
(2011) 07 SHI CK 0197
In the High Court Of Himachal Pradesh
Case No : CEA No. 9 of 2008

Commissioner of Central Excise

APPELLANT

Vs

Auro Spinning Mills and Others

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

CENVAT (Credit) Rules, 2004 — Rule 3(4)
Finance Act, 1994 — Section 68(2)
Service Tax Rules, 1994 — Rule 2(1)

Citation : (2011) 187 ECR 308 : (2012) 26 STR 413 : (2013) 60 VST 222

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—These appeals were admitted on the following identical question of law:

Whether a person who is not a actual service provider, but discharges the Service Tax liability on the notified taxable services u/s 68(2) of the Finance Act, 1994 read with Notification No. 36/2004 dated 31.12.2004 and Rule 2(1)(d) of Service Tax Rules, 1994 as a deemed service provider, is entitled, by virtue of the legal fiction to utilize the CENVAT credit availed on inputs/input services/capital goods for payment of service tax on Goods Transport Agency (GTA) Services, even though such inputs/input services/capital goods were not used for providing such taxable services?

2. The basic question which arises for decision is whether the manufacturer can take benefit of the CENVAT credit which it had obtained on the manufacturing side for discharging the service tax liability on account of goods transport agency (GTA) services rendered.

3. The Tribunal had accepted the plea of the Assessee and permitted them to utilize the Cenvat credit for payment of service tax on GTA services on account of

the fact that the Tribunal in the case of Commissioner of Central Excise, Chandigarh v. M/s Nahar Industrial Enterprises Limited had decided this question in favour of the Assessee.

4. The Respondents are all engaged in the business of manufacturing of goods. They are also liable for payment of service tax under the goods transport agency service. The Respondents utilized the CENVAT credit given to them for their manufacturing activities for payment of service tax on GTA service. The case of the revenue is that the CENVAT credit could not be utilized for payment of CENVAT payable on services rendered and this should have been paid in cash. We find that the order of the Tribunal in Nahar Industrial Enterprises Ltd and other similar matters was challenged before the Punjab and Haryana High Court which decided a large number of appeals in favour of the Assessee vide its judgment dated 6th May, 2010 and it held as follows:

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 services.

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

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 are in agreement with the reasoning given by the Punjab and Haryana High Court and are of the view that there is no force in the submission of the revenue that the CENVAT credit cannot be utilized for payment of service tax on GTA services. Accordingly, all the appeals are dismissed. No costs.