CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing: 04.05.2017

Appeal No. ST/171/2011-ST[DB]

[Arising out of the Order-in-Appeal No. 420(CB)ST/JPR-II/2010 dated 27.10.2010, passed by the Commissioner of Central Excise, Jaipur]

M/s. Sangam (I) Ltd. … Appellant

Vs.

CCE Jaipur-II ... Respondent

Appearance:

Present Ms. Rinki Arora, Advocate for the appellant
Present Shri Sanjay Jain, DR for the respondent

Coram: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No.53706/2017

Per S.K. Mohanty:

Heard both sides and perused the records.

2. The issue involved in the present appeal relates to utilization of Cenvat Credit for payment of service tax on the taxable service by the service receiver under reverse charge mechanism. The Department has denied Cenvat Credit, holding that the recipient of taxable service is not permitted to utilize the Cenvat Credit for payment of service tax.

3. We find that the Hon'ble High Court of Punjab and Haryana in the case of ***CCE Vs Nahar Fibres vide STA No. 38/2010***

dated 24.08.2010 has dismissed the Revenue's appeal in line with the judgments delivered earlier in the case ***of Nahar International Enterprises Ltd.,*** wherein it has been held that the Cenvat Credit can be utilized for payment of service tax on the taxable services under reverse charge mechanism. Further, under identical set of facts this Tribunal in the case of ***Kansara Modler Ltd. vs CCE Jaipur vide Final order no. 56000/201 dated 03.04.2013*** has also took the similar view, holding that utilization of Cenvat Credit is permissible for payment of service tax by the service recipient under the reverse charge mechanism. The relevant paragraph in the said order is extracted herein below:

> *"6. If we read Rule 2(q) of Cenvat Credit Rules with Rule 2(I)(d)(iv), we find that appellant is a person liable to Service Tax. Once appellant is person liable to service tax, he becomes provider of taxable service under Rules 2(r) and consequently become output service provider under Rule 2(p) of the Cenvat Credit Rules. Revenue is also relying on Rule 5 of Taxation of services (provided from outside India and received in India) Rules). We find that Rule 5 refers to availing of Cenvat Credit and not to utilization of credit. We are therefore of the view that the finding of the Commissioner not treating the appellant as output service provider, is not correct and accordingly we set aside the impugned order and allow the appeal."*

4. In view of the above settled position of law, we do not find any merits in the impugned order. Accordingly, by setting aside the same, we allow the appeal in favour of the appellant.

[Order Dictated and Pronounced in the open court]

(B. Ravichandran)
Member (Technical)

(S.K. Mohanty)
Member(Judicial)

Bhanu