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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/1903/2007 – SM[BR] Date 19/06/2009

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

To :
M/S ACE GLASS CONTAINERS LTD. (GLASS UNIT)
VIRBHADRA, RISHIKESH, DISTT. DEHARADUN,
UTTARANCHAL

M/S ACE GLASS CONTAINERS LTD. (GLASS UNIT) Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 590 / 2009 –SM[BR] dated 5.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.1903 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.64-CE/MRT-I/2007 dated 29.03.2007 passed by the Commissioner of Central Excise (Appeals), Meerut (U.P.)]

Date of Hearing/ Decision:5.6.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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? :

No.

4. Whether Order is to be circulated to the Departmental authorities? : yes

M/s.ACE Glass Containers Ltd. ...Appellants
[Rep. by Shri Alok Arora, Advocate]

Vs.

CCE,Meerut-I ...Respondent
[Rep. by Shri Sansar Chand, DR]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 590/09-SM (BR)/Dated:05.06.2009

Per P.K. Das:

The appellant filed this appeal against denial of credit on Colomony Powder, Welding Electrodes, Plastic Crates/Pallets and credit on input-services viz. Taxi Service, Mobile Phones and Telephones.

2. After hearing both the sides and on perusal of the records, the admissibility of credit of the above items are discussed below:-

(A) Colomony Powder:-

Ld. Advocate submits that Colomony Powder is a metal powder used for filing of the cracks of the old and used moulds and dies. He submits that the appellant manufactured Glass Bottles, wherein moulds and dies are used as capital goods. By repeated use of moulds and dies, it is damaged and Colomony Powder is used to fill-up this damage in the moulds and dies. Thus, the Colomony Powder is used for repair and maintenance of moulds and dies. He submits that the Tribunal in the case of Hindustan Zinc Ltd. Vs. CCE, Jaipur reported in 2009 (235) ELT 289 (Tribunal-Delhi) following the decision of the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. reported in 2007 (214)ELT 510 (Rajasthan) allowed credit on white metal used for repair and maintenance of the machinery.

Ld. DR submits that the item is used for repair and maintenance is not eligible for credit as held by the Larger Bench of the Tribunal in the case of Jaypee Rewa Plant – 2003 (159) ELT 553.

I find from the order of the Commissioner (Appeals) that the Colomony Power is used for the repairing of moulds and dies. It is seen that the Colomony Powder is used for filling of the cracks of the damaged moulds and dies, which is subsequently used in the finished goods. The Tribunal in the case of Hindustan Zinc Ltd. (supra) following the decision of the Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) allowed the credit on Ingot White Metal, which is used for filling of lining of bearing of crusher machines. In view of that, the credit on Colomony Powder is eligible.

(B) Welding Electrodes:

The Commissioner (Appeals) observed that the Welding Electrodes is used for repair and maintenance of Plant and Machinery. The Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. Vs. Union of India reported in 2008 (238) ELT 517 (Rajasthan) held that Welding Electrodes used for repair and maintenance of plant and machinery is eligible for credit. Hence, Welding Electrodes is eligible for Cenvat credit.

(C) Plastic Crates & Pallets:

It appears from the order of the Commissioner (Appeals) that these items were used for transferring the raw materials/semi-finished glass bottle as well as finished goods (glass bottles) from one section to another section in the factory premises.

Ld. Advocate submits that the Plastic Crates/Pallets are accessories. He relied upon the decision of the Larger Bench of the Tribunal in the case of Banco Products (India) Ltd. Vs. CCE, Vadodara-I reported in 2009 (91) RLT 216 (CESTAT-LB).

I find that the Larger Bench of the Tribunal in the case of Baco Products (India) Ltd. (supra) held that Plastic Crates were used for transporting raw materials to machine and finished goods from machine to store room is accessory to machine and eligible for credit as capital goods. So, denial of credit on Plastic Crates and Pallets is not justified.

(D) Credit on input services Viz Taxi Service, Mobile Phone and Telephones:-

The ld. Advocate submits that Mobile Phone and Telephones were installed at the residence of the Managers and also used by the employees of the appellant company. He also submits that Taxi Service is used as a cab for transporter.

Ld. DR submits that the appellant failed to produce corroborative evidence to the effect that the instant services were used for the works relating to the manufacture and clearance of their excisable goods.

I find from the show cause notice that the credit in respect of Mobile Phones allotted to the Managers and telephones were installed at the residence of the Managers and not in the factory premises. The credit in respect of the Taxi Service is not eligible as it is not within the definition of Input Service under Service Tax Rules, 2002/Cenvat Credit Rules, 2004. The Hon'ble Gujarat High Court in the case of Commissioner of Central Excise Vs. Excel Crop Care Ltd. reported in 2008 (12) STR 436 (Gujarat) held that Mobile Phones provided by the assessee to the employees and the records not showing that activities carried out by employees not relatable to manufacture, there is no reason for denial of the credit on these items.

In the present case, I find from the show cause notice that the Mobile Phones were allotted to the Managers and installed at the residence of the Managers, there is no allegation in the show cause notice that these items were not used in relation to the manufacture of final products and business activities. Therefore, the findings of the Commissioner (Appeals) is without any basis. It is noted that the Tribunal in the case of Commissioner of Central Excise, Nasik Vs. Cable Corporation of India Ltd. reported in 2008 (12) STR 598 (Tribunal-Mumbai) held that rent-a-cab service is used for the employees of the factory for manufacture of goods, input-credit is eligible. Hence, there is no justification to deny the credit on these items.

3. In view of the above discussions, denial of credit on Colomony Powder, Welding Electrodes, Plastic Crates & Pallets and Input Services viz. Taxi Service, Mobile Phones and Telephones are set aside. Accordingly, penalty is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 5.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.