

2011 (24) S.T.R. 456 (Tri. - Ahmd.)

IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD

[COURT NO. II]

Ms. Archana Wadhwa, Member (J) and Dr. P. Babu, Member (T)

KHYATI TOURS & TRAVELS

Versus

COMMISSIONER OF C. EX., AHMEDABAD

(In Favour of Assessee)

*Final Order No. A/1059/2011-WZB/AHD, Stay Order No. S/859/2011-WZB/AHD,
dated 13-6-2011 in Application No. ST/Stay/1121/2010 in Appeal No.
ST/386/2010*

CASE CITED

Om Shanti Travels — Order-in-Appeal No. 197/2010(STC)/MM/Commr(A), dated
9-8-2010 — *Followed*.....

REPRESENTED BY : Shri R. Thakkar, Chartered Accountant, for the Appellant.
Shri R.S. Srova, JDR, for the Respondent.

[Order per : Archana Wadhwa, Member (J)]. - After dispensing with the condition of pre-deposit of service tax of Rs. 44,162/-, confirmed against the appellants and interest amount, we proceed to decide the appeal itself with the consent of both the sides, inasmuch as the issue lies in a narrow compass.

2. The facts of the case, in brief, are that the appellants were engaged in the business of providing service namely "Rent-a-cab". On scrutiny of ST-3 return filed by the appellants for the period October, 2006 to March, 2007, it was observed that the appellants have discharged their service tax liabilities after availing abatement of 60% provided under Notification No. 1/2006-S.T., dated 1-3-2006 and simultaneously availed and utilized cenvat credit. The Notification No. 1/2006-S.T., dated 1-3-2006 is conditional and it read as "this notification shall not apply in cases where; (i) the CENVAT credit of duty on inputs or capital goods or the Cenvat Credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the Cenvat Credit Rules, 2004; or (ii) the service provider has availed the benefit under the Notification of the Govt. of India in the Ministry of Finance (Department of Revenue) No. 12/2003-S.T., dated 20-6-2003 [GSR 503(E) dated 20-6-2003]. Since the appellants have availed Cenvat credit along with the benefit of abatement, they failed to fulfil the conditions laid down and wrongly assessed the service tax liability for the period from October, 2006 to March, 2007. Therefore, a show cause notice dated 8-4-2008 was issued upon the appellants demanding service tax of Rs. 44,162/- by denying the abatement under Section 73(1) of the Act along with interest thereon under Section 75 of the Act and also proposed penalty under Section 76 of the Act. The adjudicating authority, vide impugned order confirmed the demand for service tax of Rs. 44,162/- under Section 73 of the Act and ordered recovery of interest thereon under Section 75 of the Finance Act, 1994. He also imposed penalty under Section 76 of the Finance Act, 1994.

3. Being aggrieved with the order, appellants filed appeal before Commissioner (Appeals) and submitted that they had initially availed the wrong Modvat credit to the extent of Rs. 759/- but the same stands reversed by them

subsequently. As such, it amounts to as if no credit has been availed by the appellants. The said plea of the appellants was not accepted by the Commissioner (Appeals) who rejected the appeal. Hence the present appeal.

4. It is seen that the appellant had reversed the wrongly availed Modvat credit along with interest, the same will have the effect as if no credit was availed by the appellants. The law on the above point is very clear and stands settled by various decisions of judicial as also the quasi judicial authorities. For the sake of convenience we may refer to the order passed by Commissioner (Appeals) in the case of *Om Shanti Travels, Ahmedabad* being Order-in-Appeal No. 197/2010(STC)/MM/ Commr(A)/Ahd dated 9-8-2010, wherein after summarising the entire **case law**, the benefit stands extended to the assessee. We reproduce the relevant paragraphs from the said order: -

"8. The appellant cited the case of *M/s. Hello Minerals Water Private Limited v. UOI* reported in 2004 (174) E.L.T. 422 (Allahabad). I have gone through this judgment. In Para 18 of this judgment it has been held by the High Court that if the exemption is subject to non-avaiement of modvat credit on inputs, the subsequent reversal of modvat credit amounts to non-taking of credit on inputs and the benefit of exemption notification number 15/94-C.E., is to be granted, even when reversal of credit on inputs was done at Tribunal stage.

8.1 The above judgment of the High Court is based on five member bench decision of the Tribunal in the case of *Franco Italian Company Private Limited v. C.C.E.*, 2000 (120) E.L.T. 792. This judgment in turn based on the Supreme Court judgment in the case of *Chandrapur Magnet Wire Private Limited v. C.C.E., Nagpur*, 1996 (81) E.L.T. 3.

8.2 I have gone through the Hon'ble Supreme Court of India's judgment in the above mentioned case, and I find that it has been laid down/held that debit entry in modvat credit account indicates as if no credit was taken on such inputs. This judgment has been followed in a number of Tribunal judgments. The latest has been a case of the Commissionerate of Service Tax itself in the case of *CST, Ahmedabad v. M/s. Amola Holdings Private Limited*. This judgment was given in order No. A/1148/WZB/AHD/09 dated 1-6-2009. This judgment also stands accepted by the Commissionerate and hence I follow the same and hold that reversal or debit of modvat credit in this case of 9595 rupees amounts to non-avaiement of modvat credit and accordingly, the appellant is eligible to the benefit under Notification No. 1/2006."

5. Inasmuch as the appellants have admittedly reversed the credit along with interest, we find that benefit of the notification in question would be available to them. Accordingly, we set-aside the impugned order and allow the appeal with consequential relief to the appellants. Stay petition also get disposed off.

(Dictated and pronounced in the Court)
