

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/131 -134/2012

(Arising out of Order-in-Original No. 56/2011 dated 28.10.2011 passed by the Commissioner of Central Excise, Commissionerate-II, Chennai).

M/s. Rajsriya Automotive Industries Pvt. Ltd. : Appellant

Vs.

CCE & ST, Chennai-III : Respondent

Appearance

Ms. Krithika Jagannathan, Advocate,
for the appellant

Shri R. Subramaniam, AC (AR)
for the Respondent.

CORAM:

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **11.05.2018**

FINAL ORDER No. **41492-41495/2018**

Per Bench

Brief facts are that the appellants are manufacturers of parts and accessories of two wheeler motor vehicles and are availing facility of Cenvat credit on inputs, input services. The department was of the view that the appellant are not eligible to

avail credit on Outdoor Catering service and SCNs were issued proposing to disallow the credit and to recover the same along with interest and for imposing penalties. After due process of law, the adjudicating authority vide impugned order herein disallowed the credit and confirmed the demand and interest and imposed penalty. Aggrieved the appellant is now before the Tribunal.

2. On behalf of the appellant, the Ld. Counsel, Ms. Krithika submitted that the period involved is from March 2006 to February 2011. The appellant had employed more than 250 persons in the factory during the relevant period. Thus for the canteen facilities provided to its staff, workers and employees, the appellant has availed credit under the category of Outdoor Catering Services. They have four factories all situated in Hosur, SIDCO Industrial Estate. The appellants had collected employee's contribution for the food supplied to them in the canteen. The employee's contribution to the subsidized food provided in the factory would be to the tune of Rs.5,95,428/-. The appellant has already paid an amount of Rs. 6,11,608/- towards this liability and the same has been intimated the department. Thus the present dispute is only regarding the eligibility to the credit on Outdoor Catering Services being the credit availed on the employee's contribution paid by the appellant. The department has denied the credit alleging that there is no nexus with outdoor catering service with the activity

of the manufacture. The issue is settled in the decision of *CCE, Ahmedabad Vs. Ferromatik Milacron India Ltd.* - 2011 (21) STR 8 (Guj.) and *CCE, Chennai Vs. Visteon Powertrain Control Systems Pvt. Ltd.* - 2016 (41) STR 168 (Mad.).

3. The Ld. AR, Shri R. Subramaniam, AC, supported the findings in the impugned order. He stressed that the appellant is not eligible for the credit on the part of the contribution collected from the employees.

4. Heard both sides.

5. The issue for consideration is whether the appellants are eligible for credit on Outdoor Catering Service/Canteen facilities provided in the factory. The period is prior to 01.04.2011 and the issue has been settled by the decisions relied by the Ld. Counsel of the appellant. However, the appellant is not eligible to avail credit on the contribution collected from the employees. It is brought from the facts as well as from the records that the appellant has reversed an amount (credit to the tune of Rs.6,11,608/-) being the credit applicable to the employees contribution. It is stated by the appellant that they have thus paid excess amount of Rs. 16,188/-. The appellant is definitely eligible for the credit on the amount contributed by them being the employee's contribution. We therefore hold that the impugned order disallowing the credit cannot sustain and requires to be set aside, which we hereby do. We make it clear

that the appellant is not eligible for the credit on the employee's contribution.

6. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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