CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No. ST/1613/2010-ST [SM]

[Arising out of Order-in-Appeal No. 110/BPL/2010 dated 21.07.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s. Hind Spinners ...Appellant

Vs.

C.C.E. Bhopal …Respondent

Appearance:
None for the Appellant
Mr. R.K. Mishra, AR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing.09.12.2016
Date of Decision._17.03.2017

Final Order No. 52440 /2017

Per S.K. Mohanty:

Brief facts of the case are that the appellant is engaged in manufacture of P.V. Yarn classified under Chapter 55 of the Central Excise Tariff Act, 1985. For Procurement of export orders, the appellant had appointed foreign based commission agents and discharged the service tax liability as the recipient of service in terms of Rule (2)(1)(iv) of the Service Tax Rules, 1994. The service tax liability was discharged by the appellant thorough Debit in the cenvat credit account. Payment of service tax from the cenvat account by the appellant under reverse charge mechanism as a recipient of such service was disputed by the Department, holding that the appellant has contravened the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004.

2. None appeared for the appellant, despite notice. Heard the ld. DR for the Revenue.

3. The short question involved in this appeal for consideration is, as to whether, the appellant in the capacity of recipient of service can pay service tax from its cenvat account.

4. I find that the issue involved in this case is no more *res-intigra* in view of the judgment of Hon'ble Gujarat High Court in the case of Commissioner of Central Excise and Customs Vs. Panchmahal Steel Ltd., reported in 2015 (37) S.T.R. 965 (Guj.). Placing reliance on the

judgment of Hon'ble Delhi High Court in the case of Hero Honda Motors Ltd, 2013 (29) STR 358 (Del.) and the Hon'ble Punjab and Haryana High Court judgment in the case of Nahar Industrial Enterprises Ltd., 2012 (25) S.T.R. 129 (P & H), the Hon'ble Gujarat High Court have held that the utilization of cenvat credit for payment of service tax is permissible to the recipient of service. The relevant Paragraph in the said judgment is extracted here in below:-

> *"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."

5. In view of the above settle position of law, I do not find any merits in the impugned order. Accordingly, the same is set aside and the appeal is allowed in favor of the appellant.

(Pronounced in the open court on 17.03.2017)

(S. K. Mohanty)
Member (Judicial)

Sakshi