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— LAW CHAMBERS —

## PRACTICE AREA UPDATE INDIRECT TAX

### **Reverse Charge Liability : Karnataka High Court Upholds Assessee's Right to Utilize CENVAT Credit for payment of Service Tax Pre 2012**

In a case involving a challenge by the Revenue under Section 35G of the Central Excise Act, 1944, the Department questioned an order passed by the CESTAT, Bangalore, which had ruled in favor of the assessee regarding the utilization of CENVAT credit for making payment of tax under Reverse Charge Mechanism the period prior to 1-7-2012. The central issue pertained to whether a service recipient, liable to pay service tax under the reverse charge mechanism for services received from outside India, could be treated as an "output service provider" for the purpose of utilizing available CENVAT credit to discharge that tax liability. The Revenue contended that such services should not be treated as output services and CENVAT Credit could not be used to discharge the said payment and that the Tribunal erred in ignoring specific restrictions and clarificatory notifications intended to limit the use of such credit.

The Counsel for the department argued that the CESTAT committed a legal error by ignoring Rule 5 of the Taxation of Services (Provided from outside India and Received in India) Rules, 2006, and misinterpreting the CENVAT Credit Rules. It was the Revenue's position that the recipient of a service is required to pay service tax under Section 66A of the Finance Act, 1994, but this does not equate to actually providing the service, thus disqualifying it as an "output service" for credit utilization.



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On behalf of the Respondent Assessee it was submitted that the questions of law raised were no longer res integra, having been decisively adjudicated by a Co-ordinate Bench of the Karnataka High Court. Reliance was placed on the Judgement in **Commissioner of Central Tax vs. Toyota Kirloskar Motors- C.E.A. No.59/2019**, asserting that though a service provider may reside beyond national borders, the law specifically foists the tax liability upon the recipient. It was further submitted that this position was further fortified by the high authorities of **Commissioner of Service Tax v Aravind Fashions Ltd.2012 (25) S.T.R. 583 (Kar.)** and **Commr. of C. EX. & CUS., Belgaum v. Godavari Sugar Mills Ltd.2015 (40) S.T.R. 1063 (Kar.)**.The Hon'ble High Court, observed that the judicial principles established in the **Toyota Kirloskar Motors, supra**, had attained finality following the dismissal of the Revenue's Special Leave Petition by the Hon'ble Apex Court. Perceiving no merit in deviating from this settled jurisprudence, the Court dismissed the Revenue's appeal , reaffirming that no substantial question of law remained for consideration as the issue stood concluded in favor of the assessee

**The client was advised by the Firm led by Partner Prashanth Shivadass, Associate Partner Rishab J and Senior Associate Nitin Aditya.**



**Prashanth Shivadass**



**Rishab J**



**Nitin Aditya**

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Prashantha s  
Chivadass

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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9<sup>TH</sup> DAY OF APRIL, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE S.G.PANDIT**

**AND**

**THE HON'BLE MR. JUSTICE K. V. ARAVIND**

**CENTRAL EXCISE APPEAL**

**BETWEEN:**

THE PRINCIPAL COMMISSIONER OF  
CENTRAL TAX-GST  
BANGALORE EAST  
COMMISISONERATE  
TTMC BUILDING,  
ABOVE BMTC BUS STAND,  
DOMLUR,  
BANGALORE - 560071.  
(FORMERLY COMMISISONER  
OF CENTRAL EXCISE,  
BANGALORE-IV)

...APPELLANT

(BY SRI. JEEVAN.J.NEERALGI, ADVOCATE)

**AND:**



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High Court of  
Karnataka



BANGALORE-560048.  
REPRESENTED THROUGH  
MANAGING DIRECTOR.

...RESPONDENT

(BY SRI. PRASHANTH.S.SHIVADASS, ADVOCATE)

THE CEA/CENTRAL EXCISE APPEAL IS FILED UNDER SEC. 35G OF THE CENTRAL EXCISE ACT 1944, ARISING OUT OF ORDER DATED 19-01-2024 PASSED IN FINAL ORDER NO. [REDACTED] BY THE CESTAT, SOUTH ZONAL BENCH, BENGALURU, PRAYING TO ALLOW THE APPEAL OF THE APPELLANT AND DECIDE THE QUESTIONS OF LAW AS FRAMED ABOVE IN FAVOR OF THE APPELLANT AND SET ASIDE THE IMPUGNED FINAL ORDER BEARING NO. [REDACTED] DATED 19-01-2024 PASSED BY THE CESTAT, SOUTH ZONAL BENCH, BANGALORE AND ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT  
and  
HON'BLE MR. JUSTICE K. V. ARAVIND





HC-KAR

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

The Revenue is in appeal under Section 35G of the Central Excise Act, 1944, questioning the order bearing [REDACTED] passed by the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, raising the following substantial questions of law:

- (i) *WHETHER, the CESTAT has committed an error in ignoring the restriction contained in Rule 5 of Taxation of Services (Provided from outside India and Received in India) Rules 2006?*
- (ii) *WHETHER, the CESTAT has erred in not holding that explanation to Rule 3(4) of CENVAT CREDIT RULES inserted vide Notification No.28/2012-CE (N.T.) dated 20/06/2012 is clarificatory and does not confer any right on the assessee for payment of service tax in respect of services where the assessee is service recipient?*
- (iii) *WHETHER, the service recipient is construed as output service provider for the purpose of availing and utilizing the CENVAT Credit contrary to the binding circular issued by the Board in F. No. 345/1/2008 dated 27/06/2008 where in it is clarified that the recipient of service is required to pay service tax under Section 66A though the service is actually provided not*





HC-KAR

*by the recipient but a person located in a country other than India. Such taxable services are not being actually provided by the person liable to pay service tax are not treated as output service for the purpose of CENVAT Credit Rules 2004?*

- (iv) *WHETHER, the CESTAT is right in allowing the CENVAT Credit in respect of the services which do not have nexus with output services contrary to the Rule 2(I) and Rule 3 of the CENVAT Credit Rules and ignoring the functional utility test of the input service thereby leading to perversity?*

2. Heard Sri. Jeevan.J.Neeralgi, learned Senior Standing Counsel for the appellant-revenue and Sri. Prashanth.S.Shivadass, learned counsel for the respondent.

3. The questions raised herein were the subject matter in the case of **Commissioner of Central Tax, GST West Commissionerate, Bangalore vs. Toyota Kirloskar Motors** in **C.E.A. No.59/2019** decided on **16.12.2021**. The relevant paragraph Nos.16, 17, 18 and 19 reads as follows:

*"16. In the case of Aravind Fashions Ltd., supra, the Co-ordinate Bench of this Court has considered the Cenvat Credit of input services utilized by the assessee towards the payment of service tax, it has been observed*





*that the assessee therein was the recipient of service tax, the service provider was outside the country, in law he has been treated as a service provider and is levied tax, the liability to pay tax on the service which he has received was foisted on such assessee under law. In order to discharge the said liability, he is entitled to use the cenvat credit which was available with him.*

**17.** *In Godavari Sugar Mills Ltd., supra, another Co-ordinate Bench of this Court having considered Rule 3(4)(e) of Cenvat Credit Rules, 2004 and Section 68(2) of the Finance Act, 1994, in the context of the assessee utilizing the cenvat credit of input services availed under Cenvat Credit Rules towards payment of GTA services and the credit of service tax paid by them for GTA, held that in view of specific reference to service tax and the benefit allowed to a service provider read with fiction created by Section 68(2) of the Finance Act, 1994, no fault can be found with the assessee in utilizing the cenvat credit available with it. These two judgments have been applied by the CESTAT in reversing the finding of the adjudicating authority.*

**18.** *In the case of Union of India v. Kansara Modlers Ltd., reported in 2018(15) G.S.T.L. 255 (Raj) the Hon'ble High Court of Rajasthan considering the identical question of law involved herein held that the Tribunal/CESTAT treating the assessee as output service provider is justiciable. The said order has been affirmed by the Hon'ble Apex Court in dismissing the special leave*





*petition filed by the Revenue reported in 2018(18) G.S.T.L. J36.*

**19.** *We are conscious that the special leave petitions preferred by the Revenue against Aravind Fashions and Godavari Sugar Mills, supra, though have been dismissed for low tax effect, we cannot subscribe to the arguments advanced by the Revenue in view of the fiction created under section 68(2) of the Finance Act, 1994 read with Rules 2(1)(d) of the Service Tax Rules, 1994 and Rule 3(4)(e) of the Cenvat Credit Rules, 2004.*

4. The Coordinate Bench of this Court has followed the decision in the case of **Commissioner of Service Tax, Bangalore v. Aravind Fashions Ltd.** in **2012 (25) S.T.R. 583 (Kar.)** as well as the decision in the case of **Commr. of C. EX. & CUS., Belgaum v. Godavari Sugar Mills Ltd. in 2015 (40) S.T.R. 1063 (Kar.)** while answering substantial questions of law in favour of assessee. The said decision of the Coordinate Bench was taken up to the Hon'ble Apex Court and the Hon'ble Apex Court dismissed the S.L.P. only on the ground of monetary limit. Thus, the decision of Coordinate Bench in the case of **Toyota Kirloskar Motors** (supra) has become final, which answered the questions in favour of the assessee.





HC-KAR



5. By following the decision in the case of **Toyota Kirloskar Motors** (supra), we dismiss this appeal filed by the revenue holding that substantial question of law would not arise for consideration. Appeal is **dismissed** accordingly.

Sd/-  
(S.G.PANDIT)  
JUDGE

Sd/-  
(K. V. ARAVIND)  
JUDGE



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S. K. Venkatesh  
Section Officer  
High Court of Karnataka  
Bengaluru-560 001  
25/4/26

- The date on which the application was made 18/4/26
- b) The date on which charges and additional Charges if any are called for
- c) The date on which charges and additional Charges if any are deposited/Paid
- d) The date on which the copy is ready 25/4/26
- e) The date of notifying that the copy is ready For delivery 28/4/26
- f) The date on which the applicant is required to appear on or before 29/4/26
- g) The date on which the copy is delivered to the Applicant
- 4 Examined by 3/5/26

