

(2015) 03 CESTAT CK 0001

Customs, Excise And Service Tax Appellate Tribunal Principal Bench, New Delhi

Case No: Appeal No. 400, 401, 407, 408 Of 2009

M/s Shree Rajasthan
Syntex Ltd

APPELLANT

Vs

CCE, Jaipur-II

RESPONDENT

Date of Decision: March 26, 2015

Acts Referred:

- Finance Act, 1994 - Section 66A

Hon'ble Judges: G. Raghuram, J; R. K. Singh, Technical Member

Bench: Division Bench

Advocate: Anusha Pandey, B.B. Sharma

Final Decision: Dismissed

Judgement

1. The appellant (assessee) filed these appeals against Order-in- Appeal No. 10-11(DK)ST/JPR-I/2009 dated 24.2.2009 in terms of which service tax

demands relating to the amounts of commission paid to the overseas agents were confirmed against it under the provisions of Rule 66A, of the

Finance Act, 1994 as recipient of service on the ground that the said service tax had to be paid in cash and payment thereof by utilising the Cenvat

credit was not allowed. The Commissioner (Appeals) sustained the respective orders-in-original confirming the impugned demands except to the

extent of allowing the appellants the cum tax benefit.

2. The appellant has contended that the issue whether such service tax can be paid from Cenvat credit is no longer res integra having been decided in

its favour in several judgements.

3. Revenue is in appeal against the impugned Order-in-Appeal that the entire amount of commission paid has to be taken as assessable value of service received and there is no ground to extend the cum tax benefit to the appellant - assessee.

4. We have considered the contentions of both sides. We find that in the appellant/assessee's own case - 2011 (24) STR 670 (Tri.- Del.), it was held

that for the period prior to Notification No. 10/2008-CE (NT), the question whether Cenvat credit can be utilised for payment of service tax on GT A

stands settled in favour of the assessee by various decisions of the Tribunal and there was no restriction for utilisation of Cenvat credit by

manufacturing unit towards payment of service tax on GTA as output service provider. In the case of Kansara Modler Ltd. Vs. CCE, Jaipur-II - 2013

(32) STR 209 (Tri.-Del.), it was held that Cenvat credit can be utilised for payment service tax payable under reverse charge mechanism in respect of

service received from abroad. Similarly Karnataka High Court in the case of CST, Bangalore Vs. Aravind Fashions Ltd. - 2012 (25) STR 583 (Kar.),

held that though assessee was recipient of Intellectual Property Service from abroad they were deemed to be provider of service liable to pay service

tax and therefore such service tax can be discharged by using Cenvat credit.

5. In the light of these judgements, the demand!confirmed against the appellant/assessee do not survive. In such a situation, the Revenue's appeal

contesting the cum tax benefit becomes infructuous. Accordingly, the appellant/assessee's appeals are allowed and the respective Revenue's appeals

are dismissed.