(2014) 11 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 56450 Of 2013 In Service Tax Appeal No. 56027 Of 2013

M/s. J.K. Lakshmi Cement Ltd. APPELLANT

Vs

CCE And ST, Jaipur-II RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Service Tax Rules, 1994 — Rule 2(1)(d)(v)
Cenvat Credit Rules, 2004 — Rule 3(4)

Citation : (2014) 11 CESTAT CK 0002

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Jitin Singhal, Govind Dixit

Final Decision : Allowed

Judgement

1. Heard both sides. The only issue involved in this case is whether the service tax on GTA service can be paid by the appellants by utilizing the

cenvat credit. Adjudicating authority as well as the first appellate authority held that the Service Tax on GTA service in terms of Rule 2(1)(d)(v) of

Service Tax Rules was required to be paid in cash on the ground that the cenvat credit was taken in respect of inputs, capital goods and inputs

services and none of these inputs capital goods or input services were used for rendering the goods transport agency service.

2. We have perused the Cenvat Credit Rules. In terms of Rule 3(4) of Cenvat Credit Rules, 2004, Cenvat Credit can be used for payment of service

tax on any output service. Any elaborate discussion on this issue is however not necessary in view of the consistent judicial pronouncements in favour

of the assessees in this regard. In the case of Shree Rajasthan Syntex Ltd. Vs. CCE, Jaipur - 2011 (24) STR 670 (Tri. Del.) the Honâ??ble

CESTAT held that prior to the date of Notification No.10/2008-CE (NT) there was no restriction for utilization of cenvat credit by manufacturing unit

towards payment of service tax as output service provider on GTA service received. Similar view was held in the case of CCE vs. Auro Spinning

Mills - 2012 (26) STR 413 (HP) which held that manufacturer can take benefit of cenvat credit which it had obtained on the manufacturing side for

discharging the service tax liability on account of goods transport agency service. CESTAT vide Final Order No.55931/2013 dated 03.04.2013 in the

case of M/s. Shree Fats & Proteins Pvt. Ltd. Vs. CCE, Jaipur-I has noted as under:-

â??It was further held that prior to the Notification dated 01.03 2008, the issue stands decided in favour of the appellant by several

judgments and Cenvat credit could be utilised towards service tax in respect of services received from GTA, in view of the deeming fiction in

Rule 2(r) whereunder the service recipient is defined to be different service provider, if liable to service tax.â??

4. As the period involved in this case is March, 2005 - March, 2006 the aforesaid decisions squarely covered the issue in favour of the appellants.

5. Accordingly, we waive the pre-deposit and allow the appeal.