

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76793 of 2019

(Arising out of Order-in-Appeal No.25/S.Tax-II/Kol/2019 dated 08/04/2019 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.)

M/s. Jekay International Track Pvt. Ltd.
(2, Hare Street, Nicco House, 3rd Floor, Kolkata-700001)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Howrah
Commissionerate**
(Customs House, 15/1 Strand Road, Kolkata-700001)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75957/2023

Date of Hearing : 05 July 2023

Date of Decision : 05 July 2023

PER R. MURALIDHAR

No one has appeared on behalf of the Appellant. As the matter pertains to the dispute arising in 2005-06, I have taken up the Appeal for disposal with the help of the Learned AR.

2. After perusing the documents and submissions made by the Learned AR, I find that the issue lies in a very narrow compass. The Appellant is the recipient of Goods Transport Agency Services. Show Cause Notice was issued to the Appellant on the ground that on gross value of freight of Rs.4,18,845/- they are required to pay Service Tax of Rs.41,884/-. The Appellants have submitted that they are required to pay Service Tax after taking the abatement of 75% from the gross value. Accordingly, after taking the abatement of 75%, on the balance 25% gross value, the Appellants have already paid Service Tax of Rs.26,564/- in the normal course during the period 2005-2006. The Adjudicating Authority has noted this fact and in the OIO he has

Service Tax Appeal No. 76793 of 2019

appropriated the amount of Rs.26,564/- paid by the Appellant. However, he has confirmed the balance demand of Rs.16,158/- along with interest and also imposed penalty of Rs.42,722/-. Being aggrieved, the Appellant has filed an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) has given a finding that the Appellant has not brought in any evidence to the effect that no Cenvat Credit was availed by the transporter. But he has made a note that the Appellant has submitted a Xerox copy of the declaration made by M/s Vivekanand Roadlines stating that no Cenvat Credit was taken by them.

3. It has been consistently held by various co-ordinate Benches of this Tribunal that the condition specified is by way of CBEC Circular and is not a mandatory condition specified under any Notification. Hence, non-production of certificate of the transporter will not deprive the Appellant from the benefit of abatement of 75%.

4. The Ahmadabad Tribunal in the case of Commr. of S.T., Ahmedabad Vs. M/s Cadila Pharmaceuticals Ltd-2010 (18) S.T.R.611 (Tri. Ahmd.) has held as under:-

4. We have considered the submissions. Notification No. 32/2004-S.T., dated 3-12-04 provides for abatement of 75% of the gross amount charged from the customer for the purpose of calculating the liability of service tax subject to the condition that the no Cenvat credit has been availed and benefit of Notification No. 12/2003-S.T., dated 20-6-03 has not been availed. The respondents are paying the service tax as per the reverse charge mechanism and the relevant notification whereby the service receiver is liable to pay the tax. The question to be decided is that how exactly it should be determined as to whether the conditions are fulfilled. The Board had clarified that the endorsement has to be made on the consignment note. Further, we have to take note of the fact that the notification, as such, does not stipulate any such condition. Notification requiring the receiver of the service to pay the tax also does not stipulate any such condition. Therefore, the requirements prescribed by the Board as per circular cannot be mandatory and cannot be used

Service Tax Appeal No. 76793 of 2019

for denying substantive rights. It is not the case of the Revenue that the appellants have not received the service or service tax has not been paid. Therefore, we find that the Commissioner's order is just and fair and does not require any interference. Further, as rightly pointed out, in the absence of an appeal against the Tribunal's order, remanding the matter for verification of evidence, that order becomes final and Revenue cannot be challenge the impugned order, ignoring the remand order. [Emphasis Supplied]

5. In the case of Aarti Industries Ltd. Vs. CCE, Surat-2012 (26) S.T.R. 154 (Tri.-Ahmd.), the Tribunal has held as under:-

2. The learned counsel submits that the decision has been taken on the basis of the circular issued by the Board No. B1/6/2005-TRU, dated 27-7-2005 wherein the service providers of GTA services were informed that they should indicate in the consignment note itself whether cenvat credit on input/capital goods has been taken and whether the benefit of Notification. No. 12/2003 has been taken or not. Based on the declaration that such benefit has not been availed, it was observed that the receivers of service can avail the abatement of 75% from the value of service received for the purpose of payment of service tax. Admittedly in this case, such declarations were not available and the period involved is January 2006 to May 2006. The learned counsel relies upon the decision of the Hon'ble High Court of Gujarat in the case of C.C.E. & S.T. v. Neral Paper Mills (P) Ltd. reported in 2010 (20) S.T.R. 601 (Guj.) to submit that it is not mandatory that such declaration is required to be made in the consignment note since the requirement is not mentioned in the Notification No. 32/04-S.T. and the circular cannot put additional conditions which are not part of the notification. In the case cited by the learned counsel, the Hon'ble High Court has upheld a view taken by the Tribunal that in the absence of specific condition in the notification, substantive benefit cannot be denied by issue of a circular prescribing additional conditions. Since the issue is already decided by the Hon'ble High Court of Gujarat in favour of the appellants

Service Tax Appeal No. 76793 of 2019

and I find the issue involved in this case also is the same, I allow the appeal with consequential relief to the appellant. [Emphasis Supplied]

6. As the issue involved in the present case is identical, I set aside the impugned OIA and allow the Appeal filed by the Appellant with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja