

**2012 (25) S.T.R. 85 (Tri. - Bang.)**

IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE

[COURT NO. II]

**Shri B.S.V. Murthy, Member (T)**

**COMMISSIONER OF CENTRAL EXCISE, MYSORE**

*Versus*

**REID & TAYLOR (INDIA) LTD.**

*Final Order No. 397/2011 and Misc. Order No. 305/2011, dated 20-6-2011 in  
Appeal No. ST/780/2009 and Cross Objection No. ST/CO/110/2010*

**CASES CITED**

Commissioner v. Shri Tubes and Steels Pvt. Ltd. — 2011 (21) S.T.R. 370  
(Tribunal) — *Referred*.....

ITC Ltd. v. Commissioner — 2011 (23) S.T.R. 41 (Tri.-Bang.) — *Referred*.....

Panchmahal Steel Ltd. v. Commissioner — 2008 (12) S.T.R. 447 (Tribunal) —  
*Referred*.....

REPRESENTED BY : Shri Harish. J. JDR, for the Appellant.

Shri K. Parameswaran, Advocate, for the Respondent.

**[Order].** - During the period from January, 2005 to March, 2006, the respondents utilized cenvat credit for payment of service tax on GTA services received by them. Revenue entertained a view that this is not correct and accordingly proceedings were initiated which has resulted in impugned order wherein the Id. Commissioner has held in favour of the respondents on merits relying upon several decisions of the Tribunal. Revenue is in appeal.

**2.** Ld. DR on behalf of the Revenue submitted that in the case of *ITC Ltd. v. CCE, Guntur* [2011-TIOL-568-CESTAT- BANG = 2011 (23) S.T.R. 41 (Tri.-Bang.)], the Tribunal has taken a view that Service tax on GTA services received by assesses who are engaged in providing some taxable service/manufacture of dutiable final products cannot pay service tax on GTA services received by them by utilizing cenvat credit. He submits that this is the latest decision and fairly admits that there were several decisions in the past wherein a view was taken

that cenvat credit can be used for payment of service tax on GTA services by recipients.

3. Ld. Counsel submitted that there were several decisions wherein a view was taken in favour of the respondents and in the case of *CCE, Belgaum v. Shri Tubes & Steels Pvt. Ltd.* [2011 (21) S.T.R. 370 (Tri.-Bang.)], the Tribunal also took the same view and in fact in that case the Tribunal had considered several decisions rendered on the same subject unlike in *ITC Ltd.* case where only *Panchmahal Steel Ltd.* [2008 (12) S.T.R. 447 (Tribunal)] case was referred to. Further he also submits that respondent has a very strong case on limitation and all the decisions rendered by the Tribunal were in favour of the respondents and therefore suppression of facts or mis-declaration could not have been invoked and in this case show-cause notice was issued in December, 2007 where the period for which the demand has been made is from January, 2005 to March, 2006.

4. I have considered the submissions made by both sides. Since I find that on limitation itself appeal can be allowed, I do not propose to go into merits at all in view of the fact that two co-ordinate Benches have taken different views on the subject. Of course in the case of *ITC Ltd.* in para 8 and 8.1. provisions of Rule 2(r) and Rule 2(q) of Cenvat Credit Rules have been discussed and on this ground also decisions have been differentiated. However, the fact remains that till the decision in the case of *ITC Ltd.*, all the decisions were in favour of the respondents and therefore invoking suppression or mis-declaration etc. for confirmation of demand is not in order. Further, I also take note of the submission made by the Ld. Counsel that even the original adjudicating authority has taken a view that the failure on the part of the assessee is acceptable as a *bona fide* error and cannot be attributed to be wilful intention to evade tax. In view of the above discussion, appeal fails on the ground of limitation alone and I am not going into merits since appeal can be rejected only on this ground. Appeal filed by the Revenue as well as the Cross-objection filed by the respondent get disposed of.

(Pronounced and dictated in open court)

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