

(2011) 04 KAR CK 0117
In the Karnataka High Court
Case No : C.E.A. No. 132 of 2009

Commissioner of C. Ex., Bangalore-III

APPELLANT

Vs

Tata Auto Comp Systems Ltd.

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

CENVAT Credit Rules, 2004 — Rule 2 (1), 3, 9

Citation : (2012) 277 ELT 315 : (2012) 27 STR 338 : (2013) 38 STT 95

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : T.M. Venkata Reddy, for the Appellant; K. Parameshwaram, for the Respondent

Judgement

Ravi Malimath, J.—This appeal is by the revenue being aggrieved by the order of the Tribunal holding that the assessee is entitled to avail Cenvat credit on the Service tax paid on the transportation services provided by the assessee to their staff for pick Up and drop from the residence to the factory and vice-versa. The assessee are holders of Central Excise Registration Certificate for manufacture of motor vehicle parts and accessories. Accordingly, the assessee is availing Cenvat credit of duty paid on inputs, capital goods and input services. The assessee was availing Cenvat and utilizing input tax credit relating to transportation services (Rent-a-Cab Service). Hence, the show cause notice was issued to them as to why the input Service tax availed and utilized on transportation services should not be treated as wrongful availment and utilization of input service credit and the same should not recovered. The assessee replied to the same. However, the assessing officer confirmed the demand. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Appeals who rejected the same. Aggrieved by the same, the assessee preferred an appeal before the Tribunal.

2. The Tribunal by relying on the decision in the case of 2009 (14) S.T.R. 316 held that the assessee is entitled for availment of Cenvat credit on the Service tax paid on transportation services provided to their staff. Aggrieved by the

same, the revenue has preferred this appeal.

3. This appeal was admitted to consider the following substantial question of law :-

(1) Whether the transportation service, provided in the factory of the M/s. Tata Auto Comp. Systems Ltd., to their staff for pick up and drop from their residence to the factory and vice versa, was an input service, in or in relation to manufacture, whether directly or indirectly of the final products within the meaning and comprehension of Rule 2(1) of the Cenvat Credit Rules, 2004?

(2) Consequently whether the Cenvat credit of the Service tax, so paid for receiving the transportation services by them for pick up and drop from their residence to the factory and vice versa, was eligible for availment and utilization in terms of Rule 3 read with Rule 2(1) and Rule 9 thereof?

The identical question of law came up for consideration before this Court in the case of Commissioner of Central Excise Vs. Stanzen Toyotetsu India (P) Ltd., This Court took the view that the transportation/Rent-a-Cab service is provided by the assessee to their employees in order to reach their factory premises in time which has a direct bearing on manufacturing activity. In fact, the employee is also entitled to conveyance allowance which would form part of his condition of service. Therefore, by no stretch of imagination it can be construed as a welfare measure by denying the availment of Cenvat credit to the assessee for providing transportation facilities as a basic necessity which has a direct bearing on the manufacturing activity. While so holding the Court held that if the credit is availed by manufacturer then the question is what are the ingredients that are to be satisfied for availing such a credit. That the said service should have been utilized by the manufacturer directly or indirectly in or in relation to the manufacturer directly or indirectly in or in relation to the manufacturer of final products or used in relation to activities relating to business. If any of the test is satisfied then the service falls under input service and the manufacturer is eligible to avail Cenvat credit and the Service tax paid on such credit. In this view of the matter, the substantial questions of law are answered in favour of the assessee and against the revenue.