CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/168/2009-DB

[Arising out of OIO No. 26-2008 dated 04/12/2008 passed by CCE, Mangalore]

SOLARIS CHEMTECHLTD
BINAGA, KARWAR

Appellant(s)

Versus

C.C.E. & S.T.-MANGALORE
7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE,
KARNATAKA
575003

Respondent(s)

Appearance:

Ms. Neetu James, Advocate
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE
KARNATAKA
560 055

For the Appellant

Shri K. Murali, Superintendent(AR)

For the Respondent

Date of Hearing: 13/08/2018
Date of Decision:___________

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. _________ / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 04/12/2008 passed by the Commissioner whereby the Commissioner has confirmed the interest of Rs.12,41,715/- and also imposed penalty of

Rs.200/- for every day during which such failure continues or @ 2% of such tax per month whichever is higher under Section 76 of the Finance Act, 1994.

2. Briefly the facts of the present case are that the appellant has taken registration under the category of GTA services. During the course of audit on the records of the appellant by the IAP, Central Excise Hqrs. Office, Managlore, it was observed that during the period from January 2005 to June 2007, the appellant had utilized CENVAT credit for payment of service tax of Rs.65,85,476/-, education cess of Rs.1,43,842/- and Higher Education Cess of Rs.4,861/- on Goods Transport Agency Service. The appellants are engaged in the manufacture of excisable goods and are availing input service credit but not providing any output service. Rule 3(4)(e) of the CENVAT Credit Rules, 2004 (CCR, for short) provides that CENVAT credit can be utilized for payment of service tax on any output service. Hence the CENVAT credit utilized by the assessee for paying service tax on GTA service becomes irregular, thereby resulting in contravention of the provisions of Rule 3(4)(e) of the CCR. On further verification by the Range Officer, it is noticed that the actual amount utilized by the assessee for discharging service tax on GTA service works out to Rs.66,54,874/- and education cess of Rs.1,31,670/- and Higher & Secondary Education Cess of Rs.7,223/- which has been paid by the assessee on being pointed by the departmental officers and the amounts paid by the assessee is regularized. On these allegations, a show-cause

notice dt. 27/05/2008 was issued to the appellant demanding interest and penalty. After following the due process, the Commissioner confirmed the demand with regard to interest and penalty.

3. Heard both the parties and perused records.

4. The learned counsel for the appellant submitted that the impugned order is not sustainable as the same is contrary to the binding judicial precedent on the same issue. She further submitted that from a combined reading of the definition of 'output service' and 'person liable for paying service tax', it is clear that the statute itself deems that GTA service as an output service in the hands of persons such as the appellant (i.e. persons liable to pay service on GTA service). Further she submitted that Rule 3(4)(e) of the CCR provides that CENVAT credit may be utilized for payment of service tax on any output service. Rule 3(4) does not qualify anywhere therein, that the term 'output service' is not including provider of taxable service who is a person liable for paying service tax. She further submitted that this issue is no longer res integra and stands settled by the Larger Bench decision of this Tribunal in the case of Panchmahal Steel Ltd. Vs. CCE&ST, Vadodara [2014(34) STR 351 (Tri. LB)] wherein the Larger Bench has considered decisions of various High Courts and held that credit availed for manufacturing activities could be used for payment of service tax on GTA service even if input services or capital goods were not utilized for providing taxable services inasmuch as there was no bar / restriction for

such utilization of CENVAT account under Rule 3(4)(e) of the CCR. She further submitted that this decision of the Larger Bench was affirmed by the Hon'ble High Court of Gujarat as reported in 2015(13) STR 965 (Guj.). She also relied upon the following decisions wherein the same issue has been settled in favour of the assessee.

i. CCE&C, Belgaum Vs. Godavari Sugar Mills Ltd. [2015(40) STR 1063 (Kar.)] as affirmed by Hon'ble Supreme Court reported at 2017(52) STR J79(SC).
ii. Oudh Sugar Mills Ltd. Vs. CESTAT [2017(52) STR 353 (All.)]
iii. UOI Vs. Flowserve Microfinish Valves Pvt. Ltd. [2014(33) STR 634 (Kar.)]
iv. CCE, Salem Vs. Cheran Spinners Ltd. [2014(33) STR 148 (Mad.)]
v. Commissioner Vs. Hero Honda Motors Ltd.[2013(29) STR 358 (Del.)]
vi. Commissioner Vs. Nahar Industrial Enterprises Ltd. [2012(25) STR 129 (P&H)]
vii. Commissioner Vs. Auro Spinning Mills [2012(26) STR 413 (HP)]

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both parties and perusal of the material on records, we find that the issue is squarely covered by the decision of the Larger Bench of this Tribunal in the case of Panchmahal Steel Ltd. cited supra wherein the Larger Bench has observed in paras 3 to 5 as under:-

> ***3.*** *After hearing both sides, we find the dispute in this case pertains to the period prior to 1-3-2008 when there is no bar for such utilization. This issue has now been settled by the*

following decisions of the Hon'ble High Courts :-

(a) CCE v. Nahar Industrial Enterprises Limited - 2012 (25) S.T.R. 129 (P & H).

(b) CCE v. Auro Spinning Mills - 2012 (26) S.T.R. 413 (H.P.) = 2012 (279) E.L.T. 349 (H.P.)

(c) CST v. Hero Honda Motors Limited - 2013 (29) S.T.R. 358 (Del.)

4. *In the above decisions, the Hon'ble High Courts have held that there is no bar for payment of Service Tax from the Cenvat Account and there is no legal restriction for utilization of Cenvat credit for the purpose of payment of Service Tax on GTA services. The Hon'ble High Court of Punjab & Haryana, in the case of Nahar Industrial Enterprises Limited (supra), held as under :-*

"7. 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 C.B.E. & C.'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.

8. 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.

9. 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."

5. *We find that the other Hon'ble High Courts have also taken the same view. In view of the above, the question referred to is answered in favour of the assessee.*

7. Further we find that the Revenue has taken this case to the

High Court of Gujarat and the Hon'ble High Court of Gujarat has dismissed the appeal of the Revenue and has observed in para 8 as under:-

> ***8*** *Rule 3 of the Cenvat Credit Rules, 2004 pertains to Cenvat credit. Sub-rule (1) thereof allows the manufacturer or purchaser of final products or provider of output service to take credit of Cenvat of various duties specified therein. Sub-rule (4) of Rule 3 of the said Rules provides that the Cenvat credit may be utilized for payment of various duties specified in clauses (a) to (e) thereof; clause (e) pertains to "Service Tax on any output service". A combined reading of these statutory provisions would, therefore, establish that though the assessee was liable to pay Service Tax on G.T.A. Service, it could have utilized Cenvat credit for the purpose of paying such duty. In view of the decisions of Punjab and Haryana High Court and Delhi High Court noted above, we do not find any error in the view of the Tribunal. Tax Appeal is, therefore, dismissed.*

8. Further, we find that ratios of all other decisions cited supra are squarely applicable in the present case and it has been consistently held by the Tribunal and the High Court that there is no bar in taking credit of service tax paid on GTA service and reutilizing the same for payment of service tax. By following the ratios of the above said decisions, we are of the view that the impugned order is not sustainable in law and therefore, the same is set aside by allowing the appeal of the appellant with consequential relief, if any.

(Order was pronounced
in Open Court on …………………..)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S. GARG
JUDICIAL MEMBER

Raja…