
(2014) 12 GUJ CK 0096
In the Gujarat High Court
Case No : Tax Appeal No. 1271 of 2014

Commissioner Central Excise and Customs	APPELLANT
Vs	
Panchmahal Steel Ltd.	RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Finance Act, 1994 — Section 66, 68, 68(2)

Citation : (2015) 50 GST 28 : (2015) 37 STR 965 : (2016) 87 VST 34

Hon'ble Judges : V.M. Pancholi, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : R.J. Oza, Advocates for the Appellant

Judgement

Akil Abdul Hamid Kureshi, J.—Revenue is in appeal against the judgment of Customs, Excise and Service Tax Appellate Tribunal, ("CESTAT" for short) West Zonal Bench at Ahmedabad dated 18th March 2014 raising the following questions for our consideration:

"(a) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in holding that there is no bar for payment of service tax from the cenvat account, and there is no legal restriction for utilization of cenvat credit for the purpose of payment of services, which is not their output service?

(b) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in allowing the Cenvat credit utilized by the respondent for the payment of service tax on Goods Transport Agency Service, which is not their output service? "

2. Briefly stated, the facts are that the assessee is engaged in the business of manufacturing excisable goods. The assessee is also liable to pay service tax for the goods transport agency service. The assessee utilized Cenvat credit arising out of manufacturing activities for payment of service tax of G.T.A. Service. The Revenue's stand was that such Cenvat credit could not have been utilized for

service tax payable on G.T.A. Service, and that such tax ought to have been paid in cash. Ultimately when the issue reached the Tribunal, the Tribunal in the impugned judgment upheld the stand of the assessee placing reliance on the decision of Punjab and Haryana High Court in the case of Commr. of C. Ex., Chandigarh Vs. Nahar Industrial Enterprises Ltd., . The Tribunal also placed reliance on the decisions of other High Courts, including in the case of Commissioner of Service Tax Vs. M/s. Hero Honda Motors Ltd., . The Tribunal held and observed as under:

"4. In the above decisions, the Hon"ble High Courts have held that there is no bar for payment of service tax from the CENVAT Account and there is no legal restriction for utilization of CENVAT credit for the purpose of payment of service tax on GTA services. The Hon"ble High Court of Punjab & Haryana, in the case of Nahar Industrial Enterprises Limited (Supra), held as under:-

"7. Learned counsel for the revenue has contended that the respondents cannot pay the service tax from the Cenvat credit availed by them. But this argument has no force, because a perusal of Para 2.4.2 of CBEC's Excise Manual of Supplementary instructions shows that there is no legal bar to the utilization of Cenvat credit for the purpose of payment of service tax on the GTA service.

8. Apart from the above, even as per Rules 3(4)(e) of the Cenvat Credit Rules, 2004, the Cenvat credit may be utilized for payment of service tax on any output service.

9. In the present case also, the service tax was paid out of the Cenvat credit on GTA services and hence, the respondents were well within their right to utilize the Cenvat credit for the purpose of payment of service tax. The Commissioner (Appeals) as well as the Tribunal have rightly held that the respondents were entitled to pay the service tax from the Cenvat credit."

5. We find that the other High Courts have also taken the same view. In view of the above, the question referred to is answered in favour of the assessee."

3. Learned advocate Shri R.J. Oza for the Revenue submitted that the decision of Punjab and Haryana High Court in the case of M/s. Nahar Industrial Enterprises Ltd. (supra) has been carried in appeal, and such appeal was admitted and is pending.

4. We notice that the Punjab and Haryana High Court in the said decision in the case of M/s. Nahar Industrial Enterprises Ltd. (supra), for accepting the payment of service tax on GTA service out of Cenvat credit relied on Rule 3(4)(e) of Cenvat Credit Rules, 2004. The view of the High Court is that the said Rule allowed utilization of Cenvat credit for payment of service tax of any output service. This would also include the GTA service.

5. The view of the Punjab and Haryana High Court in the case of M/s. Nahar Industrial Enterprises Ltd. (supra) was taken into account by the Delhi High Court in the case of Hero Honda Motors Ltd. (supra). While pursuing the same

line, Delhi High Court also placed heavy reliance on Section 68 of the Finance Act, 1994, and in particular sub-section (2) thereof. Sub-section (2) of Section 68 of the Finance Act, 1994, provides that every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in the same manner and within such period as may be prescribed. Sub-section (2) of Section 68, however, provides that notwithstanding anything contained in sub-section (1) in respect of any taxable service notified by the Central Government, the service tax thereon shall be paid by such person in such manner as may be prescribed at the rate specified in Section 66, and all the provisions of said Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. In view of such statutory provisions, Delhi High Court rejected the Revenue's appeal observing as under:-

"6. In view of the specific reference to service tax and the benefit allowed to a service provider, read with the fiction created by Section 68(2) of the Finance Act, 1994, this Court is of the opinion that there is no ground to disagree with the judgment and reasoning of the Punjab and Haryana High Court in Nahar Industrial Enterprises Ltd. The appeal consequently fails and the question of law is answered in favour of the appellant and against the Revenue."

6. Learned counsel Shri R.J. Oza produced on record a Notification No. 36/2004 dated 31st December 2004, under which, in terms of subsection (2) of Section 68, various services were notified by the Central Government; one of them being specified categories of goods transport service in relation to transportation of goods by road in goods carriage where a consignor or consignee of goods is any company established by or under the Companies Act, 1956. By virtue of this Notification, in terms of sub-section (2) of Section 68, therefore, the liability to pay service tax was thus shifted on the present assessee, i.e. service recipient instead of service provider in exception to the general rule provided under subsection (1) of Section 68.

7. Rule 3 of the Cenvat Credit Rules, 2004 pertains to Cenvat credit. Sub-rule (1) thereof allows the manufacturer or purchaser of final products or provider of output service to take credit of Cenvat of various duties specified therein. Sub-rule (4) of Rule 3 of the said Rules provides that the Cenvat credit may be utilized for payment of various duties specified in clauses (a) to (e) thereof; clause (e) pertains to "service tax on any output service". A combined reading of these statutory provisions would, therefore, establish that though the assessee was liable to pay service tax on G.T.A. Service, it could have utilized Cenvat credit for the purpose of paying such duty. In view of the decisions of Punjab and Haryana High Court and Delhi High Court noted above, we do not find any error in the view of the Tribunal. Tax Appeal is, therefore, dismissed.