IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.ST/101/2009

(Arising out of Order-in-Original No.21-22/Commr./Bol/08 dated 12.11.2008 passed by the Commissioner of Central Excise, Bolpur)

M/s Gamuda WCT (India) Pvt. Ltd

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Bolpur

Respondent (s)

Appearance:
Shri B.N.Chattopadhyay, Consultant for the Appellant (s)
Shri A.K.Biswas, Suptd.(AR) for the Respondent (s)

CORAM:
Hon'ble SHRI P.K.CHOUDHARY, Member (Judicial)
Hon'ble SHRI C.L.Mahar, Member (Technical)

Date of Hearing/Decision:- 22.06.2018

ORDER NO.FO/76366/2018

Per Shri P.K.Choudhary

The appellant is a Government Contractor and is engaged in the construction of National Highways and roads. For carrying of different materials from one place to other for the purpose of construction of roads and highways the appellant have engaged trucks and /or Goods Transport Agency (GTA). The appellant is registered with the service tax authorities and availed the benefit of Notification No.32/2004-ST dated 03.12.2004 and Notification No.12/2003-ST dated 20.06.2003. Two show cause notices were issued to the appellant as under:

Sl.No.	SCN No. and Date	Period	Amount involved. (Rs.)
1.	V(15)60/Adj/CE/Bol/06 dated 24.07.2006	01.01.2005 to 31.03.2005	66,10,404.00
2.	V(15)66/Adj/CE/Bol/07 dated 12.7.2007	01.04.2005 to 30.09.2005	28,40,058.00

		Total	94,50,462/-

Two conditions have been laid down for availing the benefit of the exemption. For better appreciation of the facts, Notification No.32/2004-ST dated 03.12.2004 and Notification No.12/2003-ST dated 20.06.2003 are reproduced:

"Notification No.32/2004-ST dated 03.12.2004

Service tax payable on 25% of the gross amount charged by Goods Transport Agency (w.e.f. 1-1-2005)

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 do to, 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.

Notification No.12/2003-ST dated 20.06.2003

Valuation (service tax) – Goods and materials sold by service provider to recipient of service – value thereof, exempted

In exercise of the power conferred by 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 so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

2. This notification shall come into force on the 1st day of July, 2003."

The appellant has filed certificate from the transporters mentioning that they (the transporters) have not availed the credit of duty paid on inputs or capital goods used for providing such taxable service under the said rules. They further submitted that they did not avail the benefits under Notification No.12/2003-ST dated 20.06.2003.

2. Ld. Consultant appearing on behalf of the appellant submits that they were asked to submit the consignment notes showing the aforesaid declarations from the GTA for verification. The appellant however, submitted only a certificate from the transporters/truck owners on their letterhead, wherein it has been stated that the credit on duty paid on inputs or capital goods used for providing such taxable service under the said Rules, was not availed. It was declared by the transporters that the benefit of exemption granted under the Notification No.12/2003-ST dated 20.06.2003 was also not availed by them. Ld. Consultant has relied on the following case laws:

(i) Commissioner of Central Excise, Vapi vs. Neral Paper Mills P. Ltd. [2009(14) STR 374 (Tri.-Ahmd.)].

(ii) Commissioner of Central Excise,Customs & Service Tax, vs. Neral Paper Mills P. Ltd. [2010(20) STR 601(Guj.)].

(iii) Sri Venkata Balaji Jute (P) Ltd. vs. Commr. Of C.Ex, Visakhapatnam [2010(19) STR 403 (Tri.-Bang.)]

(iv) Commr. Of Central Excise, Vapi vs. Unimark Remedies Ltd. [2009(15) STR 254(Tri.-Ahmd.)].

3. Ld. D.R. for the department reiterates the discussions and findings of the lower authorities.

4. We observe that the CBEC vide Circular No.B1/6/2005-TRU dt. 27.07.2005 clarified that the declaration as required under Notification No. 32/2004-ST dated 03.12.2004 can be made on the letterhead of the transport company. We find that the issue is no more resintegra in view of

the decisions of the Hon'ble Supreme Court, Hon'ble High Courts and the Tribunal in various cases.

5. We find that the Hon'ble Gujarat High Court at Ahmedabad in the case of Commr. Of C.Ex, Cus & Service Tax vs. Neral Paper Mills Pvt. Ltd. (supra) have dismissed the Revenue's appeal. The relevant paras are as under:

> *"**4.** Mrs. Naynaben Gadhavi, learned standing counsel appearing for the revenue has submitted that as per Section 37B of the Act, the order dated 12-3-2007 was issued wherein it was clarified that any person who is made liable to pay service tax, while discharging service tax liability on such service, is entitled to avail of the benefit of exemption in terms of Notification No. 32/2004-S.T. and No. 1/2006-S.T., subject to fulfillment of the conditions prescribed therein by adopting the procedure prescribed in para-31 of Circular No. B1/6/2005-TRU, dated 27-7-2005. She has further submitted that the procedure prescribed is that a declaration by the service provider, in all such cases, on the consignment note, to the effect that the conditions of the exemption notification has been satisfied, would be sufficient for availing of the benefit under the said notifications. She has further submitted that the Tribunal has wrongly come to the conclusion that a declaration by the goods transport agency in the consignment note issued to the effect that neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of Notification dated 20-6-2003 has been taken by the respondent assessee, is required to avail an abatement of 75% in taxable service of goods transport by road.*
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> ***5.** We have considered the submissions made by the learned standing counsel and also perused the orders passed by the authorities below.*
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> ***6.** The Commissioner (Appeals), in his order, at length discussed this issue and found that the exemption is provided by way of notification and the Board can prescribe the procedure for availing the benefit of the said exemption notification. The Commissioner (Appeals) further observed that it is nowhere found in the impugned order, nor even it had been alleged or held by the adjudicating authority that the GTA in this case has availed credit on inputs and capital goods used for providing taxable service or has availed benefit of Notification No. 12/2003-S.T., dated 20-6-2003. He has, therefore, concluded that the impugned order denying the benefit of Notification No. 32/2004-S.T., dated 3-12-2004 is not correct in law and hence, dismissed the appeal.*
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> ***7.** The Tribunal has, by referring to the judgment of the apex court in the case of CCE v. Dhiren Chemical Industries, 2002*

(139) E.L.T. 3 (S.C.), confirmed the order of the Commissioner (Appeals) and dismissed the appeal filed by the revenue.

8. *We do not find any infirmity in the impugned orders passed by the authorities below since the issue decided is based on the Departmental Circular as well as the decision of the Apex Court. We are, therefore, of the view that no question of law, much less a substantial question of law, can be stated to arise out of the impugned order of the Tribunal. The appeal is, accordingly, dismissed."*

6. In view of the above discussions and by respectfully following the decisions of the superior courts, the impugned order is set aside and the appeal filed by the appellant is allowed.

(Operative Portion of the Order already pronounced in the Open Court)

S/d.
(P.K.Choudhary)
Member (Judicial)

S/d.
(C.L.Mahar)
Member (Technical)

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