CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, HYDERABAD

REGIONAL BENCH

Service Tax Appeal No. 358 of 2009

(Arising out of Order-in-Original No. 16/2008-09(RS) dated 30.12.2008 passed by the Commissioner of Central Excise, Visakhapatnam-I)

M/s Concast Ferro Inc. **.... Appellant**
Dusi Village, Kothapet,
Srikakulam, A.P. - 532484

Versus

Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I **.... Respondent**
Port Area, Visakhapatnam, A.P. - 530035

Appearance:

None for the Appellant

Shri A.V.C.N. Charry, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 30918/2020

Date of Hearing: 24.01.2020
Date of Decision: 24.01.2020

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 16/2008-09(RS) dated 30.12.2008 passed by the Commissioner of Central Excise, Visakhapatnam-I.

2. Briefly stated the facts of the case are that the appellants are ho0lder of Service Tax registration in relation to Goods Transport Agency (GTA) Service. During the relevant period

February, 2005 to Septembers, 2006, they had received GTA service but failed to pay the appropriate Service Tax by wrongly availing the benefit of exemption Notification No. 32/2004-ST dated 3.12.2004 and 1/2006-ST dated 1.3.2006 thereby short paid Service Tax amounting to Rs.54,33,450/-. Consequently, a show-cause notice was issued to them on 15.5.2007 for recovery of the said amount along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. None present for the appellant. Heard the learned AR for the Revenue.

4. The learned AR for the Revenue has submitted that during the relevant period to avail the benefit of Notification No. 32/2004-ST dated 3.12.2004 and 1/2006-ST dated 1.3.2006 i.e. 75% abatement from the gross taxable value of GTA service availed, it was required to declare that neither CENVAT credit of duty paid on inputs or capital goods used for providing such services under the CENVAT Credit Rules, 2004 nor benefit of Notification No. 12/2003-ST dated19.6.2003 was availed in each consignment note of the transport documents. Therefore, the learned Commissioner (Appeals) has rightly disallowed the benefit of Notification No. 32/2004-ST dated 3.12.2004 and 1/2006-ST dated 1.3.2006 in absence of production of such evidence.

5. We have carefully gone through the records of the case, grounds of appeal assailing the impugned order. The short issue involved in the present appeal for determination is whether the appellants are entitled to benefit of Notification No. 32/2004-ST dated 3.12.2004 and 1/2006-ST dated 1.3.2006 i.e. abatement to the extent of 75% of the value of the GTA service availed during the said period. The said Notification No. Notification No. 32/2004-ST dated 3.12.2004 is reproduced as below: -

> ***"Service tax payable on 25% of the gross amount charged by Goods Transport Agency (w.e.f. 1-1-2005)***
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> *In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from so much of the service tax leviable thereon under section 66 of the said Act, as is in excess of the service tax calculated on a value which is equivalent to twenty five per cent, of the gross amount charged from the customer by such goods transport agency for providing the said taxable service :*
>
> *Provided that this exemption shall not apply in such cases where -*
>
> > *(i) the credit of duty paid on inputs or capital goods used for providing such taxable service has been taken under the provisions of the Cenvat Credit Rules, 2004; or*
> >
> > *(ii)the goods transport agency has availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503(E), dated the 20th June, 2003].*
>
> *2. This notification shall come into force on the first day of January, 2005."*

The two conditions contained in the proviso to the said Notification had been removed with effect from 01.03.2008 by Notification No. 12/2008-ST dated 1.3.2008. For the past period i.e. from 1.1.2005 to 29.2.2008 the Board vide Instruction Letter F. No. 137/154/2008-CX.4 dated 21.08.2008 had clarified as follows: -

> *"The matter has been examined. Considering the facts and circumstances of the case in partial modification of the instructions contained in Circular No. B1/6/2005-TRU dated 27.07.2005, it is clarified the benefit of availment of abatement may also be extended in past cases if the taxpayers produce a general declaration from the GTA to the effect neither credit on input or capital goods used for the purpose of service has 6 been taken nor the benefit of Notification No. 12/2003-ST has been taken by them."*

Needless to mention that the allegation against the appellant is that they have failed to comply the condition i.e. furnishing necessary declaration on the consignment note that no credit of duty paid on inputs or capital goods used for providing such taxable services had been availed by the Goods Transport Operator nor the benefit of Notification No. 12/2003-ST dated 19.6.2003 was availed by them. The appellant in the present appeal memorandum has submitted that relevant certificate/ declaration had been obtained from the consignor of the goods/ GTA service provider as required under the said notification and submitted to the Department during adjudication. In support, they have annexed few sample transport bills along with declarations with the appeal memo at pages 7 to 26.

6. On the other hand, in the impugned order, the learned Commissioner (Appeals) has observed that the appellants have failed to produce relevant documents in support of their claim that no credit was availed of the duty paid on capital goods used for providing taxable services and also on the availability of Notification No. 12/2003-ST dated 19.6.2003 as no such declaration was made on the each consignment note and/or declaration filed by the appellant. On going through the appeal memo, we find that certain evidence has been enclosed by the appellant in support of their argument that necessary

declarations have been made in the respective consignment note and/or declarations which they had obtained from the respective consignors to the effect that neither CENVAT Credit on capital goods and input services nor benefit of Notification No. 12/2003-ST dated 19.6.2003 have been availed in providing taxable services. This aspect needs to be verified. Therefore, we remand the matter to the adjudicating authority to examine the evidences enclosed with appeal paper book and the evidence that would be furnished during the course of *de novo* proceedings, if any, in support of the claim that necessary declarations on fulfillment of condition of non-availment of CENVAT Credit on inputs or capital goods used for providing the taxable services by the consignor of the goods, and/or availment of benefit of Notification No. 12/2003-ST, so as to be eligible to claim abatement from the taxable value under Notification No. 32/2004-ST dated 3.12.2004.

7. In the result, the impugned order is set aside and the is remanded to the adjudicating authority to decide the issue after affording a reasonable opportunity of hearing to the appellant.

8. Appeal is allowed by way of remand.

(Operative portion of the order pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Sinha