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

Appeal No. ST/203/2009

Arising out of Order-in-Original No. 45/Commissioner/ST/Kol/2008-09 dated 29.01.2009 passed by the Commissioner of Service Tax, Kolkata.

Commissioner of Service Tax, Kolkata.

….Appellant (s)

Vs.

M/s Hindustan Lever Limited

…Respondent (s)

Appearance:
Shri D. Haldar, A. C. (AR) for the Appellant (s)
Shri C. S. Biradar, Advocate for the Respondent(s)

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

Date of Hearing/Decision: - 05.12.2018

Order No…FO/A/77323/2018

Per Shri P. K. Choudhary:

The instant appeal has been filed by Revenue, being aggrieved by adjudication order dated 29.01.2009 passed by the Ld. Commissioner, Service Tax, Kolkata, whereby he has dropped the entire proceedings proposed in the Show Cause Notice dated 13.04.2006 issued for the period from January 2005 to September 2005 for demand of service tax, interest and penalty under the Goods Transport Agency services.

2. Service tax on "Goods Transport Service" was made applicable w.e.f. 1st January, 2005. As per the applicable legal provisions, the services provided by transportation agencies were made taxable in the hands of recipient of services under reverse charge (RCM). The respondent-assessee has duly paid the service tax on transportation

services under reverse charge after claiming the prescribed abatement of 75% on the freight amount. The said abatement is subject to the condition that the transporter has not availed the benefits of CENVAT Credit and Notification No. 12/2003-ST. The assessee has obtained general declaration on the letterheads of the transporting agencies confirming the above compliance, instead of declarations on the consignment notes. Show Cause Notice dated 13.04.2006 was issued to deny the aforesaid abatement of 75%. The Ld. Commissioner on being satisfied with the declarations issued by the transporters (GTA), dropped the entire demand as proposed in the Show Cause Notice.

3. It is the contention of the Department that the assessee should have obtained the requisite declarations from the concerned transporter on the consignment notes itself instead of general declarations on the letter heads. The Ld. Departmental Representative D.R. submitted that the assessee is therefore not entitled to get the abatement of 75% and accordingly prayed for seting aside of the impugned adjudication order passed by the Ld. Commissioner.

4. The Ld. Advocate, Sri C. S. Biradar, appearing for the appellant submits that there is no condition prescribed in the relevant Notifications bearing nos. 32/2004-ST dated 03.12.2004 and 1/2006-ST dated 01.03.2006 to obtain the required declaration on the consignment notes. A general declaration on the letterhead is sufficient to enable the assessee to claim the prescribed abatement. He relied upon the decisions of the Tribunal in the case of IOCL vs. Commissioner of Central Excise, Patna as reported in 2013 (29) STR 524 (Tri-Kol) and Ganesh Cement Pvt Ltd. vs. Commissioner of Central Excise, Allahabad reported in 2018 (12) GSTL 92 (Tri- All).

5. Heard both sides and perused the appeal records.

6. We have perused the above decisions cited by the Ld. Advocate and the relevant notifications prescribing the abatement. The issue is no longer res-integra. We observe that this Bench in the case of IOCL vs. Commissioner of Central Excise, Patna (Supra) held as under:

"6. Further we find that the issue of abatement from the taxable value under Notification No. 32/2004-S.T. or 1/2006- S.T. is no more res integra. This Tribunal in the case of Paliwal Home Furnishing (supra) had observed that the Notification No. 32/2004-S.T. and 1/2006- S.T. do not prescribe any format in which the certificate to the effect of non-availment of Cenvat credit on inputs or capital goods and benefit of Notification No. 12/2003, to be furnished. Hence, the certificates given by the GTA on their letter-heads has been held to be sufficient and the department cannot insist that such certificate should be on each consignment note. Further, in Micromatic Grinding Technologies Ltd. (supra) case, the said view was echoed and this Tribunal at para 7 observed as follows :-"

> *"7. After appreciating the submissions made by both sides, we find that the notification itself nowhere lays down as to how the said declaration are required to be made. It is only by one Board's Circular and clarifications that the Revenue is insisting on making declaration on each and every consignment. Apart from the fact that this is a technical ground, we also note that the GTA providers having made an annual declaration in respect of the consignment, the fact of the same would be as if such declarations have been made in respect of each and every consignment. As such, Revenue's objection that an annual declaration would not serve the purpose, cannot be appreciated."*

7. We are in agreement with the aforesaid judgments. In absence of any particular format prescribed under the respective notifications, the department insisting for declaration, on each consignment note for allowing the abatement under the said Notifications is unsustainable in law. In these circumstances, the declarations filed by the goods transport agencies (GTA) in their letter-heads or in the respective payment bills certifying that they have not availed Cenvat credit on inputs or capital goods nor availed the benefit of exemption Notification 12/2003-S.T., dated 20-6- 2003 should have been accepted by the department in extending the benefit of Notification No. 32/2003-S.T.

and 1/2006-S.T. In view of the above findings, we do not see any merit in the impugned orders passed by the ld. Commissioner. Consequently the orders are set aside and the appeals are allowed."

7. In view of the above legal position as settled by the Tribunal, it is our considered view that the assessee is rightly entitled for abatement, since the required declarations have been submitted on the letterheads by the Transporters and that there is no legal requirement to submit the declarations on the consignment notes which is not issued by the transporters in assessee's case. Even otherwise, we find that the non-submission of declaration on the consignment notes is a procedural lapse and would not result in denial of substantive benefit to the assessee.

8. In view of the above discussions, the impugned order passed by the Ld. Commissioner allowing the abatement is legal and is therefore sustained. The instant appeal filed by the Revenue is rejected being devoid of any merit.

(Dictated and pronounced in the open court.)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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