2014 (2) TMI 100 - CESTAT MUMBAI

UMASONS AUTO COMPO PVT LTD Versus COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

ST/326/10

Dated - 28 November 2013

Demand of service tax - Recipient of GTA service - Appellant had paid the service tax to the provider of GTA service and the provider has paid to the Revenue and the appellant has availed credit of the same - Held that:- there is no dispute regarding payment of service tax by the provider of GTA service. Once the amount of service tax is accepted by the Revenue from the provider of GTA service, it cannot be again demanded from the recipient of the GTA service - Decided in favour of assessee.

Judgment / Order

S S Kang, J.

For the Appellant : Mr A P Kolte, Adv.

For the Respondent : Mr D D Joshi, Superintendent, AR

PER : S S Kang

Heard both sides.

2. Appellant filed the appeal against the impugned order passed by Commissioner (Appeals), whereby the Commissioner (Appeals) upheld the adjudication order whereby the demand of service tax was confirmed. The demand is confirmed on the ground that the appellant being recipient of GTA service is liable to pay service tax.

3. The contention of the appellant is that the appellant had paid the service tax to the provider of GTA service and the provider has paid to the Revenue and the appellant has availed credit of the same. As the service tax has already been paid by the provider of GTA service and Revenue is demanding the same tax from the recipient. Therefore, the demand is not sustainable. The appellant also relies upon the decision of the Tribunal in the case of Navyug Alloys Pvt. Ltd vs CCE & C, Vadodara II reported in 2009 (13) STR 421 (Tri-Ahmd).

4. Revenue relies upon the finding of the lower authorities and submitted that as per the provisions of the Finance Act, recipient is liable to pay service tax in respect of GTA service and if the same has been paid by the service provider, he can seek refund of the amount.

5. I find that there is no dispute regarding payment of service tax by the provider of GTA service. Once the amount of service tax is accepted by the Revenue from the provider of GTA service, it cannot be again demanded from the recipient of the GTA service. In view of this, the impugned order is set aside and the appeal is allowed.

(Dictated in Court)

2013 (7) TMI 593 - CESTAT BANGALORE

M/s. Cronimet Alloys India Limited Versus Commissioner of Central Excise Visakhpatnam-I Commissionerate Visakhapatnam

Appeal No: ST/285/2012

Dated - 13 June 2013

Recovery of service tax – as per Notification No.35/2004-ST assessee should have discharged the service tax as a recipient - proceedings were initiated for recovering service tax on GTA service received by the assessee - Held that:- Extended period could not have been invoked since it cannot be said that there was intention to evade payment of duty when the transporter had paid the service tax and in any case as a recipient assessee was eligible for the benefit of CENVAT Credit also – court relied upon decisions of the Tribunal in Navyug Alloys Pvt. Ltd. vs. CCE, Vadodara-II: (2008 (8) TMI 100 - CESTAT AHEMDABAD) - Stay application – as there was no point in postponing the final issue court granted the stay – appeal decided in favour of assessee.

Judgment / Order

SHRI B.S.V. MURTHY, J.

For the Appellant: Mr. K. Kumaresan, Advocate

For the Respondent: Mr. S. Teli, Deputy Commissioner (AR)

JUDGEMENT

Appellants are engaged in the manufacture of High Carbon Ferro-chrome and they paid transportation charges and service tax to the transporter of anthracite coal, which is a raw material. There is no dispute that transporter had paid the service tax. Taking the view that as per Notification No.35/2004-ST dated 3.12.2004, appellant should have discharged the service tax as a recipient, proceedings were initiated for recovering service tax on GTA service received by the appellant during the period from September 2006 to March 2007.

2. The learned counsel submits that there were several Tribunal decisions wherein a view has been taken that if the transporter had paid the service tax, on the same service, tax cannot be demanded from the recipient also. The following decisions were relied upon:

(i) Navyug Alloys Pvt. Ltd. vs. CCE, Vadodara-II: 2009 (13) S.T.R. 421 (Tri.-Ahmd.);

(ii) Mandev Tubes vs. CCE, Vapi: 2009 (16) S.T.R. 724 (Tri.-Ahmd.);

(iii) Sakthi Masala P. Ltd. vs. CCE, Salem: 2009 (15) S.T.R. 314 (Tri.-Chennai);

(iv) Deccan Chromates Ltd. vs. CCE, Hyderabad: 2011 (22) S.T.R. 440 (Tri.-Chennai); and

(v) CST, Meerut-II vs. Geeta Industries P. Ltd.: 2011 (22) S.T.R. 293 (Tri.-Del.).

Further, he submits that extended period could not have been invoked in this case.

3. I have considered the submissions. I find that the decisions of the Tribunal cited above are applicable to the facts of this case. Further, as submitted by the counsel, extended period could not have been invoked since it cannot be said that there was intention to evade payment of duty when the transporter had paid the service tax and in any case as a recipient, appellant was eligible for the benefit of CENVAT Credit also.

4. Matter was heard for some time and the issue is squarely covered by the decisions, there is no point in

postponing the final issue and granting stay. Accordingly the stay application as well as the appeal are allowed.

(Pronounced and dictated in open Court).

2008 (8) TMI 100 - CESTAT AHEMDABAD

NAVYUG ALLOYS PVT. LTD. Versus CCE & C, VADODARA-II

ST/66/2008

Order No. - A/1736/WZB/Ahd/2008-CII

Dated - 19 August 2008

Appellant availing the GTA services, for the period January, 2005 to September, 2006 - service tax on the said services stands paid by the transporters - Revenue's contention that it was the liability of the appellant to pay the tax, is not acceptable – held that once the tax is already paid on the services, it was not open to the Department to confirm the same against the appellant, in respect of the same services

Judgment / Order

Smt. Archana Wadhwa, Member (Judicial)

(Final Order No. A/1736/WZB/Ahd/2008-CII dt. 19.8.2008 certified on 3.9.2008 in Appeal No. ST/66/2008)

Shri V.B. Tayal, Director for Appellant.

Shri Sameer Chitkara, SDR for Respondent.

[Order per Archana Wadhwa Member (Judicial)] - Service tax of Rs. 51,385/- stands confirmed against the appellant who are availing the goods transport agency services, for the period January, 2005 to September, 2006. It is on record that the service tax on the said services stands paid by the transporters. The Revenue's contention is that it was the liability of the appellant to pay the tax and the service tax paid by the transporter providing services cannot be treated as a valid payment. However, the Revenue has not refunded the service tax paid by the transporter to them.

2. Once tax already paid on the services, it was not open to the Department to confirm the same against the appellant, in respect of the same services. I accordingly set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated & pronounced in Court.)