

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA
Court No.1**

Service Tax Appeal No.75111 of 2017

(Arising out of Order-in-Appeal No.64/SLG-ST/2016 dated 27.09.2016 passed by Commissioner of CGST & Central Excise (Appeals), Kolkata)

M/s Pataka Industries Private Limited
(Vill.-Sultanganj, PO-Kaliachak, Dist.-Malda, Pin-732201)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Siliguri
(C.R.Building, Hakimpara, Haren Mukherjee Road, Siliguri)

Respondent

Appearance:

Shri N.K.Chowdhury, Advocate for the Respondent
Shri A.Mukherjee, Authorized Representative for the Appellant

CORAM:

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

DATE OF HEARING : 20 FEBRUARY 2026
DATE OF DECISION : 20 FEBRUARY 2026

FINAL ORDER NO.75282/2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order demanding service tax and penalty imposed on the appellant.

2. The facts of the case in brief are that the appellant was engaged in the manufacture of Bidi. They were paying service tax on the GTA services availed by them. During the period from January, 2005 to March, 2006, the appellant had paid the service tax on the 25% of the freight charges. Department, on scrutiny of the records of the appellant, found that they were paying service tax on the 25% of the total freight charged by the Goods Transport Agencies but they did not submit the declaration of the transporter that they did not avail the credit on the inputs or capital goods for providing GTA service and

Service Tax Appeal No.75111 of 2017

they did not avail the benefit of Notification No.12/2003-ST dated 20.06.2003.

2.1 A proceeding was initiated by issuing a Show Cause Notice dated 06.02.2007 claiming the differential service tax for the period from January, 2005 to March, 2006 since the appellant did not produce any declaration given by the transport agencies.

2.2 The appellant submitted the reply to the said Show Cause Notice annexing the certificates given by the transporters and prayed for dropping the proceedings.

2.3 The Adjudicating Authority dropped the demand for the period from January, 2005 to August, 2005 since the appellant had submitted general declaration in terms of the Circular No. B1/6/2005-TRU dated 27.07.2005 and Clarifications vide F. No.137/154/2008-CX.4 dated 21.08.2008 but denied the benefit of abatement for the period from July/August, 2005 to March, 2006 on the ground that the abatement cannot be allowed on the basis of general declaration.

2.4 Accordingly, the appellant filed an appeal before the Commissioner (Appeal), who upheld the order of the Adjudicating Authority.

2.5 Bearing aggrieved with the said order, the appellant is before us.

3. The Id.Counsel appearing on behalf of the appellant submits that the order passed by the authorities below cannot be maintainable in law in view of the fact that Notification No.32/2004-ST dated 03.12.2004 provides for payment of service tax after abatement of 75% subject to fulfilment of some conditions. In the present case, the conditions have been fulfilled by producing the certificates from the

Service Tax Appeal No.75111 of 2017

transporters by the appellant. The general certificates of the transporter would be sufficient for allowing the benefit of abatement. The said issue came up for consideration before the Tribunal on different occasions when the Tribunal held that the appellant was not required to produce any certificate since the appellant was the deemed provider of Goods Transport Agency and he cannot take credit on inputs or capital goods for providing GTA certificates. The abatement cannot be denied. The Tribunal has also held that general certificate of GTA would be sufficient for availing abatement of 75% of the freight charges for payment of service tax. Therefore, the question of making payment of differential duty does not and cannot arise. Consequently, charging of interest and imposition of penalty also does not arise.

3.1 He also submits that the demand is also barred by limitation. The period of dispute in this case is from January, 2005 to March, 2006 and the case has been emanated from scrutiny of Service Tax Returns and the question of suppression of fact with intent to evade tax does not and cannot arise. Therefore, extended period of limitation also cannot be invoked in this case. To support of his contention, he relies on the following case laws :

(i) Gangesh Cement Pvt. Ltd. -Vs-Commissioner of Central Excise, Allahabad 2018 (12) GSTL 92 (Tri.- All.) ;

(ii) Lykes Line Ltd. -Vs-Commissioner of Service Tax, Mumbai-1 2017 (50) STR 51 (Tri.- Mumbai) ;

Service Tax Appeal No.75111 of 2017

(iii) Indian Oil Corporation Ltd. -Vs-Commissioner of C. Ex.,
Mumbai-II 2011 (22) STR 282 (Tri.-Mumbai) ;

(iv) Commissioner of C. Ex., Rajkot -Vs-Sunhill Ceramics Pvt.
Ltd. 2008 (9) STR 530 (Tri.- Ahmd.) ;

(v) Paliwal Home Furnishing -Vs-Commr. of Service Tax, Delhi
2011 (22) STR 531 (Tri.- Del.) ;

(vi) Indian Oil Corporation Ltd. -Vs-Commissioner of C. Ex.,
Patna 2013 (29) STR 524 (Tri.- Kolkata) ;

(vii) Commr. of S.T., Abmedabad Vs. Cadila Pharmaceutical Ltd.
2010 (18) STR 611 (Tri. - Ahmd.).

4. The Id.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the denial of the abatement of 75% to the appellant is only on the basis of that there was a general certificate produced by the appellant for abatement. Therefore, the issue that arises is whether on the basis of the general declaration in respect of the goods transport agency services provided by the transporter, the benefit of abatement of 75% can be given to the appellant or not ?

7. The said issue has been examined by this Tribunal in the case of Lykes Line Ltd. Vs. Commissioner of Service Tax, Mumbai I reported in 2017 (50) STR 51 (Tri.-Mumbai), wherein this Tribunal has observed as under :

"5. We find that the lower authorities have denied the Exemption Notification 32/2004-S.T. which provides 75% abatement on the gross value of the GTA service for discharging the service tax. In the present case, the appellant is discharging

Service Tax Appeal No.75111 of 2017

service tax on reverse charge basis as a recipient of service. Firstly, the condition if any imposed on goods transport agency cannot be practically complied with by the recipient of service. Secondly, the department could not prove that the goods transport agency has availed the benefit of Cenvat credit and Notification 12/2003-S.T. The Notification does not provide any condition that any declaration as sought by the department is required to be obtained from the goods transport agency and produce to the department in order to avail the Exemption Notification. Therefore, the Board circular which prescribes the procedure for obtaining the declaration, is not flowing from the Notification. In our view, the Board cannot prescribe any condition or procedure for availing any Exemption Notification. If at all any procedure is required, it should be part and parcel of the Notification, which is not the case here. In the present case, the appellant had provided a declaration from the goods transport agency on their letterhead. It is very surprising to note that the lower authority has discarded the said certificate merely on the ground that the declaration was obtained on the letterhead and not on each consignment note. Once a transport agency gives the declaration that they are not availing the Cenvat credit, that means they are not availing Cenvat credit in all the transactions. Therefore, individual consignment need not bear such declaration. As per the above position, we are of the considered view that the ground on which the Exemption Notification was denied to the appellant is absolutely incorrect. Therefore, the Exemption Notification cannot be denied. As per the judgments cited by the learned counsel, the issue is squarely covered by various judgments. We, therefore, set aside the impugned order and allow the appeal with consequential relief."

Service Tax Appeal No.75111 of 2017

8. The same view has been taken by this Tribunal in the case of Ganesh Cement Pvt. Ltd. (Supra).

9. As the issue is no more *res integra*, therefore, we hold that the appellant has correctly availed the abatement of 75% of the service tax payment for goods transport agency services on the basis of the declaration given by the transporters. Therefore, we do not find any merit in the impugned order, accordingly, the same is set aside and no demand is sustainable against the appellant.

10. In view of this, we allow the appeal filed by the appellant.

(Operative part of the order was pronounced in the open Court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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