CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH – COURT NO – I

Service Tax Appeal No. 72 of 2009

(Arising out of Order-in-Appeal No. 54/2008 (H-II) ST dated 31.10.2008 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals- II) Hyderabad)

M/s Taher Ali Industries & Projects Pvt Ltd **Appellant**
Pspd, Sarapaka
Bhadrachalam

VERSUS

Commissioner of Central Excise. **Respondent**
Hyderabad-II Commissionerae
7th Floor, Kendriya Shulk Bhavan
L.B. Stadium road,
Basheer Bagh,
Hyderabad

Appearance

None for the Appellant.
Shri Shri N. Bhanu Kiran, Authorised Representative for the Respondent.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No./3045/2019

DATE OF HEARING: 09.04.2019
DATE OF DECISION: 09.04.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

This appeal is filed against order-in-appeal No. 54/2008 (H-II) ST dated 31.10.2008.

2. None appeared on behalf of the appellant despite notice. Heard learned A.R. and perused the records. The issue which falls for consideration in this appeal is whether the appellant can use CENVAT Credit to pay service tax under reverse charge mechanism on GTA services availed by

them. CBEC vide Circular No. 97/9/2007 dated 23rd August 2007 has clarified that the consignee has to pay service tax in cash on the goods transported by road under reverse charge mechanism because they are not paying service tax on the final product but are discharging the tax on the input services. Accordingly, a show-cause notice was issued and the lower authority vide his order-in-original No. 2/2008 dated 09.01.2008 confirmed the demand along with interest. Aggrieved the appellant appealed to the First Appellate Authority who vide the impugned order, rejected the appeal and upheld the order of the lower authority. We find that this issue is no longer *res integra* and has been settled by the larger bench of the Tribunal in the case of Panchmahal Steel Ltd Vs CCE & ST Vadodara [2014(34)STR 351(LB)] in which it was held that credit availed for manufacturing goods could be used for payment of service tax on GTA services even if inputs/input services/capital goods were not utilised for providing taxable services and there is no such restriction on utilisation of CENVAT Credit under Rule 3(4)(e) of CENVAT Credit Rules 2004. Accordingly, we find that the issue has been settled in favour of the appellant and we follow the precedent decision. The impugned order is set aside and the appeal is allowed.

(dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy