

Central Excise: Cenvat re-credit as consequential relief: No refund claim required

The appellant is a manufacturer of parts and components of motor vehicle. They have got the job work done from the job worker i.e. the process of heat treatment of the components. The job worker has paid the service tax on the process of heat treatment and charged to the appellant. The appellant has availed the Cenvat credit of service tax amount paid by the job worker.

Department has raised the objection that the job worker activity is exempted from payment of service tax in terms of Notification No. 8/2005-(ST) DT. 1.3.2005, therefore, the job worker was not supposed to pay the service tax & since they paid the service tax wrongly without availing exemption, the appellant is not entitled to take the Cenvat credit.

Not wanting to precipitate matters, the appellant reversed the credit. In the meantime, the Department had issued SCN for disallowance of the credit.

Simultaneously, the appellant filed a refund claim for getting back the amount reversed.

The proceedings initiated under the SCN was dropped.

The refund claim was rejected on merit as well as on the ground of unjust enrichment.

The Commissioner (A) allowed the appeal of the assessee on merit but rejected refund on unjust enrichment.

The appellant is before the CESTAT.

The CESTAT observed -

" 5. ...I find that the basic issue under dispute was whether the appellant are entitle for the Cenvat Credit in respect of the service tax paid by the job worker and this issue has been resolved in the adjudication Order No. 06/VNL/2010-11 DT. 30.7.2010. As per the said order the appellant is entitled to take the credit. In my view, the appellant is not required to pursue the refund application as they have been granted the relief under the said order dt. 30.7.2010 itself. The appellant have not taken the credit for the reason that they were pursuing this refund matter right from show cause notice stage till this appeal stage. In my considered view, the appellant is entitled to take the credit in terms of the adjudication order dt. 30.7.2010. I also hold that for the purpose of limitation in taking the credit, the period of litigation in the present case shall stand excluded. In view of my above observation, the present appeal is dismissed as withdrawn."