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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/2287/2007 - SM (BR) Date 07/07/2009

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S VIKRAM CEMENT Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 651 / 2009 –SM[BR] dated 12.5.2009

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 VIKRAM CEMENT

P.O. KHOR, DISTT. NEEMUCH (M.P)

2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI

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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.2287 of 2007-SM

[Arising out of Order-in-Appeal No.IND-1/105/2007 dated 18.05.2007 passed by the Commissioner of Central Excise (Appeals-I), Indore (M.P.)]

Date of Hearing/ Decision:12.5.2009

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?	:	No.
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes.

CCE, Indore ...Appellants

[Rep. by Shri S. Gautam, DR]

Vs.

M/s. Vikram Cement ...Respondent

[Rep. by Shri R. Raghavan, Advocate]

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

Final Order No.651/2009 SM(BR)/Dated:12.05.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of cement. They availed Cenvat Credit on input services during the period from January, 2005 to December, 2005. The details of the Cenvat credit on the input-services are as under:-

(a) Credit in respect of consultancy services for designing and engineering provided by M/s.Bhagwati Designers in relation to installation of Fly Ash handling, Storage & Loading System at Kota Thermal Power Plant Kota (Rajasthan).

(b) Credit in respect of services provided by M/s. Holtech Consulting P. Ltd. relating to fee for submission of DHDB report and fee due on submission of deposit block model report in relation to mines situated outside the factory.

(c) Credit in respect of coal/fly ash handling services provided by M/s. Dahej Harbour, Infr. Ltd. and M/s. Translinks, but in fact it relates to service charges recovered by the provider in the matter of refund of MP/MAD/Cess and to bonus payable to provider against storage in coal rakes.

(d) Credit in respect of the services provided by M/s. N.K. Traders for supervision and regulating the tankers of fly ash in FSP area.

2. The Original Authority denied the credit and imposed penalty.

3. The Commissioner (Appeals) set aside the Adjudication Order. Hence, Revenue filed this appeal.

4. Ld. DR on behalf of the Revenue reiterates the Grounds of Appeal. He submit that the input services were used outside the factory premises and, therefore, the respondents are not eligible for credit. He further

submits that Rule 2 (1) of the Cenvat Credit Rules, 2004 provides any services used by the manufacturer whether direct or indirectly, in or in relation to the manufacturer of final products and clearance of final products from the place of removal. He submits that the input services in this case were rendered outside the place of removal of the goods and, therefore, they are not eligible.

5. Ld. Advocate on behalf of the respondents reiterates the findings of Commissioner (Appeals). He drew the attention of the Bench to Cenvat Credit Rules (draft rules) and Cenvat Credit Rules, 2004. He also submits that the Larger Bench of the Tribunal in the case of Commissioner of Central Excise Vs. GTC Industries Ltd. reported in 2008 (12) STR 468 (Tribunal-LB) while dealing with the input-services of outdoor catering service held that outdoor caterer providing catering services is input service relating to business. It has been held that expenses towards canteen and provision of subsidized canteen form part of cost of production, Cenvat credit is admissible. He also relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Nasik Vs. Cable Corporation of India Ltd. reported in 2008 (12) S.T.R. 598 (Tribunal-Mumbai), wherein rent-a-cab service used for transporting employees to work in the factory for manufacture of goods, input service credit is eligible. He also relied upon the decision of the Tribunal in the case of Manikgarh Cement Vs. CCE, Nagpur reported in 2008 (9) S.T.R.

554 (Tribunal-Mumbai). He submits that the Commissioner (Appeals) rightly held that there is no provisions for denial of credit on the ground that the service was rendered outside the factory premises.

6. In reply to the submission of the respondent, the ld. DR submits that Rule 2 (1) of the Rules is very clear that the services used by the manufacturer must be in relation to the manufacture of final products. In this case, the services rendered at the premises of power plant cannot be related to the manufacture of the final product. He further submits that "inclusion" Clause of Rule 2 (l) of the Cenvat Credit Rules, 2004 provides 'procurement of inputs' and it indicates the receiving of the inputs. It is his contention that the services rendered at the premises of the power plant prior to the receiving of the inputs, which would not be treated as "procurement of input". He further submits that the words in the "Inclusion" Clause, "transportation upto the place of removal" indicate that activities should be within the factory premises. It is his contention that whatever the expenses incurred by the assessee and service tax paid cannot be eligible for Cenvat Credit. It must be looked into as to whether the service is used in the manufacture of the final products.

7. After hearing both the sides and on perusal of the records, I am unable to accept the submission of the ld. DR that the services rendered by the service providers outside the factory of manufacture cannot be

treated as services in relation to procurement of inputs. It should be kept in mind that excise duty is a tax on value addition on goods, service tax is a tax on value addition by rendering services. Service tax has to be understood in this context. Now, the definition of "input service" under Rule 2 (l) of Cenvat Credit Rules, 2004 is reproduced below:-

> "(l) "Input Service" means any service,-
>
> (i) used by a provider of taxable 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 from the place of removal,
>
> and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premise of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs

or capital goods and outward transportation upto the place of removal."

8. As per definition, input-service would cover any services used by the manufacturer directly or indirectly in or in relation to the manufacture of final products. The Commissioner (Appeals) rightly held that there is no provisions that the services received outside the factory would not make eligibility for the credit. The main issue in this case is to be examined as to whether the impugned service is in or in relation to the manufacture of final product.

9. It is revealed from the impugned order that coal and fly ash are required for the manufacture of their final products. M/s. Dahej Harbour ad M/s. Translinks rendered services with regard to transportation of coal and fly ash. It appears that the credit availed by the respondents in respect of the inputs services, which are in relation to the manufacture of the final product. It is contended by the ld. Advocate that value of the such services were already included in the assessable value. The Larger Bench of the Tribunal in the case of Commissioner of Central Excise, Mumbai-V Vs. GTC Industries Ltd. reported in 2008 (12) S.T.R. 468 (Tribunal-LB) held that the cost of production shall consist of material consumed, Direct Wages and Salaries, Director Expenses, Works Overheads, Quality Control Cost, Research and Development Cost, Packing cost, Administrative Overheads relating to production. To arrive

at cost of production of goods dispatched for captive consumption, adjustment for stock of work-in-progress, finished goods, recoveries for sales of scrap, wastage, etc. shall be made. It is noted that the services rendered in procurement of raw materials would be included in the raw material cost, which is also included in the cost of production. The Larger Bench while dealing with Service Tax on the outdoor catering services, it has been held that as the same will form part of cost of production. In the present case, it has also been observed that coal/fly ash are inputs required for the manufacture of final products and the expenses incurred for services thereon included in the raw material cost, a part of the cost of the production. So, the Commissioner (Appeals) rightly allowed the credit on these items.

10. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in the open court on 12.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.