IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Service Tax Appeal No. 204/2008

(Arising out of Order-in-Appeal No.162/Pat/S. Tax /Appeal/2008 dated 16.10.2008 passed by the Commissioner of Central Excise & Service Tax (Appeals), Patna)

M/s. Zenith Studio & Color Lab.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise &
Service Tax, Patna

Respondent (s)

Appearance:

Shri D.V. Pathy, Advocate for the Appellant (s)

Sri A.K. Biswas, Supdt. (A.R.) for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Date of Hearing/Decision:- 18.05.2018

ORDER NO. : F/O 76230/2018

Per Shri Bijay Kumar

This appeal arises out of Order-in-Appeal No.162/Pat/S.Tax /Appeal/2008 dated 16.10.2008 passed by the Commissioner of Central Excise & Service Tax (Appeals), Patna wherein he has upheld the order of lower Adjudicating Authority. In the said order, the Lower Adjudicating Authority has not allowed the abatement of material consumed while providing photographic service in terms of Section 67 of Finance Act read with Notification No.12/2003-ST dated-20/06/2004. The benefit was disallowed on the ground of not showing the bifurcation of value of materials consumed for photographic service.

2. Ld. Advocate has drawn our attention to following case laws:

i) Digi Studio Vs. Commr. of Central Excise, Calicut
-2008 (9) S.T.R. 205 (Tri.-Bang.)

ii) Commr. of Central Excise, Mysore Vs. Express Color Lab.
-2008 (9) S.T.R. 126 (Tri.-Bang.)

iii) Commr. of Central Excise, Mysore Vs. Crystal Color Lab.
-2008 (10) S.T.R. 26 (Tri.-Bang.)

iv) Delux Color Lab. Pvt. Ltd. Vs. Commr. of Cntral Excise,
Jaipur-2009 (13) S.T.R. 605 (Tri.-Del.)

v) Shilpa Colour Lab. And Others Vs. Commr. of Central Excise,
Calicut and others- [2007] 8VST (CESTAT-B'lore)

vi) Commr. of Central Excise Vs. Vahoo Colour Lab.
STA No. 19 of 2009 (P&H)

vii) Imagic Creative Pvt. Ltd. Vs. Commissioner of Commercial
Taxes- 2008 (9) S.T.R. 337 (SC)

It has been held in the above case laws that abatement of value of input materials consumed/sold while providing the photographic service is required to be permitted, subject to maintenance of record and production of documentary evidence. So is the case in the aforesaid notification issued by the Board. Ld. Advocate also drawn our attention to some of the invoices filed alongwith the appeal memorandum.

3. On perusal of invoice indicates the bifurcation of amount charged by the appellant into input amount, taxable amount and service tax paid @ 8% during the relevant time.

4. Ld. D.R. has reiterated the grounds contained in the order of lower authority.

5. We have considered the submissions made by both the parties and also perused the appeal records. The issue is on the narrow compass. The issue regarding abatement of the input material consumed while providing photographic services is settled in the cited judgements in favour of the appellant. However, the invoices shown are only sample invoice and thus not sufficient for covering the entire demand. We, therefore, remand the case back to the lower adjudicating authority for the verification of invoices of the relevant period and permit the abatement of inputs consumed while providing the photographic service.

6. The appeal is allowed by way of Remand by setting aside the impugned order.

(Operative part of the order already Pronounced in the Court)

Sd/-

(P.K.Choudhary)
MEMBER(JUDICIAL)

Sd/- 7.6.18

(Bijay Kumar)
MEMBER(TECHNICAL)

k.b/-