**(2016) 03 CESTAT CK 0006**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Service Tax Appeal No. 59624 Of 2013

M/s. Pankaj Oxygen Limited — APPELLANT

Vs

CCE, Raipur — RESPONDENT

**Date of Decision :** 28-03-2016

**Acts Referred:**

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

**Citation :** (2016) 03 CESTAT CK 0006

**Hon'ble Judges :** S.K. Mohanty, J

**Bench :** Single Bench

**Advocate :** Manigopal Das, Kanu Verma Kumar

**Final Decision :** Allowed

## Judgement

1. This appeal is directed against the impugned order dated 15.05.2015 passed by the Commissioner (Appeals)-I, Customs, Central Excise and Service

Tax, Raipur.

2. The brief facts of the case are that during the disputed period April, 2009 to February, 2012, the appellant had paid service tax under reverse charge

mechanism in terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994. The Service Tax liability of 100% in respect of freight charges was paid by the

appellant and the amount paid as service tax was taken as Cenvat Credit. Taking of entire amount as cenvat credit instead of 25% of the gross

amount charged by the goods transport agency was objected to by the Central Excise Department. The SCN issued in this regard culminated in the

adjudication order dated 24.08.2012, wherein cenvat credit of Rs.55,799/- was confirmed and equal amount of penalty was confirmed against the

appellant. The adjudication order was upheld by the ld. Commissioner (Appeals) vide the impugned order. Hence this present appeal is before the

Tribunal.

3. Heard the ld. Counsel for both the sides and perused the records.

4. The fact of Payment of service tax on the whole amount of freight charges by the appellant is not in dispute. The only dispute in this case is that the

appellant was entitled to take cenvat credit of 25% of the gross amount charged by the goods transport agency and not on the entire amount of

service tax paid by the appellant. Since the fact is not under dispute that the service tax paid by the appellant was taken as cenvat credit, denial of

such credit is not in confirmity with Rue 3 of the Cenvat Credit Rules, 2004, which mandates that service tax paid on input service received by the

manufacturer of final product is eligible for cenvat credit.

5. In view of the statutory provisions, I am of the considered opinion that denial of cenvat credit to the appellant is not proper and justified. Thus, I do

not find any merits in the impugned order, and accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Dictated and Pronounced in the Open Court]

 