(2015) 02 CHH CK 0036

In the Chhattisgarh High Court

Case No : Tax Case No. 56 of 2009

Union of India APPELLANT

Vs

Jindal Steel and Power Ltd. RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Citation : (2015) 40 STR 67

Hon'ble Judges : Navin Sinha, A.C.J;P. Sam Koshy, J

Bench : Division Bench

Advocate : Smriti Sharma, for the Appellant; B.D. Guru, Advocates for the Respondent

Judgement

Navin Sinha, Acting C.J—We have heard Learned Counsel for the Appellant and the Respondent. The present appeal arises from order dated 22-4-2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (hereinafter referred to as ''the Tribunal'') in Service Tax Appeal No. 567 of 2006.

2. The Tribunal held that the respondent shall be deemed to be an output service provider under Rule 2(p) of the Cenvat Credit Rules, 2004 (hereinafter referred to as ''the Rules'') and was therefore entitled to Cenvat credit for the Service Tax paid by it prior to the period 5-3-2004.

3. By the order dated 29-1-2015 the only question of law surviving for consideration in the appeal as originally framed on 13-12-2013 remains as follows:--

"Whether the respondent - assessee is entitled to claim credit of Service Tax paid prior to 5-3-2004?"

4. Learned Counsel for the appellant submitted that the Tribunal has erred in holding that during the relevant period, the services for which the Respondent has paid Service Tax, it would be deemed to be an output service provider under Rule 2(p) of the Rules. Rule 2(p) came into force on 10-9-2004 and is

prospective in operation. The service tax paid by the respondent as a deemed output service provider is for the period prior to 5-3-2004. The Tribunal erred in giving retrospective effect to Rule 2(p). The provision has not been made retrospective in operation. If for any reason the respondent was subsequently held not liable to pay Service Tax as a deemed output service provider, its remedy for the same by way of refund was separate and distinct. Rule 2(p) having come at a subsequent point in time, the Tribunal erred in holding that the date 5-3-2004 prior to which the respondent had paid Service Tax as a deemed output service provider was not relevant or crucial.

5. Learned Counsel for the respondent submitted that the order of the Tribunal calls for no interference. The Tribunal has proceeded on principles of substantive justice. If the Appellant received Service Tax payments from the Respondent as a deemed output service provider, to which they were legitimately not entitled to and there was no time limit for availing the Cenvat credit with respect to Service Tax dues paid, the Tribunal committed no error by granting relief to the respondent treating it as a deemed output service provider under Rule 2(p) of the Rules.

6. We have considered the submissions on behalf of the parties.

7. It is an undisputed position that prior to 5-3-2004 the respondent was not an output service provider. It became an output service provider subsequent to that date after it entered into a MOU with M/s. Vallab Steels Ltd. for rendering output service. If prior to the same, the Respondent paid Service Tax on the ground that M/s. JFE Engineering Corporation, a company incorporated in Japan, from whom it received input service was not liable to pay tax and subsequently it was held that the Respondent was not liable to pay Service Tax as a deemed output service provider under the Service tax Rules, its remedy to seek a refund, if entitled in the law, is a completely separate matter.

8. The Rules having come into force on 10-9-2004 only, and not having been made retrospective in operation, the Tribunal erred in holding that during the relevant period prior to 5-3-2004, the respondent would be deemed to be an output service provider under Rule 2(p) giving it retrospective effect. The Tribunal therefore erred in ultimately holding that availment of credit was permissible in view of the subsequent extended definition of output service which came into force on 10-9-2004 much after the period in question prior to 5-3-2004.

9. The order under Appeal is held to be unsustainable and is set aside. The appeal is allowed.

