IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. ST/89883/2014

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/133/14-15 passed by the Commissioner of Customs & Central Excise, Nagpur

M/s. Jayaswal Neco Industries Ltd. : **Appellant**

VS

Commissioner of Central Excise, Nagpur : **Respondent**

Appearance

Shri P.V. Sadavarte, Advocate for Appellant

Shri Vivek Dwivedi Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 12/04/2018
Date of pronouncement : 18/05/2018

ORDER NO. A/86451/2018

Per : Ramesh Nair

The issue involved in the present case is whether the appellant is liable to pay the service tax on renting of immoveable property.

2. Shri P.V. Sadavarte, Ld. Counsel appearing on behalf of the appellant submits that the appellant are engaged in providing the services in respect of GTA service on reverse charge mechanism and renting of part of the premises of their office building. He submits that the demand was raised for 5 years i.e. from 2007-08 to 2011-12. In every financial year the total amount of rent received is below Rs.4

lakhs therefore they are entitled for the exemption notification No.6./2005-ST dt.1.3.2006, therefore the demand is not sustainable.

3. Shri Vivek Dwivedi, Ld. Assistant Commissioner (A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order. He further submits that the appellant is not engaged in only providing renting of immoveable property service but they are deemed service provider in respect of GTA service on reverse charge mechanism therefore taking into account total value of GTA service and service of renting of immoveable property, the appellant is not eligible for exemption notification No. 06/2005-ST.

4. We have carefully considered the submissions made by both the sides. We find that as per the orders of the lower authority the demand was confirmed/upheld on the renting of immoveable property service for the period 2007-08 to 2011-12. We observed that the gross value received towards renting of immoveable property service are as under:

Period	**Income Received**
2007-08	394500
2008-09	214788
2009-10	138000
2010-11	138000
2011-12	144050

From the above it can be seen that in each year the total receipt of service charges is less than Rs.4 lakhs therefore the appellant is clearly eligible for exemption Notification No. 6/2005-ST. As regard the contention of the Revenue that the value of GTA service to be included in the aggregate value. We find in the notification No. 6/05-

ST dt. 1.3.2005 regarding determining the aggregate value it is provided in following para which is reproduced below:

> *"3. For the purposes of determining aggregate value not exceeding four lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying service tax is as specified under subsection (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account. Explanation.- For the purposes of this notification,- (A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person; (B) "aggregate value not exceeding four lakh rupees" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to four lakh rupees but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification."*

From the above para 3 of the notification, it is clear that for calculating the aggregate value of threshold limit of Rs.4 lakhs, the value of goods transport agency service for which the person liable of paying the service tax shall not be taken into account. In this position the only value of renting of immoveable property shall be taken into account for the purpose of exemption limit. Therefore appellant is clearly entitled for the exemption Notification No. 6/05-ST. Consequently the demand of service tax is not sustainable. The impugned order is set aside. The appeal is allowed.

(Pronounced in court on 18/05/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.