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

APPEAL No. ST/89896/2013

(Arising out of Order-in-Appeal No. SK/263/RGD/2013-14 dated 30.9.2013 passed by Commissioner of Central Excise (Appeals-II), Mumbai)

Cemacon Associates **Appellant**

Vs.

Commissioner of Central Excise, Raigad **Respondent**

Appearance:

None for appellant
Shri Dilip Shinde, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 18.6.2018
Date of Decision: 18.6.2018

ORDER No. **A/86761/2018**

Per: Dr. D.M. Misra

None present for the appellant despite notice nor there is any request for adjournment. Heard the learned AR for the Revenue.

2. The short issue involved in the present appeal is whether the appellant is entitled to the benefit of exemption Notification No.1/2006-ST dated 1.3.2006.

Learned AR for the Revenue brought to our notice that while availing the benefit of Notification No.1/2006-ST, the appellant has simultaneously availed cenvat credit on input/input services in providing output service. He submits that since the condition of the notification is violated, therefore the appellant is not eligible for the benefit in discharging the service tax liability availing the abatement prescribed thereunder. Also, he submits that neither before the Ld. Commissioner (Appeals) nor before this Tribunal, they produced any evidence substantiating their claim that they have not availed cenvat credit on inputs/input services and accordingly would be eligible to the benefit of Notification No.1/2006-ST dated 1.3.2006.

3. We find from the records that the appellant had undoubtedly availed benefit of abatement under Notification No.1/2006-ST dated 1.3.2006 in discharging the service tax liability and also simultaneously availed cenvat credit on input/input services in providing the output service. It is the condition of the said notification that abatement as well as benefit of cenvat credit cannot be availed simultaneously. In absence of evidence that the appellant had not availed cenvat credit on input/input services used in or in relation to providing output

services, the benefit of abatement under Notification No.1/2006-ST dated 1.3.2006 cannot be extended.

4. In the result, the impugned order is upheld and the appeal is dismissed.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

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