CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 08.06.2017

Appeal No.ST/844 & 846/2011

[Arising out of the Order-in-Appeal No. 131 (DKV) CE/JPR-I/2011 dated 29/03/2011 & 156/2011 dated 21/04/2011 passed by the Commissioner (Appeals1), Central Excise,Jaipur.)

M/s Mayur Uniquoters Ltd., Appellant

Vs.

CCE,Jaipur … Respondent

Appearance:

Present Shri Kr. Vikram Advocate for the appellant
Present Shri K. Poddar, AR for the respondent

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

FINAL ORDER No. 54047-54048/2017

Per Ashok K. Arya :

1. The appellant namely M/s Mayur Uniqoters Ltd. has filed two appeals (No. ST/844 & 846/2011) against Orders in Appeal No. 131/2011 dated 29/03/2011 and No 156/2011 dated 21/04/2011. The total period of dispute in both the cases is from October, 2006 to September, 2007. The demands of service tax confirmed by these two Orders in Appeal are of Rs. 1,76,479/- and Rs. 2,03,752/-.The equivalent penalties have also been confirmed by these two impugned orders.

2. The brief facts are that:

i. The appellant is engaged in manufacturing of coated fabrics.

ii. The appellant is registered for payment of service tax under the category of transport of goods agency service.

iii. The appellant paid service tax on goods transport agency service through Cenvat credit account. However, the Revenue's stand is that the appellant is liable to pay Service Tax on goods transport agency service in cash.

iv. Therefore, the appellant was issued two show cause notices dated 21/05/2007 and 24/03/2008, which were adjudicated by Order in Original dated 23/11/2010 and 24/11/2010 confirming the demands of service tax.

v. Against above Orders in Original, the appellant went in appeal before Commissioner (Appeals), who passed impugned orders in appeal dated 29/03/2011 and 24/3/2011 sustaining the demands confirming by the respective orders in Original.

3. With the background of above facts, both sides represented by Ld. Counsels, Shri Kumar VIkram for the appellant and Shri K. Poddar for the Revenue have been heard.

4. After having carefully considered the facts of the case and submissions of both the sides it appears that the matter is covered by the Tribunal's decision in the case of *M/s Maharaja Shree Umaid Mills Vs CCE Jaipur* –II decided by Final Order No. 52933/2017 in Appeal No ST/265/2011 SM dated 17/04/2017, where it has been held that an assessee is entitled to pay service tax on GTA services through Cenvat credit. The Tribunal in the said decision has observed as under:

> 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 :
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> > "**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."
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> 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 :
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> > "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."

4.2 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.

5. Considering the observations made in the Tribunal's decision (supra) it is clear that the appellant is entitled to pay Service Tax on GTA service through Cenvat credit. Consequently, the impugned orders are set aside and both appeals are allowed with consequential relief, if any, to the appellant.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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