

## Service Tax: Credit allowed on common input services when used in J&K: CESTAT

The appellant is providing consulting engineer service, technical inspection and certification services, information technology software services and management / business consultant services. They are registered with the Service Tax Department. It is the case of the department that appellant availed CENVAT credit of service tax paid on input services for providing output services to State of Jammu & Kashmir and to other parts of India. Section 64 of Chapter V of the Finance Act, 1994 excludes the applicability of service tax to the State of Jammu & Kashmir. Therefore the audit team observed that appellant is bound to reverse the CENVAT credit availed on common input services as provided under Rule 6(3)(ii) read with Rule 6(3A)(b)(iii) of CENVAT Credit Rules which is applicable to a provider of both taxable and exempted services. The department is of the view that when the Finance Act, 1994 itself is not applicable to Jammu & Kashmir, the services rendered in that State are exempted services.

The appellant contended that Rule 6(2) of CENVAT Credit Rules comes into application when the manufacturer / service provider avails credit on inputs / input services used for manufacture of final products or providing output service which are chargeable to duty / tax as well as exempted goods / exempted services. That the services rendered by appellant to Jammu & Kashmir are not exempted services and therefore the provision does not apply.

After hearing both sides, the Tribunal held:

- The period of dispute is 4/2008 to 9/2010. During the relevant period the definition of output service under Rule 2(p) of CENVAT Credit Rules, 2014 is 'any taxable service, excluding the taxable service referred to in sub-clause (zzp) of Clause (105) of Section 65 of Finance Act, provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person as the case may be, and the expression 'provider' and 'provider' shall be construed accordingly. The definition of output service includes only the taxable services provided by a person. The definition of input service is given in Rule 2(l). Input service means any service used by a provider of taxable service for providing an output service. Undeniably, the services provided in the State of Jammu & Kashmir are not taxable services.
- Rule 6 speaks about the situation when the service provider is rendering output services which are chargeable to tax as well as exempted services. The services rendered in Jammu & Kashmir are not chargeable to service tax and therefore are not taxable services. But this does not make them exempted services also. A service becomes an exempted service when by notification or law, the service tax payable on such service is exempted. Rule 6(2) does not apply to a situation where the service provider renders both taxable services and services which are not subject to service tax. The law is silent in this regard. The department cannot construe the services provided to Jammu & Kashmir as exempted services and press into application, in such situations, Rule 6 of CENVAT Credit Rules 2004. As the services provided to Jammu & Kashmir are not subject to levy of service tax, whether such services would fall into the definition of 'output service' during the relevant period is itself doubtful. As per the definition of input service, only if the service provider uses for providing output service will the service be qualified as input service. In any case, the services rendered to Jammu & Kashmir do not fall in the category of exempted services.

Accordingly, the Tribunal allowed the appeal.

Before parting -At the material time the definition of exempted service under Rule 2(e) read

(e) "exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act.