

Service Tax Payable under Transport of Goods on Road or goods Transport Agency service[GTA] can be paid out of CENVAT.

Above service is covered under reverse charge mechanism and provided in Notification No. 30 dated 20.06.2012 in exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012- Service Tax , dated the 17th March, 2012.

Means that if service is covered under reverse charge i.e. S. 68(2) , service tax shall be paid in cash and after the payment of ST in cash, CENVAT can be claimed

But in recent two judgments of CESTAT whole understanding of law and Sec. 68(2) has been reversed and allow the Service tax payable in case GTA service by recipient out of CENVAT.

1. CCE Indore Vs. Deepak Spinners Ltd. [CESAT New Delhi]
2. CCE Indore Vs. Uflex Ltd [CESAT New Delhi]

Both the cases decided in favour of assessee on the basis of below mentioned High Court cases.

Revenue has filed this appeal against order on the ground that the Commissioner (Appeals) had allowed payment of service tax on the GTA service from cenvat credit which is not permitted as GTA service was not appellants output service and service tax was payable by the appellant under reverse charge mechanism, while cenvat credit can be utilised for paying service tax on output service. In this regard, we notice that in the appellants own case reported as CCE, Chandigarh vs. Deepak Spinners Ltd. - 2013 (32) STR 531 (H.P.), High Court of Himachal Pradesh held that cenvat credit can be utilised for payment of service tax on GTA service. In the case of Commissioner vs. Nahar Industrial Enterprises Ltd. 2012 (25) STR 129 (P&H), Punjab & Haryana High Court has also held that cenvat credit can be utilised for payment of service tax on GTA service under reverse charge mechanism. Similar view has been taken by the Delhi High Court in the case of CST vs. Hero Honda Motors Ltd. 2013 (29) STR 358 (Del.). Thus, the issue involved in this case is no longer res integra and has been settled in favour of assessee.

Basis of decision in favour of assessee in case of Nahar Industrial Enterprises Ltd is as follow:

"Whether a person who is not a actual service provider, but discharges the service tax liability on the Taxable Services, under Section 68(2) of Finance Act, 1994, as a deemed service provider, is entitled to avail the CENVAT credit on inputs/input services/capital goods for payment of GTA service tax, even if he is not using such inputs/input services/capital goods for providing taxable services by virtue of deeming legal fiction?"

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 service

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

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.

Now after the above said judgement, big question arises that the other services stipulated in Notification No. 30/2012 can be paid out of CENVAT or not.

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