

(2011) 09 KAR CK 0172
In the Karnataka High Court
Case No : CEA No"s. 89 and 90 of 2009

Commissioner of Service Tax, Bangalore

APPELLANT

Vs

Aravind Fashions Ltd.

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Finance Act, 1988 — Section 68 (2)
Service Tax Rules, 1994 — Rule 2 (1) (d) (iv)

Citation : (2012) 278 ELT 164 : (2012) 25 STR 583 : (2012) 34 STT 314 :
(2012) 50 VST 310

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

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; K.S. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue has preferred these appeals challenging the order passed by the Tribunal holding that the service tax on said deemed output service can definitely be paid by utilizing the Cenvat credit on input services.

2. The assessee is a Company incorporated in the manufacture and sale of ready made garments bearing the brand names like "Wrangler" and "Lee" which belong to foreign Companies. The foreign Companies provided Intellectual Property Service (IPS) with effect from 10.9.2001 to the assessee and the assessee Company being the service provider was made liable to pay service tax in terms of Section 68(2) of the Finance Act 2(1)(d)(iv) of the Service Tax Rules, 1994. The Service Tax liability was discharged by the assessee using Cenvat credit availed on "Intellectual Property Service" which was objected to by the Department. The assessee filed a revised returns and used credit relating to other input services such as advertisement, freight, manpower recruitment, courier services, maintenance, repair and construction services for discharging Service Tax under the category of Intellectual Property Service" in the capacity of the service receiver. The Revenue proceeded against the assessee on the ground

that Cenvat was wrongly used for paying Service Tax on Intellectual Property Service" purported service when he is not a service provider but the receiver of service. Therefore overruling the objections of the assessee the demand was confirmed. Aggrieved by the said order the assessee preferred an appeal to the Tribunal. The Tribunal held that though the assessee is a recipient of services in law as the service provider is outside the country he is deemed to be the service provider and tax is levied on him. But to discharge that liability he can use the Cenvat credit which is to his credit and therefore they set aside the order passed by the Commissioner. Aggrieved by the said order the Revenue is in appeal.

3. Heard counsels.

4. In the instant case, though he is the recipient of service tax, the service provider is outside the country. In law, he is treated as a service provider and is levied tax. In other words, the liability to pay tax on the service which he has received is foisted on him under law. It is to discharge the liability he is entitled to use the Cenvat credit which was available with him and therefore the Tribunal was justified in interfering with the order passed by the Commissioner. In that view of the matter, we do not see any merit in these appeals. As there is no liability to pay tax the question of imposing penalty would not arise.

The connected CEA 90/2009 pertains to setting aside of the penalty by the Tribunal. There is no merit in the said appeal. The substantial question of law is answered in favour of the assessee and against the Revenue.

Therefore, both the appeals are dismissed.