

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

Appeal No. ST/177/2010

(Arising out of Order-in-Appeal No. 16/PAT/C.Ex/Appeal/2010 dated 18/02/2010 passed by the Commissioner (Appeals) of Central Excise, Customs & S. Tax, Patna).

Commissioner of Central Excise, Patna

Applicant (s)/Appellant (s)

Vs.

M/s. Hindustan Coca-Cola Beverages, Pvt. Ltd

Appearance:

Shri S. Mukhopadhyay, Suptd. (A. R.) for the Revenue

Shri Ravi Raghavan, Adv. & Ms. Nivedita Agrawal, C. A. for the Respondent (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -13.06.2018

ORDER NO. F/76473/2018

PER SHRI P. K. CHOUDHARY

The present appeal has been filed by the Revenue against the impugned Order-in-Appeal No. 16/PAT/C.Ex/Appeal/2010 dated 18/02/2010 passed by the Commissioner (Appeals) of Central Excise, Customs & S. Tax, Patna

2. The facts of the case in brief are that the Respondent-Assessee, M/s. Hindustan Coca Cola Beverages Pvt. Ltd, Patna, were issued a Show Cause Notice dated 11/09/2007 alleging that they have short paid the Service Tax inasmuch as they had wrongly availed the benefit of 75% abatement on the gross taxable value under Notification No. 32/2004-ST dated 13/12/2004 and Notification No. 01/2006-ST dated

01/03/2006. The period of dispute was from April 2006 to September 2006. It is the case of the Revenue that as per the condition as envisaged under the notification 32/2004-ST (Supra) can be availed provided Cenvat Credit on input /capital goods has not been taken for provision of the service and also benefit of Notification No. 12/2003-ST dated 20/06/2003 has not been availed by Goods Transport Agency. The Board vide its Circular/Order F. No. B1/6/05-TRU dated 27/07/2005 and Order No. 05/01/2007-ST dated 12/03/2007, has laid down the procedure for giving a declaration in the consignment note itself issued by the Transport Agency to the effect that no Cenvat Credit on the input or capital goods used for providing service has been taken nor benefit of notification no. 12/2003-ST (Supra) has been availed.

3. The assessee was asked to produce before the Service Tax Authorities, the consignment notes issued by Goods Transport Agency. It is the allegation of the Revenue that the assessee failed to produce the proper consignment notes containing the declaration stipulated in the Board's Circular which is mandatory for availing the abatement of 75% from the gross taxable value.

4. The Adjudicating Authority vide Order-in-Original dated 12/12/2008 confirmed the demand of Service Tax amounting to Rs.24,27,012 along with interest and imposed penalty under Section 76 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) vide the Impugned Order, allowed the appeal filed by the assessee. Being aggrieved by the impugned order, the Revenue is in Appeal before the Tribunal.

5. The Ld. DR reiterates the grounds of appeal and argues that the Ld. Commissioner (Appeals) has allowed the appeal filed by the assessee by accepting the general declaration from the Goods Transport Agency (GTA) to the effect that no credit on input or capital goods used for provision of service has been taken, as substantial compliance of the procedure as laid down by the Board vide Circular No. B1/6/05-TRU dated 27.07.2005 and Section 37 B Order No. 05/01/2007-ST dated 12.03.2007 issued under the Authority of Section 37 B of Central Excise Act, 1944.

The Ld. DR for the Revenue, vehemently argued that the Board vide its aforesaid circular as laid down the procedure for taking credit. It is the case of the Revenue that wherever no declaration has been given on the body of the consignment note, it has not been considered as substantial compliance of the Board's Circular and a general declaration in respect of all consignment notes, on the Letter Head of the goods Transport Agency has not been considered as legally acceptable document.

6. The Ld. Advocate appearing on behalf of the Respondent-Asseesee filed written submissions and compilation of the relevant statutory provisions and relied upon case laws.

The Ld. Advocate submits that a general declaration on the letter head of the Goods Transport Agency, mentioning that Cenvat Credit has not been availed on inputs or capital goods, by the Goods Transport Agency, is a sufficient compliance of conditions as envisaged in Notification No. 32/2004-ST (Supra). He further submits that Notification No. 32/2004-ST (Supra) provides that Service Tax on

Services provided by the Goods Transport Agency is payable under the Reverse Charge Mechanism on 25% of the gross amount charged by the Goods Transport Agency, provided that the Goods Transport Agency has not availed Cenvat Credit of duty paid on inputs and Capital goods used for providing such services. It is his submission that the Respondent Assessee has correctly paid Service Tax on 25% of the gross amount after availing the abatement of 75%. The GTA had not availed credit on inputs and capital goods and has given a general declaration on the letter-head that credit on input or capital good has not been taken. The Ld. Advocate contends that it is not mandatory to declare or certify on the body of each and every consignment note, issued by the Transport Agency that they have not availed Cenvat Credit.

The Ld. Advocate made the Bench go through the CBEC Service Tax Letter bearing F. No. 137/154/2008-CX.4 dated 21/08/2008 wherein the Board clarifying the earlier Circular No. B1/06/2005-TRU dated 27/07/2005, mentioned that benefit of availment of abatement under Notification No. 32/2004-S.T. be extended to past cases also, if the tax payers produces a general declaration from the GTA to the effect that neither credit on inputs or capital goods nor the benefit of Notification No. 12/2003/ST (Supra) has been taken for provision of outward service.

7. The Ld. advocate strongly contended that the Notification No. 32/2004-ST and 01/2006-ST, do not prescribe any format in which the certificate to the effect of non-availment of Cenvat Credit on inputs or capital goods is to be furnished. Hence, the certificate given by the

GTA on their letter-head is sufficient compliance and Department cannot insist that the declaration/certificate should be on the body of each and every consignment note. In support of his submissions, he relied upon the following decisions:-

(i) Lykes Line Ltd. Vs. CST : 2017 (50) STR 51 (Tri.)

(ii) Prakash Industries Ltd. Vs. CCE : 2015 (40) STR 804 (Tri.)

(iii) IOCL Vs. CCE, 2013 (29) STR 524 (Tri.)

8. Heard both sides and perused the appeal records.

9. We find that the assessee has availed the services of a Goods Transport Agency for transportation of their products to outward destination. They have obtained declaration from the transporter declaring that they have not taken Cenvat Credit of Duty paid on inputs or capital goods or Service Tax on input Service, used for providing the service of GTA under the Cenvat Credit Rules.

We also find that the Adjudicating Authority denied the abatement of 75% on the gross value of GTA service as available under the exemption Notification No. 32/2004-ST. In the present case, the appellant is discharging Service Tax under the Reverse Charge Mechanism, being a recipient of service. The Respondent-Assessee has provided declaration as received from the Goods Transport Agency issued by them on their Letter Head. The Adjudicating Authority discarded the declarations on the ground that the declaration was obtained on the letterhead and not on the body of each consignment note.

10. It is our considered view that the issue is no more res-integra in view of the various decisions of the Tribunal and accordingly, the

benefit of the exemption notification cannot be denied to the assessee. In absence of any particular format prescribed under the respective notification, the Department's insistence for declaration on each consignment note for allowing the abatement under the notification is unsustainable in the eyes of law. On facts and under the circumstances of the case, we hold that the declarations filed by the Goods Transport Agency (GTA) on their letter head certifying that they have not availed Cenvat Credit on inputs or capital goods in availing the benefit under Notification No. 12/2003-ST (Supra), should have been accepted by the Department in extending the benefit Notification No. 32/2004-ST (Supra) and 01/2006-ST (Supra).

11. In view of the above observations, we do not find any reason to interfere with the impugned order and the same is accordingly sustained.

The appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in the open court.)

(BIJAY KUMAR)
Member (Technical)

(P.K. Choudhary)
Member (Judicial)

Pooja