IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/52920, 52921/2016-EX(SM)

[Arising out of Order-in-Appeal No. 149-150/CE/DLH/2016 dated 01.08.2016, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Indira Printers ....Applicants

Vs.

C.C.E. Delhi ....Respondent

Appearance:

Shri Sumit Wadhwa, Advocate for the Appellants
Shri S. Nunthuk, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 07.02.2017

FINAL ORDER NO. 50733-50734/2017-EX(SM)

Per Archana Wadhwa:

Both the appeals are being disposed of by a common order as they arise out of the same impugned order of Commissioner (A) and issue is identical.

2. As per facts on record appellant is a 100% EOU engaged in the manufacture of export of printed books falling under chapter 49 of the Central Excise Tariff Act 1985. They get the book binding done from another independent manufacture on job worker basis. As the work at the job works end did not attract any excise duty, the same was not paid neither any service tax was paid by the job worker.

3. Subsequently, on an advice, the job worker found that they are liable to pay service tax. So accordingly, he paid the same and

raised debit notes against the appellant. The appellant paid the service tax to the job worker and took the credit of the same on the basis of the debit notes.

4. Subsequently, the appellant filed the refund claim of the said credit in terms of Rule 5 of the Cenvat Credit Rules in as much as the entire goods were exported by them. Revenue raised two objections. First, that the debit notes raised by the job workers cannot be equated with the invoice and as such credit could not be availed by the appellant on the basis of such debit notes and secondly that the job worker was not required to pay any service tax in as much as the same was exempted and as such credit of the same cannot be availed by the assessee. Accordingly, vide impugned orders the refund claim was rejected.

5. After hearing both the sides, I find that as regards the first issue it is not the revenue's case that no service tax was actually paid by the job worker. The only objection is that the same was raised against the assessee by way of debit notes instead of invoice in which case credit would not be available to the assessee. I find that the identical question was the subject matter of the Tribunal's decision in the case of ***Shree Cement Ltd. Vs. CCE Jaipur 2013 (29) STR 77 (Tri-Del).*** Wherein it was observed that substance is more important that the format and the denial of credit on the basis of the debit notes, instead of invoices, cannot be appreciated and upheld.

As regards the second issue Revenue's objection is that the job worker should not have paid the service tax. However, they have not disputed that such service tax was actually "paid" by the job worker in which case the same would be available as a credit to the appellant in as much as it is the credit of tax "paid" which is available and not credit of tax which is "payable".

6. As such I am of the view that the appellant availment of the credit of service tax paid by the job worker, is within his rights. The credit having not been correctly availed, hence entitled to the refund of the same in terms of the provision of Rule 5 of Cenvat Credit Rules. Accordingly, the impugned orders are set aside and both the appeals are allowed with consequential relief to the appellant.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu