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(2010) 05 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : CEA No. 99 of 2008 and CEA No''s. 242, 17, 57, 58, 62 and 98 of 2009, STA No''s. 13, 15, 16, 17 and 18 of 2009 and STA No''s. 5, 6 and 8 of 2010

Commr. of C. Ex., Chandigarh — APPELLANT

Vs

Nahar Industrial Enterprises Ltd. — RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

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

Citation : (2012) 25 STR 129 : (2012) 56 VST 497

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—As identical question of law and facts is involved, therefore, we propose to dispose of all the above mentioned appeals vide this common judgment, in order to avoid repetition of the facts. However, the facts have been extracted for facilitation from CEA No. 99 of 2008 titled as 2007 (7) S.T.R. 26 passed by the Customs, Excise & Service Tax Appellate Tribunal (for brevity "the Tribunal"), vide which the appeal filed by it was dismissed and it was held that there is no restriction for utilisation of Cenvat credit by manufacturing unit towards payment of service tax, as service tax provider at the relevant time.

2. The respondents are engaged in the manufacturing of textile goods. They are also deemed output service providers for payment of service tax under the Goods Transport Agency (for short "the GTA") services. The respondents utilised the Cenvat credit for payment of service tax on GTA services. The service tax was paid from the Cenvat credit availed by the respondents. The case of the Department is that the service tax ought to have been paid in cash and not from the Cenvat credit. A show cause notice was issued to the respondents to which reply was filed. The Adjudicating Authority confirmed the demand of service tax of Rs. 9,26,819/- and also imposed interest and penalty vide order dated

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30-4-2006 (Annexure A/1).

3. The assessee filed the appeals before the Commissioner (Appeals), Customs & Central Excise, who set aside the order of the Adjudicating Authority and held that services received by the respondents on which they were liable to pay service tax became "Output Service" for the purpose of Cenvat Credit Rules, 2004 and, therefore, service tax could be paid out of the Cenvat credit, vide order dated 17-10-2006 (Annexure A/2).

4. The aforesaid order (Annexure A/2) was challenged by the revenue by filing an appeal before the Tribunal, who dismissed the appeal and upheld the order passed by the Commissioner (Appeals) vide impugned order dated 7-3-2007 (Annexure A/3). Now, the revenue has challenged the order (Annexure A/3) of the Tribunal in this appeal, which was admitted to consider the following question of law:-

Whether a person who is not a actual service provider, but discharges the service tax liability on the Taxable Services, u/s 68(2) of Finance Act, 1994, as a deemed service provider, is entitled to avail the CENVAT credit on inputs/input services / capital goods for payment of GTA service tax, even if he is not using such inputs/ input services/capital goods for providing taxable services by virtue of deeming legal fiction?

5. We have heard the learned counsel for the parties.

6. 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 utilisation of Cenvat credit for the purpose of payment of service tax on the GTA services.

7. 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.

8. 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. In view of the above, the question of law posed in these appeals is answered in favour of the assessee and against the revenue. We find no merit in these appeals and the same are accordingly dismissed.

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