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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 71178 of 2013

(Arising out of Order-in-Appeal No. 58/ST/B-I/2013 dated 28.06.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Suburban Industries Limited **: Appellant**
Chandaka Industrial Estate Complex,
Sector-B, PO-KIIT,
Bhubaneswar – 751 024

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007

APPEARANCE:

Smt. Shreya Mundhra, Advocate
along with Shri Jnanesh Mohanty, Advocate
for the Appellant

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

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75252 / 2024

DATE OF HEARING / DECISION: 20.02.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order demanding Service Tax under Section 73(1) of the Finance Act, 1994 by denying the benefit of Notification No. 12/2003-S.T. dated 20.06.2003.

2. The facts of the case are that the appellant is engaged in the activity of manufacture of LPG Gas Cylinders and are also engaged in the activity of repair

and maintenance of LPG Gas Cylinders. The issue pertaining to this appeal relates to repair and maintenance of LPG Gas Cylinders during the period from July 2003 to March 2005. The appellant was undertaking the activity of repair and maintenance of gas cylinders by using various inputs for such repair and maintenance. They availed CENVAT Credit thereon and also availed the benefit of Notification No. 12/2003-S.T. dated 20.06.2003 and paid the Service Tax.

3. During the course of investigation, it was found that the materials viz., paints, MS Rings, HR Stripes, etc., were procured by the appellant for their manufacturing activity but the said inputs were used for repair and maintenance and that the appellant had availed CENVAT Credit on paints, etc., and also availed the benefit of Notification No. 12/2003-S.T. dated 20.06.2003. Therefore, demand has been raised against the appellant by denying the benefit of Notification No. 12/2003-S.T. dated 20.06.2003.

4. The appellant reversed the proportionate CENVAT Credit attributable to the materials used in the activity of repair and maintenance, but without considering the same, Show Cause Notice dated 06.11.2007 was issued to the appellant, proposing to demand Service Tax for the period from July 2003 to March 2005, by denying the benefit of Notification No. 12/2003-S.T. dated 20.06.2003.

5. The matter was adjudicated and the demand of Service Tax was confirmed. Aggrieved from the said demand, the appellant is before us.

6. Heard the parties and perused the records.

7. We find that in this case, the appellant has already reversed the CENVAT Credit attributable to inputs used for their activity of repair and maintenance, namely, paints, rings, etc., on 03rd October, 2006. In these circumstances, the Show Cause Notice was not required to be issued to the appellant, and by reversal of CENVAT Credit, the appellant is entitled to claim the benefit of Notification No. 12/2003-S.T. dated 20.06.2003.

8. In the circumstances, we hold that the impugned demands are not sustainable against the appellant. Accordingly, the same are set aside.

9. In the result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd