HIREGANGE & ASSOCIATES

Indirect Tax- Latest Judicial Precedents

June 2016

This material and the information contained herein prepared by Hiregange & Associates intended for clients and other chartered accountants to provide legal updates on indirect tax and is not an exhaustive treatment of such subject. We are not, by means of this material, rendering any professional advice or services. It should not be relied upon as the sole basis for any decision which may affect you or your business.

By CA AshishChaudhary

HIGH COURT

1. Compulsorily availment of exemption not made applicable to service tax *(CCE Vs. Federal Mogul TPR India Ltd., Bangalore 2016 (42) S.T.R. 427 (Kar.)*

- Background:Assessee engaged in activity of chrome plating on job work basis. Job work charges exempted from ST if excise duty paid on final products by principal manufacturer. The assessee did not claim ST exemption, availed credit and charged service tax on job work charges. Manufacturer claimed credit of service tax charged by job worker. Department contended that exemption needs to be claimed compulsorily by job worker.
- Issue: Is it compulsory to claim unconditional exemption under service tax law?
- Decision: Sec5A(1A) of Central Excise Act requires compulsory availment of unconditional exemption.This section has not been made applicable to Finance Act, 1994. Also, there is no specific provision akin to Section 5A(1A) in Finance Act. Hence, no compulsion to claim exemption under ST law.

Comment:*Notification No. 25/2012-ST contains similar exemption. This judgment is expected to bring an end to unnecessary disputes requiring compulsory availment of exemption notification.Many times it may be beneficial not to claim exemption especially in cases where it results in breakage of Cenvat chain.*

ADVANCE RULLING

2. No service tax on Incentives/Volume discounts received from media owner *(M/s AKQA MEDIA INDIA PVT LTD 2016-TIOL-14-ARA-ST)*

- Background: Media agency providing services to advertisers charging appropriate service tax. Media vendors (where advertisement displayed) pay incentive/volume discounts at the end of period.
- Issue: Whether ST is applicable on incentive given by media owner to media agency?
- Decision:Held thatin absence of any contractual obligation between Applicant and Media Owners, the incidental receipt of incentives/volume discounts shall not be considered as consideration for providing any service. It is gratuitous payment, not liable to service tax.

TRIBUNAL

3. Credit is not deniable of duty paid on inputs even if process carried out on these inputs does not amounts to manufacture *(Jindal StanlessSteerway Ltd Vs CCE, Raigad 2016 (335) E.L.T. 57 (Tri-Mumbai)*

- Background: Assessee had availed credit of duty paid on inputs on which process carried out does not amounts to manufacture. Department contended that credit cannot be taken as the process carried out is not manufacturing.
- Issue: Whether Credit could be taken even if there is no manufacturing?

- Decision: It was held that as per Rule 16 of CER, 2002 credit is not deniable on duty paid input even if process carried out on these inputs does not amount to manufacture and same can be utilized for the payment of duty on the processed goods.

---

4. **Duty paid on inputs used in repair and maintenance of the capital goods which further used in manufacturing of goods is eligible to credit** *(Ganga KishanSahkariChini Mills Ltd. Vs CCE, Meerut. 2016 (335) E.L.T. 99 (Tri.- ALL.)*

- Background: Appellant availed credit of duty paid on inputs used in repair and maintenance of capital goods. Department contented that inputs are not being used in the manufacturing of excisable goods and hence credit cannot be taken.
- Issue: Whether credit is eligible on inputs used in repairing of capital goods?
- Decision: It was held that no final product can be manufactured without repair and maintenance and up keep of capital goods and hence inputs required for up keep and maintenance of capital goods are eligible for credit.

---

5. **Service tax not leviable on free services provided by selling dealers to customers during warranty period***(CCE& CUS Vs. Automotive manufactures Ltd., Nashik 2016 (42) STR 448 Tri-Mum)*

- Background: Assessee giving free services to customers during warranty period and not charging service charges. Such charges, if any, are included in dealer's margin provided by the manufacturer.
- Issue: Whether service tax leviable on such free services provided to customers under warranty?
- Decision: It was held that value of service is included in dealer's margin and no service charge is received from service receiver. Payment of bills by **selling** dealer to **service** dealer was an internal arrangement and had nothing to do with payment for services provided by selling dealer to customer of carhence service tax not leviable.

---

6. **Activity of repacking refined edible oil from tankers to retail packs with labeling of brand name not amounts to manufacture** *(CCE, Pune Vs. Anwar Oils, 2016 (335) E.L.T. 177 (Tri- Mumbai)*

- Background: Appellant is engaged in activity of repacking of refined edible oil in retail packs from tankers with labeling of brand name. Revenue contended that as per legal fiction of deemed manufacture created under law, such activity amounts to manufacture.
- Issue: Whether repacking of oil from tankers and labeling of brand name on it amounts to manufacture?
- Decision:Held that deemed manufacture is applicable only when repacking undertaken from bulk packs. It is well settled that tankers cannot be treated as bulk packs and hence activity of repacking refined edible oil from tankers to retail

packs with labeling of brand name does not amount to manufacture.

---

7. **Refund not admissible on services not listed with development commission for SEZ authorised operations***(Metro Global Business Services Pvt. Ltd. Vs. CCE-Pune III 2016 (42) STR 489 Tri-Mum)*

- Background:Appellant, SEZ, filed refund claim for imported services on which they had paid tax under RCM. They claimed that services fall under BAS but paid tax under residuary heading "other than 119 services". Appellant had not listed "any other services" with development commissioner for their authorized operations.
- Issue:Whether refund is admissible for such not registered services?
- Decision:It washeld that assessee has not listed "any other services" with Development Commissioner for their authorized operations. In absence of such permission, discharging service tax liability would not automatically entail granting of refund.

---

8. **SSI exemption and Cenvat credit benefit can be taken simultaneously.** *(British Health Product India Ltd Vs CCE, Jaipur 2016 (335) E.L.T. 489 (Tri- Del.)*

- Background: Appellant engaged in the manufacture of Low Sodium Salt (Lona) and avails SSI exemption. Appellant also manufacture Ayurvedic medicines and Ostwel Capsules on job work basis with brand name of others and pay excise duty in respect of those products and avails credit on input used for such goods. Department denied for SSI exemption and contended that both the benefit cannot be availed.
- Issue: Whether both the benefit can be availed simultaneously.
- Decision: Court relied upon case of Nibulae Health Care Ltd and held that manufacture of dutiable goods bearing brand name is outside the scope and purview of SSI exemption and hence credit would be admissible in respect of dutiable goods.

---

9. **Registration not statutory condition for claiming cenvat credit** *(J.P. Morgan services India pvt. Ltd Vs. CST-Mumbai-I 2016 (42) STR 579)*

- Background:Appellant, an exporter, availed cenvat credit of the activities of BAS and BSS before incorporating the same in service tax registration.
- Issue:Whether credit can be availed without obtaining registration?
- Decision: The court held that registration is not statutory condition precedent for claiming cenvat credit. Credit cannot be denied for the period when output service was not incorporated in service tax registration and incase where activities are undertaken from premises other than one in registration certificate.

---

10. **Classification of service should be same from both the end of service provider and service receiver.** *(JDSU India Pvt. Ltd. Vs. CST- Pune 2016 (42) STR 752 (Tri-*

Mum)

- Background:Service provider classified its service under works contract and discharged service tax liability accordingly. Appellant reclassified services so provided by SP as services of renovation and modernization and availed the Credit.
- Issue:Whether credit can be taken on works contract services reclassified by the appellant as services of renovation and modernization?
- Decision: The court held that if services of renovation and modernization are provided as 'works contract service' and tax liability is discharged under such head, then credit is not admissible. It is not open at service receiver end to reclassify the services in the nature of modernization/renovation/repair when SP has classified it under works contract for the purpose of availment of credit.

---

11. Credit allowed on service tax paid on membership fees of club for business promotion *(Pam Pharma& Allied machinery co. p. ltd. Vs. CCE- Mumbai-I 2016 (42) STR 757 (Tri-Mum)*

- Background:Appellant availed credit of ST paid on membership fees of club known as Entrepreneur organization. The expenses incurred on membership of club are forming part of the assessable value. Department contended that credit is not allowed as such service is not in relation to the business.
- Issue: Whether credit is admissible of ST paid on membership fees of club?
- Decision:Held that expenses incurred on membership of business club like Entrepreneur organization is indirectly related to the business promotion of business of appellant. Thus such expense incurred is 'input service' and the appellant can legally avail Cenvat credit of such expenses.

---

12. Credit of Service tax paid on banking and other financial services can be taken based on bank statement. *(Prudential process mgmt. services (I) (p) Ltd. Vs.CST Mumbai-II 2016 (42) STR 764)*

- Background:Appellant is a 100% EOU engaged in business of IT enabled services and availed Cenvat credit of ST paid on banking and other financial services based on the bank statement. Department contended that bank statement is not a valid document for availment of credit.
- Issue:Whether credit can be taken based on bank statement?
- Decision: It was held that proviso to sub-rule (1) of Rule 4A of service tax rules provides that any document provided by bank is sufficient for taking Cenvat credit and hence credit is allowed based on bank statement.

---

13. Mere technical discrepancies in the invoices cannot be ground for denying substantive benefit of refund to SEZ. *(Tieto Software Technologies Ltd Vs. CCE, Pune-III 2016 (42) STR 689 (Tri-Mum)*

- Background:Invoices issued by vendor located outside India which did not comply with the provisions of rule 4A of Service Tax Rules, 1994. Appellant paid ST under RCM and availed credit of it. Department denied the credit as invoice does not contain nature and category of service.

- Issue: Whether refund of credit availed on such service can be claimed by SEZ unit?
- Decision: It was held that vendor located outside India is not required to comply with the provisions prescribed under the Service Tax Rules, 1994. Mere technical discrepancies cannot be the grounds for denying the benefit of refund available to an SEZ.

---

14. Activity of converting saree into designer saree not amount to manufacture *(RohitBalDesigns(P) Ltd. 2016 (335) E.L.T. 543 (Tri. Del.)*

- Background: Assessee had carried out embroidery and hemming work on duty paid sarees purchased from market. Departments contends that work carry out by assessee contribute greater thickness to the cloth which amount to manufacture and demand duty.
- Issue: Whether assessee is liable to pay duty on work carried by them?
- Decision:Sarees were in running length and process of hemming and hand embroidery undertaken thereon does not alter its character and use.Therefore, as per Section 2(f) of CEA, 1994, activity undertaken by assessee does not amount to manufacture.

---

15. Truck owner is not liable to pay service tax *(M/s SHIVAJI HANUMANTRAO HUDE 2016-TIOL-1085-CESTAT-MUM)*

- Background: Assessee engaged in delivery of foodgrains as per direction of District Supply Officer under P.D.S System. Revenue contended that monthly invoice issued by assessee is consignment note against the goods transported and liable to ST.
- Issue: Whether service tax is applicable on transportation of goods without issuing consignment note?
- Decision: Periodical bills cannot be considered consignment note/biltees for delivery of foodgrains. In absence of consignment note, the assessee cannot be said to be GTA and hence not liable to service tax.

Comment: *Transportation of goods other than by GTA is covered under Negative List and hence not liable under current regime also.*

---

16. Two manufacturing unit are interconnected and eligible for common registration where product of Unit-I is starting point of manufacturing in Unit-II and have common registrations under other acts(*M/s MET TRADE INDIA LTD 2016-TIOL-1097-CESTAT-AL**L**)*

- Background: Unit I of assessee was sending lead ingots to Unit-II for manufacture of Lead Oxide and was receiving back the same and clearing on payment of duty from Unit I. After acquiring Unit-II, assessee requested Department for granting a common registration which was rejected on ground that both the units are not interlinked.
- Issue: Whether assessee is eligible for common registration?
- Decision:Finished product of Unit-I of assessee is starting point of manufacturing in

Unit-II and assessee has a common sales tax registration, files common income tax returns. Hence**,** both units are inter-connected. Once common registration is admissible then both the units are treated as one assessee and no duty on intermediate stages are required to be paid when duty is paid on end products.

---

17. Service tax refund not allowed where assessee not registered as service provider or manufacturer instead registered as non-assessee *(M/s Shams Healthcar Software (P) Ltd. vs CCE, Nagpur 2016 (42) STR 543 (Tri-Mumbai)*

- Background:Assessee not registered as service provider/manufacturer but obtained non assessee code with ACES. Refund of cenvat credit filed under Rule 5 of CCR.
- Issue: Whether assessee not registered as service provider/manufacturer entitled to claim credit and its refund under Rule 5?
- Decision:Credit can be claimed only by registered service provider/manufacturer. Assessee not registered in such capacity and hence may not claim credit. Accordingly, refund also not permissible.

---

18. Refund of unutilized credit admissible under Rule 5 of CCR, 2004 where it has no possibility of utilization in future on account of closure *(M/s SRINIVASA HAIR INDUSTRIES 2016-TIOL-1203-CESTATMAD)*

- Background:Assessee filled a refund claim of unutilized cenvat credit under Rule 5 of CCR which has no possibility of utilization in future, because of the closure of the unit. Department disallowed refund on ground that Rule 5 is applicable only in case of export of goods/services.
- Issue: Whether assessee is eligible for refund claim of unutilized cenvat credit?
- Decision:The Hon. Tribunal relied upon decision of Hon. High Court of Karnataka in case of Slovak India Trading Co.Ltd. [2008 (223) ELT A170 (SC)] wherein it was held that unutilized Cenvat credit, having no possibility of utilization in the future, on account of closure of the unit, may be refunded under Rule 5 of the CCR, 2004.

NCR Office: 509, Vipul Trade Centre, Sohna Road, Sector 48, Gurgaon
Tel: 8510950400; ashish@hiregange.com
Head Office: 1010, II Floor, 26th Main, 4th T Block, Jayanagar,
Bangalore-560041, Tel: 080-26536405

Branch Office:
409, Filix, LBS Marg,
Opp. Asian Paints,
Bhandup (West),
Mumbai-400078

Branch Office:
Basheer Villa", House No.8-2-268/1/16/B, II Floor, Sriniketan Colony, Road No.3, Banjara Hills, Hyderabad – 500034
Tel: 040-40062934

Branch office:
Flat No. 101, D.No. 9-19-18, Sai Sri KesavVihar, Behind Gothi Sons Show room, CBM Compound, Visakhapatnam-530 003 Tel:8916009235

www.hiregange.com