IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/89657/2013

[Arising out of Order-in-Appeal No: NSK-EXCUS-000-255-13-14 dated 30/08/2012 passed by the Commissioner of Central Excise & Customs (Appeals), Nashik.]

Basic Arch Products Pvt. Ltd …***Appellant***

versus

Commissioner of Central Excise & Customs
Nasik ***…Respondent***

Appearance:

Shri Vidyadhar Apte, Advocate for appellant

Shri V.R. Reddy, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 27/12/2017
Date of decision: 27/12/2017

ORDER NO: A/92291 / 2017

Per: M V Ravindran:

This appeal is directed against Order-in-Appeal No: NSK-EXCUS-000-255-13-14 dated 30/08/2012 passed by the

Commissioner of Central Excise & Customs (Appeals), Nashik.

2. Heard both the sides and perused the records.

3. On perusal of the records, it transpires that the issue is regarding demand of service tax for the period 2007-08 to 2010-11 in respect of service tax liability on ‘erection, commissioning and installation service’, ‘business auxiliary services’ and ‘GTA services’. Both the lower authorities have held that the services are liable to be taxed.

4. Learned Counsel, after taking us through the entire case records, submits that, their appeal is only towards the service tax liability confirmed against them in respect of ‘erection, commissioning and installation service’ wherein the lower authorities had not given the benefit of Notification No.1/2006 dated 01/03/2006 in respect of flanges, locks, screws, nuts, bolts, wooden supports like angles, channels, etc. which were supplied. It is also the submission that the service tax liability on the ‘business auxiliary service’ and ‘GTA services’ needs to be reworked as the entire tax liability was calculated on the gross amount and the benefit of cum-tax price was not extended.

5. Learned Authorised Representative reiterates the findings of the lower authorities.

6. On careful consideration of the submissions, we find that the first appellate authority in the impugned order in respect of ‘business auxiliary service’ and in ‘GTA service’ has clearly recorded detailed findings as to why the claim of cum-tax benefit should not be extended to them and the first appellate authority has stated that the tax liability on GTA service was found correct and it was discharged and in the case of ‘business auxiliary service’ the contract indicated that the said amount was received without considering service tax liability.

7. We do not find any reason to look into the aspects as claimed by the Learned Counsel. As regards service tax liability on ‘erection, commissioning and installation service’ we find that for the benefit of Notification No. 1/2006 is available to the appellant but he has not produced any evidence before the lower authorities as well as before the Tribunal to come to a conclusion that abatement as provided in the notification needs to be extended. The evidences which are contemplated in the notification are inputs issued for providing of service. In the absence of any such evidence, we hold that the tax liability as fasten by the lower authorities is correct.

8. As regards the penalty imposed, we find that the appellant being under the *bonafide* belief that they are eligible for the benefit of Notification No. 1/2006 could have misconstrued the provisions and hence did not discharge the tax liability. In our considered view, the penalty imposed on the appellant needs to be set aside by invoking the provisions of Section80 of the Finance Act, 1994.

9. The appeal stands disposed of as indicated herein above.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

(M V Ravindran)
Member (Judicial)

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