

(2015) 10 KAR CK 0065

In the Karnataka High Court

Case No : Central Excise Appeal No. 100011/2014

Commissioner of Central Excise, Customs

APPELLANT

Vs

Godavari Sugar Mills Ltd.

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Finance Act, 1994 — Section 66, 68, 68(1), 68(2), 76

Citation : (2015) 40 STR 1063

Hon'ble Judges : Anand Byrareddy and S. Sujatha, JJ.

Bench : Division Bench

Advocate : Gangadhar S. Hosakeri, Advocate, for the Appellant; R.M. Kulkarni, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The Revenue is in appeal in the following circumstances.

2. The matter coming up for admission is considered for final disposal as the hierarchy of authorities have arrived at a finding that the issue stands covered by two judgments, of the Punjab and Haryana High Court as well as the Delhi High Court in the cases of Commr. of C. Ex., Chandigarh Vs. Nahar Industrial Enterprises Ltd., and in the case of Commissioner of Service Tax Vs. M/s. Hero Honda Motors Ltd., , respectively.

3. The brief facts are, that the respondent assessee M/s. Godavari Sugar Mills Limited, Bagalkot, are said to be manufacturers of excisable goods and are holders of Central Excise Registration and were also registered for payment of Service Tax under the category of Goods Transport Agency (GTA) services. The assess had utilized the Cenvat Credit of input services availed under Cenvat Credit Rules towards payment of GTA services. The assessee had further availed the credit of service tax paid by them for GTA. It was the Revenue's contention that the assessee is a deemed provider of services only for the limited purpose of discharging service tax liability. It was opined that the act of the assessee of

taking credit of service tax paid on GTA services and reutilizing the same for payment of service tax on GTA services is not tenable. Accordingly a show cause notice was issued demanding service tax of Rs. 15,36,051/- and demanding recovery of Cenvat Credit of Rs. 22,31,610/- along with interest and it was also proposed to impose penalty under Section 76 of the Finance Act, 1994 read with Rule 15(3) of Cenvat Credit Rules, 2004. The assessee had replied to the show cause notice. The Adjudicating Authority vide Order-in-Original No. 11/2006 ADC dated 31.10.2006 confirmed the demand of Rs. 15,36,051/- and Rs. 22,31,610/- along with interest thereon and penalty was also imposed in terms of the Act and Rules.

4. In the appeal against the said order the Commissioner of Appeals by his judgment dated 27.2.2007 allowed the appeal of the assessee based on the circular issued by the Board dated 3.10.2005 and on an interpretation of Rule 2(p) and 2(r) as the said Rules stood prior to 19.4.2006, had set aside the Order-in-Original. Aggrieved by the order, the revenue had preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal, Bengaluru. The Tribunal placing reliance on the aforesaid decisions of the Punjab and Haryana High Court and the Delhi High Court, held that the assessee can utilize the Cenvat Credit for payment of duty on GTA services and rejected the appellant's appeal. It is that which is sought to be challenged in the present appeal.

5. The revenue has raised several grounds, all of which were raised before the hierarchy of authorities, namely, the Commissioner who in the first instance had allowed the appeal as well as the Tribunal which had heard a further appeal by the revenue against the said order and as rightly held by the Tribunal, the issue is squarely covered by the aforesaid judgments. Both the Punjab and Haryana High Court and as well as the Delhi High Court have relied on the CBEC's Excise Manual of Supplementary Instructions which do not indicate any legal bar for the utilization of Cenvat Credit for the purpose of payment of service tax on the GTA services. Apart from the above 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 services and Rule 3(4) of the Cenvat Credit Rules, 2004, read with Section 68 of the Finance Act, 1994, particularly, are referred to and extracted, which read as follows:

"(4) The CENVAT credit may be utilized for payment of-

- a) any duty of excise on any final product; or
- b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
- c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
- d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or
- e) service tax on any output service;"

S. 68(1) and (2) of the Finance Act, 1994 read as follows:

Sec. 68 . Payment of Service Tax:--

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Govt. in the Office Gazette, the service tax thereon shall paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service."

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 Industries Enterprises Ltd. The appeal consequently fails and the question of law is answered in favour of the assessee and against the Revenue. The present appeal lacks merit and is rejected.