IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 17.4.2017

Appeal No. ST/265/2011-SM

(Arising out of Order-in-Appeal No. 504(CB)ST/JPR-II/2010 dated 14.12.2010 passed by the Commissioner (Appeals), Central Excise, & Customs, Jaipur-II)

M/s Maharaja Shree Umaid Mills — Appellant

Vs.

CCE, Jaipur-II — Respondent

Appearance

Shri Kumar Vikram, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 52933/2017

Per Ashok K. Arya :

The appellant is in appeal against the order in appeal No. 504/2010 dated 14.12.2010 passed by Commissioner (Appeals) whereunder demand of service tax of Rs.45,38,670/-along with interest and equivalent penalty has been confirmed.

2. The brief facts are that the appellant is engaged in the manufacture of manmade blended yarn and cotton fabrics. They are liable to pay service tax under the category of transport of goods by road. The appellant is availing credit for duty paid on inputs, capital goods etc.

2.1 Revenue has denied them facility of payment of service tax from Cenvat Credit account alleging that the appellant wrongly paid service tax as the recipient of Goods Transport Agency service by utilising the Cenvat credit in contravention of Rule 3(4)(e) of Cenvat Credit Rules, 2004.

3. The impugned order denies the appellant facility of payment of service tax on GTA services through Cenvat credit account. Hence, they are in appeal before the Tribunal.

4. With the background of above facts, both the sides have been heard. They are represented by ld. Counsels, Shri Kumar Vikram for the appellant and ld. DR, Shri K. Poddar for the Revenue.

5. From the facts and submissions of the parties, it appears that the matter is covered by the Hon'ble Gujarat High Court decision in the case of ***CCE, Vs. Panchmahal Steel Ltd.-*** 2015 (37) STR 965 (Guj), where it has been observed that :

> "**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."

5.1 Further, the Hon'ble Punjab & Haryana High Court in the case of ***CCE, Vs. Nahar Industrial Enterprises Ltd.* -** 2012 (25) STR 129 (P&H) has also held that the assessee is entitled to utilise their Cenvat credit for payment of service tax on GTA service. The Hon'ble Punjab & Haryana High Court has observed 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 CBEC'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.
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> **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.
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> **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.
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> **10.** In view of the above, the question of law posed in these appeals is answered in favour of the assessee and against the revenue. We find no merit in these appeals and the same are accordingly dismissed."

5.2 Considering the Hon'ble Gujarat High Court's decision (supra) and Hon'ble P&H High Court decision (supra), the appellant is entitled to the benefit of payment of service tax on GTA services through their Cenvat credit account.

8. In the result, the impugned order is set aside and appeal is allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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