

Instructions issued by Revenue Department needs to be aligned with the decisions taken by the courts and the position of law as declared by the judgments

The Hon'ble Delhi High Court in *M/s. Hero Motocorp Ltd. v. Union of India & Ors [Review Petition 318/2022 in W.P.(C) 2032/2019 dated December 15, 2022]* has dismissed the review petition filed by the Revenue Department, and upheld the order passed by the Hon'ble Delhi High Court quashing the Instructions which prohibited the Input Service Distributor (“ISD”) from transitioning accumulated unutilized CENVAT credit. Further, held that, such instructions were not aligned with the decisions taken by the various courts and with the position of law as declared by judgments.

Facts:

M/s Hero Motocorp Ltd. (“**the Petitioner**”) is an ISD, whose request for allowing credit of unutilized CENVAT credit got rejected by the Revenue Department (“**the Respondent**”) vide letter dated February 4, 2019 (“**the Impugned Letter**”) on the basis of Instructions dated February 5, 2018 (“**the Instructions**”) issued by the Respondent, which prohibited ISDs from transitioning accumulated unutilized CENVAT credit.

The Petitioner then filed a petition before the Hon'ble Delhi High Court in *W.P. (C) 2032/2019*, challenging the Impugned Letter wherein, the Court vide order dated October 10, 2022 (“**the Impugned Order**”) quashed the Instructions issued by the Respondent and held that, no effect will be given to the Impugned Letter issued to the Petitioner by the Respondent and allowed the Petitioner to transition unutilized CENVAT credit.

Hence, the Respondent has filed the present review petition concerning the directions contained in the Impugned Order regarding the Instructions that was quashed.

Issue:

Whether the review petition filed by the Respondent is valid?

Held:

The Hon'ble Delhi High Court in ***Review Petition 318/2022 in W.P.(C) 2032/2019*** held as under:

- Noted that, the Instructions were not aligned with the decisions taken by the courts. Therefore, since this position was recognized, the prayers made in the writ petition were allowed, not as a matter of concession, but because of the position of law as declared by the judgments.
- Stated that, even according to the Respondent, the Petitioner was entitled to relief in terms of the judgment rendered by the Hon'ble Supreme Court in ***Union of India & Anr. v. Filco Trade Centre Pvt. Ltd. [Special Leave to Appeal (C) No(s). 32709-32710/2018]***.
- Held that, the review petition against the Impugned Order is not called for.

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