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

Appeal No. ST/89036/2014

(Arising out of Order-in-Appeal No. AV(74)56/2014 dated 19.5.2014 passed by the Commissioner of Central Excise & Service Tax (Appeals), Aurangabad).

M/s Nilesh Fabrication & Engineering Services	Appellant

Vs.

Commissioner of Central Excise & Service Tax, Aurangabad	Respondent

Appearance:

None (Adjn. Request)	for Appellant
Shri M. Suresh, D.C. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 28.06.2018

Date of Decision: 28.06.2018

ORDER NO. **A/86912 / 2018**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. AV(74)56/2014 dated 19.5.2014 passed by the Commissioner of Central Excise & Service Tax (Appeals), Aurangabad.

2. Briefly stated facts of the case are that the appellants are engaged in providing taxable services under the category of

Maintenance or Repair service and Erection, Installation and Commissioning service during the relevant period. In providing taxable services, the appellant has used various inputs namely, Part of Boilers, ERW Tubes, Steel Tubes, Pipes, Flanges etc. which required for installation and maintenance service, on which they availed CENVAT Credit. Also the appellant had availed benefit of exemption under Notification No. 12/2003-ST dated 20.6.2003 in discharging Service Tax in providing the aforesaid services. Alleging that since the appellant had not complied with the conditions of Notification No. 12/2003-ST dated 20.6.2003, a show-cause notice was issued to them for recovery of Service Tax of Rs.10,48,721/- not paid during the said period. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed an appeal before the Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. None present for the appellant. Heard the learned AR for the Revenue.

4. The learned AR for the Revenue submitted that the learned Commissioner (Appeals) in the order has categorically recorded that since the appellant had availed the CENVAT Credit on the inputs utilized for providing taxable output services and without reversing the same, they could not avail the benefit of exemption Notification No. 12/2003-ST dated 20.6.2003. He submits that even though in their grounds of appeal, the appellant had claimed that they have included the value of components/equipment used for providing output service in the

gross taxable value and discharged Service Tax on the same, but no evidence has been brought before the authorities below nor the said ground was raised earlier. Also, no evidence has been produced before this Tribunal in this regard.

5. We have carefully considered the grounds of appeal and the submissions advanced by the learned AR for the Revenue.

6. A limited issue for determination in the present appeal is whether the appellant is entitled to benefit of Notification No. 12/2003-ST while computing the value of taxable services which were rendered by the appellant during the relevant period. It is not in dispute that the appellant had provided Repair & maintenance service and erection, installation and commissioning services during the period from October, 2007 to March, 2009. Also, it is not in dispute that components, parts or raw materials were used in providing the outputs service and they had been availed credit on the same and utilized it in discharging the Service Tax liability. In this background, the Revenue denied the benefit of Notification No. 12/2003-ST dated 20.6.2003 on the value of the raw materials that were utilized in providing the output services while computing the gross taxable value of the services provided, as the condition of the notification not satisfied. The said relevant Notification No. 12/2003-ST reads as follows: -

> **"Valuation (Service Tax) — Goods and materials sold by service provider to recipient of service — Value thereof, exempted**
>
> In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, as is equal to the value of goods and

> materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.
>
> This notification shall come into force on the 1st day of 2. July, 2003"

A plain reading of the above notification makes it crystal clear that to avail the benefit of the said notification, the assessee should not avail the credit on the inputs/raw materials used in providing the output services. Even though the appellant in the grounds of appeal, claimed that the value of the components/ parts etc. have been included in the value of taxable services, however, no evidence has been produced in this regard.

7. In these circumstances, we do not find any discrepancy in the impugned order of the learned Commissioner (Appeals). Consequently, the appeal being devoid of merit is dismissed.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

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

Sinha