
(2014) 03 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Stay Application No. 59530 Of 2013, Service Tax Appeal No. 58885 Of 2013

?Vikas Cable Co.

APPELLANT

Vs

C.C.Ex., Delhi I

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 3(4)(e)

Citation : (2014) 03 CESTAT CK 0011

Hon'ble Judges : G. Raghuram, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Rinky Arora, Suchitra Sharma

Final Decision : Allowed

Judgement

1. The Assistant Commissioner, Faridabad-V denied the appellant's claim for exemption under Notification No.1/2006-ST dated 1.3.2006; denied

entitlement to Cenvat Credit availed, confirmed short service tax paid of Rs.3,11,000/- and directed its recovery along with penalty and interest. The

appellant preferred an appeal which was rejected by the Commissioner (Appeals), New Delhi vide order dated 30.4.2013.

2. The appellant is registered for providing/receiving Goods Transport Agency service. Proceedings were initiated covering the period October, 2006

to March 2007 on the ground that verification of the ST-3 return filed for the period revealed availment of cenvat credit and simultaneous availment of

exemption under Notification No.1/2006-ST, while remitting service tax after claiming the abatement benefits, which is impermissible, allegedly in

terms of the conditions of exemption Notification 1/2006-ST.

3. We notice that this issue is covered by the several judgments including of the

Punjab & Haryana High Court, in Commr. of Central Excise,
Chandigarh vs. Nahar Industrial Enterprises Ltd. - 2012 (25) STR 129 (P & H), of
the Himachal Pradesh High Court in C.C.E. vs. Auro Spinning
Mills - 2012 (26) STR 413 (HP) and of the Delhi High Court in C.S.T. vs. Hero
Honda Motors Ltd. - 2013 (29) STR 358 (Del.). All these decisions
have uniformly held that utilization of cenvat credit by recipient of Goods
Transport Agency service, for the payment of service tax is permissible
under Rule 3(4)(e) of the Cenvat Credit Rules, 2004 and that in respect of Goods
Transport Agency service, a manufacturer can take cenvat credit
which is obtained from a recipient by discharging the liability of GTA service
rendered.

4. In the light of the settled legal position, the primary order as confirmed by the
Appellate Commissioner is unsustainable and is accordingly set aside.

The appeal is allowed at the stage of considering the stay application, after
hearing the Id. Counsel for the appellant and the Id. A.R. for the
respondent-Revenue and after waiving the pre-deposit. No costs.