CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. E/60076/2018

[Arising out of Order-in-Appeal No. 98/CE/CGST-APPEAL-GURUGRAM/SG/2017 dated 29.09.2017 passed by the Commissioner of Central Excise (Appeals), Gurgaon I]

Date of hearing/decision: **02.04.2018**

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

C.C.E. Gurgaon I **:** **Appellant(s)**

VS

M/S Mark exhaust systems Ltd. **:** **Respondent(s)**

Appearance:
Present for the Appellant(s): Sh. Satyapal
Present for the Respondent(s): Sh. B. L. Yadav (consultant)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

FINAL ORDER NO. **62018** /2018

Per : **Ashok Jindal**

Revenue is in appeal against the impugned order wherein Cenvat Credit availed by the respondent on outdoor catering service has been allowed by both the authorities below. The period involved is 2010-2012, which means that it includes both the periods prior to amendment and post amendment also. In the period prior to 01.04.2011, the Ld. DR did not raise any objection for availment of Cenvat credit but is only agitating that the decision of Ultratech Cement Limited reported as - 2010 (20) S.T.R. 577 (Bom.,) has been appealed against before the Hon'ble Apex Court and the decision on the same is still awaited. For the post 01.04.2011, it is the contention of the Ld. AR that outdoor catering service has been excluded from the definition of the input service, therefore, they are not entitled to avail Cenvat Credit.

3. Heard the parties. Considering the fact that for period prior upto 01.04.2011, the decision of the Hon'ble High Court of Bombay in the case of Ultratech Cement Limited (Supra) has not been set aside by any Court. In that circumstances, the said decision is applicable as on date. Therefore, the respondent has rightly availed the Cenvat Credit on outdoor catering services prior to 01.04.2011.

4. For the period post 01.04.2011, the issue has been examined by this Tribunal in the case of Hindustan Coca-cola Beverages Pvt. Limited - 2017 (49) S.T.R. 88 (Tri.- Hyd.) wherein the Tribunal observed as under:-

> *"The definition of input service in Rule 2(l) of Cenvat Credit Rules, 2004 w.e.f. 01.04.2011 is reproduced as under:-*
>
> *RULE 2(l) : " Input Service" means any service.-*
>
> *(i) Used by a provider of output service for providing an output service; or*
>
> *(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; but excludes services, -*

(A) Specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh), and (zzzza) of clause (105) of Section 105 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) Construction of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) Specified in sub- clauses (d), (o), (zo) and (zzzzj) of clause (105) of Section 105 of the Finance Act, in so far as they relate to a motor vehicle is available as capital goods; or

(C) Such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

6. In Circular No. 334/3/2011 –TRU, dated 28.02.2011, the Board has discussed the highlights of the changes brought forth by finance Bill, 2011. The amendment to the definition of input service is discussed and the specific portion regarding the exclusion portion of clause (c) is as under:-

1.9 On the same lines, a service meant primarily for the personal use or consumption of employees will not constitute an input service. A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.

7. The appellants contend that canteen/outdoor catering services is provided within the factory premises in compliance to the provisions of the Factories Act, 1948. It is also submitted that such services are not used primarily for personal use or consumption of employee. In P. Ramanthan Aiyar's Advanced Law Lexicon 3rd edition, the word primarily is defined as "that which is first in order, rank or importance, anything from which something else arises or is derived." The word means something which is more proximate or more important. When outdoor catering services, beauty treatment, health services, etc. used for personal use or consumption of an employee, it would not quality as 'input service'. In the instant case, as per Factories Act, 1948, the appellants are compelled to provide food facilities inside the factory. It is more importantly *used by the appellant to comply with the mandatory requirement under Factories Act. If they do not comply with such provision of the Factories Act, the appellants will definitely not be able to engage in the production/manufacture of final products. Therefore, outdoor catering services are used by appellant in relation to the business of manufacture and not for any personal use or consumption of employee."*

As issue has already been decided by this Tribunal in the case of Hindustan Coca Cola Beverages Pvt. Limited (Supra) and the facts of the case are the same has not been disputed, in that circumstances, I hold that authorities below has rightly allowed Cenvat Credit on Outdoor catering service to the respondent. In that circumstances, I do not find any infirmity in the impugned order and the same is upheld. Appeal filed by the revenue is dismissed.

(Order dictated and pronounced in the court)

Ashok Jindal
Member (Judicial)

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