CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

SERVICE TAX APPEAL NO: 86369 OF 2017
WITH
SERVICE TAX APPLICATION (MISC) NO: 87023 OF 2025
(on behalf of appellant)

[Arising out of Order-in-Appeal No: PK/ST-I/MUM/91/16-17 dated 31/01/2017 passed by the Commissioner of Service Tax (Appeals – I), Mumbai.]

Naafe Construction
3rd Floor, MHYN House, N-9 Ghodhari Street
Python, Mumbai – 400 003 ... ***Appellant***

versus

Principal Commissioner of CGST
GST Bhavan, 115 Maharshi Karve Road
Churchgate, Mumbai - 400020 ***...Respondent***

APPEARANCE:

Shri SS Gupta, Chartered Accountant for the appellant

Shri SBP Sinha, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO: 85859/2026

DATE OF HEARING: 15/05/2026
DATE OF DECISION: 15/05/2026

PER: S.K. MOHANTY

Miscellaneous application filed by the applicant-appellant, seeking change of name of the respondent in the cause title to the appeal is allowed.

2. Heard both sides and examined the case records.

3.1 Denial of the benefit of abatement provided under Notification No. 1/2006-S.T. dated 1st March 2006, is the subject matter of present dispute.

3.2 The appellant herein is a contractor, engaged in the activities of civil construction and for that purpose got itself registered with the jurisdictional service tax authorities under the category of 'construction of commercial complex' services. During the disputed period, the appellant had undertaken the civil construction work for M/s Lotus Enterprise in respect of a building in Mumbai. The said work involved supply of material as well as provision of labour. As a service provider, the appellant had claimed abatement as per Notification No. 1/2006-S.T. dated 1st March 2006, and accordingly had paid service tax on 33% of gross value. The benefit provided under the said notification is not available, in the eventuality where the CENVAT credit of central excise duty paid on inputs and capital goods and service tax paid on input services were taken by the assessee. It is an admitted fact that the appellant had availed the CENVAT credit on the inputs and input services, but subsequently reversed the same in their books of accounts and also paid the interest on such delayed reversal of the CENVAT credit. However, the adjudicating authority in the impugned order dated 16/11/2011 has denied the benefit of abatement provided under the said notification on the ground that the appellant had availed CENVAT credit in respect of the capital goods, inputs and input services and thus, the abatement of 67% is not available and the appellant should be liable for payment of service tax on the entire value of taxable service provided by them.

3.3 The appellant has contended that though it had availed CENVAT credit on the input and input services, but in order to get the benefit under the Notification dated 1st March 2006, it had reversed the CENVAT credit and also paid interest attributable to delay in reversal of such CENVAT credit. Thus, it was contended that in such circumstances, where the CENVAT credit was reversed and the amount of interest was paid, it would be considered as if no CENVAT credit was availed. To support the stand that the benefit of abatement as per the notification dated 1st March 2006 is available, the appellant has relied upon the order of the Co-ordinate bench of the Tribunal passed in the case of *Old World Hospitality Ltd v. Commissioner of Service Tax, New Delhi [2017 (3) GSTL 178 (Tri.-Del.)].*

4. We find that the Department in this case had not specifically objected to the fact that CENVAT credit availed by the appellant was not subsequently reversed by them and the interest attributable to such delayed reversal was not paid by the appellant. Therefore, we are of the view that benefit of Notification No. 1/2006-S.T. dated 1st March 2006 should be available to the appellant for claim of abatement of service tax of 67% and on the balance 33% of the gross value, they are liable to pay service tax. We find that this particular issue has been dealt with by the Co-ordinate bench of the Tribunal in the case of *Old World Hospitality Ltd (supra).* The relevant paragraph recorded in the said order is reproduced below:

> *"10. Regarding the eligibility of the appellant for abated service tax liability for Mandap Keeper service in terms of the Notification No. 1/2006-S.T., admittedly, the appellant availed Cenvat credit during the material time. However, we note that the appellants have reversed the whole of the Cenvat credit availed during the material time along with applicable interest. We also note that the Cenvat credit availed was recorded in the original order but at that time, reversal was not made by the appellant. They have made the reversal of availed credit along with applicable interest on 20-9-2013. Following the ratio of the Hon'ble Supreme Court in Chandarpur Magnet (supra) and Hon'ble Allahabad High Court in Hello Mineral Water Pvt. Ltd. (supra) and the Tribunal's decision in Franco Italian Co. Pvt. Ltd., we find that the appellant is eligible for abated rate of duty as they have reversed the Cenvat credit availed during the material time, fully. As such, the bar on claiming on such exemption is no more applicable. Accordingly, we hold that the impugned order of denial of exemption is to be set aside."*

5. In view of the foregoing discussions, we do not find any merits in the impugned order and therefore, the same is set aside and the appeal is allowed in favour of the appellant.

(Dictated and Pronounced in Open Court)

(S.K. MOHANTY)
Member (Judicial)

(M.M. PARTHIBAN)
Member (Technical)

**/as*