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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/2131/2007 – SM[BR] Date 07/07/2009

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S BEEKAY ENGG. CORP., Respondent

I am directed to transmit herewith a certified copy of **Final order No. 661 / 2009–SM[BR]** dated 11.6.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S BEEKAY ENGG. CORP.,
   27/28, LIA INDUSTRIAL ESTATE, BHILAI,DISTT-DURG(CG)
2. Adv. / Consult SHRI S. GROVER ADV.
   N/V;----------------------
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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

<u>COURT – III</u>

<u>CENTRAL EXCISE APPEAL NO. 2131 OF 2007-SM</u>

[Arising out of Order-in-Appeal No. 08-ST/RPR-II/2007 dated 28.03.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

For approval and signature:

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

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?	NA
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, Raipur — Appellant

Vs.

M/s. Beekay Engg. & Castings Ltd., — Respondents

Appearance:

Shri V.K. Saxena, Jt. C.D.R. for the Revenue;
Shri S. Grover, Advocate for the respondents

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 11th June, 2009

FINAL ORDER NO. 661/2009 SM(Br) **dated** _________

Per P.K. Das:

Revenue filed this appeal against order of the Commissioner (Appeals) whereby Adjudication order was modified and credit was allowed on certain input services and penalty was reduced from Rs. 10,000/- to Rs. 2,000/-.

2. After hearing both sides and on perusal of the records, the admissibility of credit on input services are discussed as under:-

(a) **Mobile /landline Phones** – The original authority disallowed the credit on the ground that some documents were not in favour of the respondents. The Commissioner (Appeals) observed that the respondents produced documents which were verified by the Suptd. of Central Excise (Appeals). It has also been observed that the documents are showing the address of the respondents and it cannot be said that these documents are not in favour of the respondents. Regarding Landline Telephone, it has been observed that the respondents submitted the documents i.e. BSNL Telephone bills in which only telephone number had been mentioned and the address of the respondents. It was also observed that payments were made by the respondents and these telephones were installed in the factory. The ld. Jt. CDR submits that mobile phone is not exclusively used in relation to the manufacturing or business activities.

Hon'ble Gujarat High Court in the case of CCE, vs. Excel Crop Care Ltd., reported in 2008 (12) STR 436 (Guj.) held that phone while installed in the factory premises credit cannot be denied.

I find that there is no material available that phones were not used in relation to the business activities. There is no specific provision in Cenvat Credit Rules that mobile phone would be used exclusively in relation to the manufacturing process in business activities. So, the Commissioner (Appeals) rightly allowed the credit on Mobile and Landline phones.

(b) **Rent-a-Cab Service** – The original authority held that Rent-a-Cab service is not eligible for input credit. The Commissioner (Appeals) observed that the taxis were hired and utilized by the employees of the unit and in their business activities, these are input services.

Learned Jt. CDR submits that Rent-a-Cab service were not utilized by the manufacturer exclusively for the business purpose.

The Tribunal in the case of CCE, Nasik vs. Cable Corporation of India Ltd., reported in 2008 (12) STR 598 (Tri.-Mumbai) held that input credit on Rent-a-Cab is eligible. It is seen that the Commissioner (Appeals) after verification of the documents allowed the credit on Rent-a-Cab service. There is no material available that Rent-a-Cab was utilized otherwise. So, contention of the learned Jt. CDR cannot be accepted.

(c) **Insurance premium** – The original authority held that input credit on insurance premium is not eligible. The Commissioner (Appeals) observed that service tax paid on premium of General Insurance towards the losses due to fire, machinery breakdown, cash handling, group gratuity and group accident policy, is eligible for credit. The ld. Jt. CDR submits that insurance premium paid to cover individual persons/ staffs of the respondents and not plant and machinery.

The Tribunal in the case of Stanzen Toyotetsu India Pvt. Ltd. vs. CCE, Bangalore-III, reported in 2009 (14) STR 316 (Tri.-Bang.) held that input service credit is eligible on Group Insurance Health policy for employees/ workers of the assessee. Therefore, the Commissioner (Appeals) rightly allowed the credit on Insurance premium.

(d) **Courier (Inward Freight)** – The original authority denied the credit on the ground that Courier (Inward freight) is not eligible for input credit. It is also held that in some cases registration number was not given. It is revealed from the order of the Commissioner (Appeals) that credit was availed only on inward freight, courier charges and not on outward freight. Commissioner (Appeals) observed that on scrutiny of the documents, it is seen that registration number of service provider are clearly mentioned in the documents. Learned Jt. CDR submits that courier service was not used for manufacture or in relation to the manufacture of final product. The Tribunal in the case of CCE, Hyderabad vs. Deloitte Tax Services India Pvt. Ltd., reported in 2008

(11) STR 266 (Tri.-Bang.) held that courier service for inward freight is eligible for input credit. I find that the Tribunal in the case of Deloitte Tax Services India Pvt. Ltd. (supra) extended the benefit of input service credit on courier as it related to business activity. So, the Commissioner (Appeals) is justified in allowing credit on this service.

(e) **C & F Services** – The ld. Jt. CDR submits that C&F services were used in relation to export goods at the port of export and it is beyond the place of removal. The Commissioner (Appeals) observed that service tax was paid on C&F charges in connection with the export at the port of export and photocopies of the registration certificates of the service providers have been produced before him. It is also observed that C&F service is not inward freight and covered by the definition.

The Tribunal in the case of Rawmin Mining and Indus. Ltd. vs. CCE, Bhavnagar-I, reported in 2009 (13) STR 269 (Tri. – Ahmd.) held that Cenvat credit on service tax on C&F charges are eligible. It has been held that the assessee is eligible for Cenvat Credit on C&F agent service, in view of the fact that place of removal in the case of FOB export has to be treated as port of export and, therefore, credit was allowed. In view of the decision of the Tribunal in the case of Rawmin Mining and Indus. Ltd. (supra) the Commissioner (Appeals) rightly allowed the credit on C&F service.

(f) **Air Travel, Pager, Maintenance & Repaid** – The original authority denied the credit on the ground that the documents are not in favour of the respondents. I find that the Commissioner (Appeals) after verifying the documents allowed the credit partly. Therefore, there is no reason to deny the credit on the said item partly.

3. It is revealed from the order of the Commissioner (Appeals) that the documents produced by the respondents were verified by the Suptd., Central Excise (Appeals), Raipur and the decision was taken after verification. It is noted that the Revenue had not disputed the verification of documents in the grounds of appeal. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

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