Availability of CENVAT Credit on Service Tax paid by the provider of GTA Service

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2016-TIOL-779-CESTAT-ALL

Issue:-

Whether service receiver can avail cenvat credit on service tax has been deposited by the provider of GTA service on the basis of invoice?

Facts and Background

M/S JK Sugar Ltd. ("The Appellant") had received inward GTA service and was liable to pay service tax under reverse charge mechanism as per rule 2(1)(d)(v) of Service Tax Rule, 1994. However, service tax was deposited by the service provider in lieu of the Appellant. In addition Appellant had availed credit on such service tax paid by the service provider on the basis of invoice.

Accordingly, the adjudicating authority issued SCN demanding the amount of credit availed by the Appellant on the ground of violation of Rule 2(1)(d)(v) of the Service Tax Rules and Rule 9(1)(e) of cenvat credit rule, 2004. The SCN was contested and the demand was confirmed by the Adjudicating authority.

Being aggrieved by the adverse order, the Appellant preferred an appeal before the Tribunal.

Applicant's Contention:

The Appellant contended that they had paid the service tax to the service provider and availed cenvat. The Service provider successively deposited the same in the revenue exchequer. Further, there is no dispute regarding payment of service tax by the service provider and the same has been accepted by the revenue. Thus, service tax cannot be demanded on same amount twice. The appellant further relied on the decision of Navyug Alloys (P) Ltd. vs CCE [2008-TIOL-2156-CESTAT-AHM] and submitted that service tax once paid by the GTA cannot be demanded from the manufacturer.

Revenue's Contention:

Rule 2(1)(d)(v) of the Service Tax Rules provides that in case of GTA service, service tax shall be paid by the recipient of service. Further, rule 9(1) (e) of the Cenvat Credit Rule, 2004 provides that the manufacture shall be eligible to avail credit on the basis of payment challan evidencing payment of service tax.

In the instant case since the tax has been paid by the service provider and credit has been availed by the service receiver on the basis of invoice, both rule 2(1)(d)(v) and rule 9(1)(e) has been violated.

Discussion:

The new regime of reverse charge mechanism was introduced w.e.f 01.07.2012, by which few services were notified by the Government where service receiver would be liable to discharge service tax. In order to give effect to such changes in the law, Section 68(2) had been amended along-with insertion of a proviso, whereby both the service provider and service receiver would be considered as persons liable to pay the tax on notified taxable services and to the extent specified against each one of them.

Ruling:

The Hon'ble Tribunal took note of such changes and had held that Section 68(1) provides that service tax shall be paid by the service provider as per Section 66; which is the charging section and Rule 2(1)(d)(v) of the Service Tax Rules cannot override the provisions of the section of the Act. Further, the liability to pay service tax by service receiver had come into effect from 01.07.2012. Moreover, it had been clarified in the board circular no. 97/8/2007-ST dated 23.07.2007 that service tax may be paid by the consignor, consignee or GTA where consignee is a manufacturer and service in question in an input service for them, the manufacturer shall be eligible to take credit of the same. Thus, the Hon'ble tribunal allowed the appeal, enabling the appellant to avail cenvat credit.