(2015) 03 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal Nos. 1518, 1520 Of 2011

C.C.E. And S.Tax (LTU), Delhi APPELLANT

Vs

Whirlpool of India Ltd. RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2, 2(1), 2(p), 14
Finance Act, 1994 — Section 73

Citation : (2015) 03 CESTAT CK 0007

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Devender Singh, Tarun Gulati, Kishore Kunal

Final Decision : Dismissed

Judgement

1. Revenue has filed these appeals against the Order-in-Original No.31/ Comm/2011 dated 31.3.2011 and Order-in-Original No.32/Commr./2011 dated

31.3.2011 in terms of which demands of Rs.42,46743/- and Rs.21,73,119/- raised on the ground that Cenvat credit of the service tax under GTA paid

by the respondents was not admissible to them were dropped on the ground that the GTA service (on which service tax was paid) was clearly an

input service as it was in relation to transport of goods upto the respondent's depot and vide CBEC Circular No.97/8/2007-ST, dated 23.8.2007, the

impugned credit was admissible.

2. Revenue has essentially contended that (i) in view of amendment to Rule 2(1) and 2(p) of Cenvat Credit Rules, 2004 as amended by Notification

No.10/2008-CE(NT), dated 1.3.2008, credit of service tax paid on GTA service is admissible only upto the place of removal of final goods and that it

is also obligated that payment of service tax on GTA services cannot be made through Cenvat Credit Account as GTA service has been taken out of

specified services designated as 'output service' as per Notification No.13/2008-ST, dated 1.3.2008.

(ii) The order-in-original under reference does not reveal as to whether the adjudicating authority had caused any verification to ascertain that the

respondents had availed credit in respect of finished goods only upto the place of removal and not beyond that point.

3. The respondents stated that show cause notice does not reveal as to on what basis the amount of cenvat credit of service tax paid on GTA service

was sought to be denied and that they had consistently asserted that service tax on GTA was paid by them for transportation of their final product

upto their depot which is the place of removal. They also referred to the judgment of C.C.E., LTU, Chennai vs. Areva T & D (I) Ltd. - 2011 (267)

ELT 552 (Tri-Chennai) wherein it was essentially held that Committee of Chief Commissioners cannot authorize filing of appeal without coming to

conclusion based on their verification that the order was not legal and proper and by merely noting that the grant of abatement was without

verification.

4. Ld. A.R. for Revenue reiterated the grounds of appeal.

5. We have considered the contentions of both sides. At the very outset, it must be stated that in the show cause notice or in the impugned order-in-

original, the manner of payment of GTA service tax is not an issue at all. What is at issue is whether the GTA service tax paid by the respondents

was admissible as cenvat credit in the given circumstances. The show cause notices contain only the following allegations with regard to raising of

demand for the impugned cenvat credit:

Whereas it appears that the service tax payable on GTA service shall be only 25% of the gross amount charged as freight. Amendment in

the Cenvat Credit Rules, 2004 w.e.t. 1.3.2008 provides that the GTA service providers shall not be allowed to avail input credit under

Cenvat Credit Rules, 2004 as Rule 2 has been amended to exclude goods transport agency from the scope of output service.

During the course of test check of the records of the notice by Audit, it was noticed that the notice has paid service tax on ""Goods

Transport Agency (GTA) on 25% of the gross amount charged as freight and took cenvat credit simultaneously. But as amendment in

Cenvat Credit Rules, 2004 has been made w.e.f. 1.3.2008 the Cenvat Credit availed by the notice on GTA is not admissible. The notice vide

their Jetter No. G.M. IAI A13 2009 has informed the amount of service tax availed by them on GTA during the period 2008-09 as

Rs.42,46,743/- (Rs.41,23,052/- + E.C. Rs.82,460/- + HEC of Rs.41,231/-) which does not appear to be admissible to them and is

recoverable under Rule 14 of Cenvat Credit Rules 2004 read with Section 73 of the Act.

Notwithstanding the vagueness of the basis of the allegation in the show cause notices, the show cause notices do not mention as to how the said

amendment w.e.f. 1.3.2008made the respondents ineligible for the impugned credit. Indeed the said amendment does not even remotely have any

bearing on the issue of admissibility of the Cenvat credit of service tax paid on G.T.A. services. Further we find that CBEC Circular No. 97/8/2007-

ST, dated 23.8.2007, clearly states as under:

It is therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during

removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-

duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the

determination of the 'place of removal' does not pose much problem. (emphasis added).

Thus it is evident that even according to the aforesaid Circular of CBEC, service tax paid on GTA service by the respondents for transportation of

goods upto their depot was eligible for cenvat credit taken by them. It has also been so held by the Punjab & Haryana High Court in the case of

Ambuja Cements Ltd. v. UOI - 2009 (14) STR 3 (P & H).

6. One of the grounds in Revenue's appeals is that Orders-in- original under reference do not reveal as to whether the adjudicating authority had

caused any verification to ascertain that the respondents had availed credit in respect of finished goods only upto the place of removal and not beyond

that point. The said ground is not a tenable ground for filing of appeal as has been held in the case of C.C.E, LTU , Chennai vs. Areva T & D (I) Ltd.

(supra); in para 5 of the said order, the Tribunal held as under:

5. We find that two grounds have been taken by the Committee of Chief Commissioners. Firstly, the Committee has opined that giving the

benefit of abatement based on the certificate given by the transporters for the period from 9/05 to 9/07 without seeking and verifying the

connected documents is legally not tenable. However, we find that the Committee of Chief Commissioners has not verified any documents

nor any material has been provided by it to show to what extent the abatement allowed by the adjudicating Commissioner has been wrongly

allowed. Under the statutory provisions, only when the Committee of Chief Commissioners comes to a conclusion that an order is not legal

or proper it can authorize filing an appeal against the same. To come to such a conclusion, the Committee must do its own fact finding and

come to a firm conclusion regarding the order reviewed by it not being legal and proper. It cannot, in our view, authorize filing an appeal

without coming to such a conclusion. There cannot be a ground for the Tribunal to interfere with an order passed by the adjudicating

Commissioner unless the Committee of Chief Commissioners does its own home work and verification, and points out the basis on which it

finds the order under review to be not legal and proper. As such, we find that the ground of appeal taken in this case is vague and it does

not provide any basis for holding any part of the relief granted by the Commissioner to be not legal or proper. It appears to us that the

review undertaken by the Committee is rather superficial and the same has resulted in filing these avoidable appeals before the Tribunal.

The adjudicating Commissioner has dropped a total demand of about Rs. 1.90 Crores but the Committee of Chief Commissioners has not

provided any documentary evidence on the basis of which the Tribunal can either modify the adjudicating Commissioner's order or confirm

any part of the said demand of Rs.1.90 crores.

7. In the light of the foregoing, we find no merit in Revenue's appeals and the same are therefore dismissed.

