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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1270/2007-1272/2007 – SM[BR] Date 20/01/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR II

Appellant

Vs

M/S J.K.CEMENT WORKS

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 81–83 / 2009- **SM[BR** dated 16.1.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S J.K.CEMENT WORKS
MANGROL, (RAJ.)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1 /1289-A, VASANT KUNJ NEW DELHI -70.

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

2. M/S J.K.CEMENT WORKS
NIMBBAHERA, CHITTORGARH (RAJ.)

3. M/S J.K.CEMENT WORKS
MANGROL, (RAJASTHAN)

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal Nos. 1270 – 1272 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 132-134 (HKS) CE/JPR-II/2007 dated 27/02/2007 passed by The Commissioner (Appeals-II), Customs & Central Excise, Jaipur.]

For Approval and signature :

Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Jaipur – II — Appellant

Versus

M/s J.K. Cement Works — Respondent

Appearance

Shri A. K. Rastogi, Authorized Representative (DR) – for the appellant.

Shri Atul Gupta, C.S. – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 10/12/2008.
DATE OF DECISION : 16-01-2009 .

Final Order No. 81-83/09-SM(BR) Dated : 16-1-09

Per. Rakesh Kumar :-

These are the Revenue's appeals against the impugned order-in-appeal dated 27/2/07 passed by CCE (Appeals), Jaipur, by which he set aside the Deputy Commissioner's orders-in-original No. 186/06-ST dated 05/12/06, 205/06-ST dated 15/12/06 and 169/06-ST dated 04/12/06 confirming Cenvat credit demands of Rs. 1,20,246/-, Rs. 8,201/- and Rs. 9,363/- respectively against the Respondent and also imposing penalty on them. The Respondents are manufacturer of cement in their plants at Nimbahera and Mangrol and avail Cenvat credit facility. The point of dispute is as to whether they are eligible for service tax credit in respect of "Rent a cab services", "cellular telephone services". "repair of car/motor vehicle service" and "photography services". According to Revenue, these services cannot be treated as "input services" used in or in relation to manufacture of cement.

2. Heard both the sides.

2.1 Shri A.K. Rastogi, the learned Departmental Representative, reiterating the grounds of appeal pleaded that the condition of the phrase – "directly or indirectly, in or in relation to manufacture ..." in the definition of "input services" in Rule 2 (l) of the Cenvat Credit Rules, 2004, is not fulfilled in respect of 'Rent a cab (Taxi hire)', 'Photography' 'Maintenance & repair of cars/Motor vehicles' and 'cellular/mobile telephone service', that the Respondents have not established as to how these services have been used in relation to manufacture of the final product, and clearance of the final product, from the place of removal, that no documentary evidence has been submitted by the Respondents that these services were used for their in relation to their business and that in view of this, the impugned order is not correct.

2.2 Shri Atul Gupta, Company Secretary, the learned counsel for the Respondent, pleaded that the services, in question, are used in or in relation to the manufacturing and business activity of the Respondent, that Rent a cab (Taxi hire) services are used for movement of technical team and experts who frequently visit the factory premises and the mines, that many times the technical persons from the Head office located at Kanpur visit the plants at Nimbahera and Mangrol, that engineers visit the various sections of the plant and the mines for day today operation, for which rented cabs are used, that photographs of various plants or some equipment are sent by the Respondent to various statutory bodies evidencing that a particular production process was as per requirement of this statute, that the Respondent company maintains ~~maintenance~~ of fleet of cars and other vehicles for use of their service offices for Respondent company's work and repair and maintenance expenses have been incurred for maintenance of these vehicles, that cellular phones have been used for the company's work only and personal use of such phones has to be paid for by the employee, that credit in respect of mobile phone is available in view of Tribunal's judgments in cases of **Indian Rayon and Industries Ltd. vs. CCE, Bhavnagar** reported in **2006 (4) S.T.R. – 79** and

Grasim Industries vs. CCE, Jaipur – II reported in **2008 (11) S.T.R. – 168**, that as per the Tribunal's judgment in case of **CCE, Nasik vs. Cable Corporation of India Ltd.**, reported in **2008 (12) S.T.R. – 598**, 'rent a cab service' used for bringing employees to work in factory for manufacture of goods is an 'input service' ~~and~~ as defined under Rule 2 (l) of the Cenvat Credit Rules, 2004 and that the Tribunal in case of **Victor Gaskets India Ltd. vs. CCE, Pune – I** reported in **2008 (10) S.T.R. – 369**, while holding that outdoor catering services" for running canteen in the factory premises is included in the expanded inclusive definition of 'input service', has observed that the expression – 'such as' in Rule 2 (l) means stipulated activities that follow the expression are only illustrations and not limitation and that the expression – "in relation to" used in Rule 2 (l) has to be given a wide meaning as has been held by Hon'ble Supreme Court in cases of **Solars Chemtech Ltd.** reported in **2007 (214) E.L.T. – 481 (S.C.)** and **Doypock Systems Pvt. Ltd.** reported in **1988 (36) E.L.T. – 201 (S.C.)**.

3. I have carefully considered the submissions from both the sides and have gone through the records. The Revenue's

ground for denying Cenvat credit in respect of the 'cellular mobile phone service', 'rent a cab (Taxi hire) service', 'photography service' and 'maintenance and repair of company owned cars/vehicles' is that the condition of the phrase – 'directly or indirectly, in or in relation to ..." is the definition of 'input service' ~~and~~ or given in Rule 2 (l) of the Cenvat Credit Rules, 2004, is not fulfilled in case of the Respondents as they have not established that these services were used in relation to manufacture of finished product and its clearance from the place of removal. On going through the orders in original, I find that in course of adjudication proceedings before the Deputy Commissioner, the use of each of these services in relation to manufacture had been explained.

3.1 As per the Tribunal's judgments in case of India Rayon & Industries Ltd. (supra) and Grasim Industries (supra), service tax paid on mobile telephone service is available to service provides of output service and manufacturers. The Respondent's plea that the mobile phones given to their service offices and staff for company's work and personal use of such phones has to be paid for the employee, has not been

disputed
~~controvert~~ by the Revenue. Therefore there is no ground for denying the credit of service tax paid on cellular mobile phones provided by the Respondent to their employees for company's work.

3.2 As per Tribunal's judgment in case of CCE, Nasik vs. Cable Corporation of India (supra) Rent-a-cab service used for bringing employees to work in the factory for the manufacture of goods is 'input service' within the meaning of this term, as defined in Rule 2 (l) of the Cenvat Credit Rules, 2004. The Respondents have explained the use of hired taxis in relation to manufacture of cement. There is no evidence produced by the Revenue that the taxis were used for not related to manufacture activities of the Respondent. In view of this there is no justification for denying credit of service tax paid or rent-a-cab service availed by the Respondent.

3.3 Since the repair and maintenance of service is availed by the Respondents in respect of fleet of cars/motor vehicles owned by them for ~~these service~~ their officer's use for the company's work and since the Respondent's claim that the 'photography service' has been availed by them only in relation to their manufacturing activity, has not been controverted by the Revenue, both these services have to be treated as – 'Services used directly or indirectly, in or in relation to manufacture of final products …' or 'in relation to activities relating to business and hence the same are covered by the definition of 'input service' as given in Rule 2 (l) ibid. As held by this Tribunal in case of Victor Gaskets India Ltd. (supra), the expression – 'in relation to' in the definition of 'input service' has to be given a wide ~~cennitation~~ connotation and the illustrative list of activities relating to business in the inclusive definition of "input service" is not exhaustive, as the expression 'such as' follows the expression – 'activities relating to business'.

4. In view of the above discussion, I find no infirmity in the impugned order. The Revenue's appeals are dismissed.

(Pronounced in open court on 16/6/09)

(Rakesh Kumar)
Member (Technical)

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