IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. ST/86342/2013

(Arising out of Order-in-Original No. 12/ST/2012 dated 24.12.2012 passed by Commissioner of Central Excise & Customs, Nashik)

Hindustan Aeronautics Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Nashik **Respondent**

Appearance:

Shri Lokmohan Hota, C.A., for appellant
Shri M.K. Sarangi, Joint Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 1.3.2018
Date of Decision: ______.2018

ORDER No. **A/86655/2018**

Per: Ramesh Nair

The Present appeal has been filed against impugned Order-in-Original dt. 24.12.2012 passed by the Commissioner, Central Excise, Nashik. The brief facts of the case are that Appellant had provided Management, Maintenance or Repair Service to Indian Air Force (IAF) and are also supplying materials along with the said services. The said material was purchased from the vendors or from the IAF store and supplied alongwith service. The Appellant were availing the benefit of Notification No. 12/2003-ST dt. 20.06.2003 on the services provided to IAF. They were issued show cause notice alleging that they were recovering more amount than the acquisition cost of the material used in providing the said service to the IAF i.e by adding 10% profit on the value of material. That the Appellant are eligible for the exemption under Notification No. 12/2003 – ST dt. 20.06.2003 to the extent of the acquisition cost of the goods and materials procured by them for providing service to the IAF. They have not added the 10% profit/ profit in the taxable value and has thus contravened the provisions of Section 67 of the Finance Act, 1994. The Show cause notice proposed to deny benefit of exemption Notification No. 12/2003-ST to the extent of 10% profit element on material by demanding Service Tax of Rs. 6,45,37,011/- under section 73 (2) Finance Act, 1994 alongwith interest and penalty under Section 78 of the Finance Act, 1994. The demand was confirmed and penalty was imposed by the impugned order. Hence the present appeal.

2. Shri Lokmohan Hota, ld. CA appearing for the Appellant submits that Notification No. 12/2003-ST speaks of 'Value of materials' and not 'cost of materials', hence the Value of material includes the element of Profit. That they have maintained proper records and fulfilled conditions of the said Notification. He also submits that the service tax is not paid

on material value and profit in respect of materials drawn from IAF stores as the same is deducted from invoice value for the purpose of claiming net amount against the service provided. He also relied upon the judgments in their own case of Hindustan Aeronautics Ltd. 2010 (17) STR 249 (TRI) and other favourable orders in similar controversy in case of M/s Agarwal color advance photo (2010 (19) STR 181) (Tri.-Del), Chakita Ranjini Udyam (2009 (16) STR 172) (Tri.-Bang.) Jamshedpur Contractor's Association (75 STC 132), BSNL and another (2006(2) STR 161) (SC), Gujarat Ambuja Cements Ltd. (2005(4) SCC 214) (SC).

3. Shri M.K. Sarangi, Ld. Assistant Commissioner (A.R.) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have gone through the submission made by both the sides and records of the case. We find that the Appellant is showing the values of raw materials and labour separately in their invoices. They also pay VAT/ Sales Tax as may be applicable on such value of material. In such case there is no reason to demand service tax on 10% profit or profit on which material is sold by them. The issue involved already stands settled in favour of Appellant in case of Hindustan Aeronautics Ltd. Vs. Commissioner of Service Tax 2010 (17) STR 249 (TRI) and Hindustan Aeronautics ltd. Vs

Commissioner of Service Tax, Bangalore 2014 (34) S.T.R. 874 (Tri. - Bang.). In view of our above observation and findings we hold that the impugned demand and penalty imposed against the Appellant are not sustainable. We therefore set aside the impugned order. The appeal is allowed with consequential relief, if any.

(Pronounced in court on _______.2018)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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