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

<u>S.T.Appeal No.39/08</u>

(Arising out of Order-in-Appeal No.105/CE(A)/GHY/07 dated 20.11.2007 passed by Commr. (Appeals) of Central Excise & Customs, Guwahati)

M/s Kitply Industries Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise, Dibrugarh

Respondent (s)

<u>Appearance</u>:

None for the Appellants(s)
Shri S. Mukhopadhyay, Supdt. (AR) for the Revenue

CORAM:

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

<u>Date of Hearing : 05.12.2018</u>
<u>Date of Decision : 05.12.2018</u>

ORDER NO. FO/A/77056/2018

<u>Per Bench :</u>

The present appeal is against the Order-in-Appeal No. 105/CE(A)/GHY/07 dated 20.11.2007.

2. The appellant is engaged in the manufacture of wood and articles of wood. Their finished products were transported through Goods Transport Agencies to different destination. Since they are making payment of freight for such transportation of goods, the Department was of the view that the appellant will be liable to make payment of service tax under "Goods Transport Agency Services" in terms of Rule 2(1)(d)(iv) read with Rule 6 of Service Tax Rules, 1994. The liability for payment was quantified and demanded from the appellant under

reverse charge basis. The ld.Commissioner (Appeals) upheld the order for payment of service tax, but also imposed penalties. The said order is being challenged in the present proceedings.

3. When the appeal was called, none appeared on behalf of the appellant. Heard Shri S.Mukhopadhyay, ld.D.R. for the Revenue.

4. In the present appeal, the appellant has not seriously disputed their liability for making payment of service tax on reverse charge basis under "Goods Transport Agency Services". They have only submitted that in terms of exemption Notification No.32/2004-ST dated 03.12.2004, they will be entitled to an abatement @ 75% of the freight charges paid to the transport agency. Accordingly, it is submitted that the tax amount of Rs.10,02,672/- along with Education Cess already paid by the appellants will cover the liability for payment of service tax in terms of the impugned order.

5. After going through the records, we note that the appellant will be entitled to get the benefit of abatement in terms of Notification No.32/2004-ST dated 03.12.2004. After extending the benefit of the said Notification, the liability will be only to the extent of 25% of the amount confirmed in the impugned order. We order accordingly.

6. Under the circumstances, we find no justification for imposition of penalty, which is set aside, in terms of Section 80 of the Finance Act, 1994.

7. In the result, the appeal filed by the appellant is allowed.

(Dictated and pronounced in the open court)

Sd/ Sd/

(P.K.Choudhary) **(V.Padmanabhan)**

Member (Judicial) **Member (Technical)**

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