the impugned order is set aside with consequential reliefs, if any.

(Dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Jaya