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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

Date 06/08/2009

Appeal No. ST/ 9 -10 / 2008 –SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. JAYPEE REWA PLANT
2. M/S JAYPEE BELA PLANT
(UNIT- JAIPRAKASH ASSOCIATES LTD), JAYPEE
NAGAR, DISTT- REWA(MP)
JAYPEE REWA PLANT

Appellant
Vs
Respondent

C.C.E BHOPAL

I am directed to transmit herewith a certified copy of **Final order No.** 879- 880 / 2009-SM[BR] dated 28.7.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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

Service Tax Appeals Nos.9 to 10 of 2008-SM (BR)

[Arising out of Order-in-Original No.29-30/COMMR/2007 dated 24.09.2007 and No.27-28/COMMR/2007 dated 24.09.2007 passed by the Commissioner of Central Excise, Bhopal (M.P.)]

Date of Hearing/ Decision:28.07.2008

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

(1)M/s. Jaypee Rewa Plant ...Appellants
(2)M/s.Jaypee Bela Plant [Rep. by None.]

Vs.

CCE, Bhopal ...Respondent
[Rep. by Shri S.N. Srivastava, DR]

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

Final Order No. 879 - 880/2009 SM(BR)/Dated:28.07.2009

Per P.K. Das:

Common issue is involved in these appeals and, therefore, both are being taken up together for disposal.

2. After hearing ld. DR and on perusal of the records, it is seen that the appellants are engaged in the manufacture of cement clinker and

cement classifiable under Heading No.25.02 of the Schedule to the Central Excise Tariff Act, 1985. The appellants availed Cenvat credit facility on inputs, capital goods and input services. In the impugned order, the Commissioner disallowed Cenvat credit on various input services as discussed below:-

(A) **Air Travel Agent Services:-**

The Commissioner observed that the appellants had not adduced any evidence that the air tickets were purchased for their officials and the journeys undertaken were related to the manufacture of sales promotion of their goods. In the memo of appeal, the appellants have contended that the expenditure incurred with supporting documents were submitted in reply to the show cause notice, which is also recorded in the impugned order. As such, it is required to examine the documents by the Commissioner to allow the credit.

(B) Rent-a-Cab-Service:

In this case also, the Commissioner ~~(Appeals)~~ observed that the appellants have not submitted any evidence in this regard that the said cabs were used by their officials for marketing of their products only. It has further observed that in the absence of such evidence, the credit cannot be allowed. It is contended by the appellant in the memo of appeal that the relevant supporting documents had been submitted in reply to the show cause notice. Thus, it is required to be examined by the Commissioner.

(C) Maintenance and Repair Services:

The Commissioner observed that the appellant failed to give any evidence that what equipments were got repaired and whether they were in any way related to manufacture and clearance of the goods produced by the appellants. It is contended by the appellant that for the services availed on maintenance/repair of the machinery and the equipment in the factory as well as in the office like photocopies, computer, etc, which are used for officials, sales promotion, etc., they are eligible for credit. As such, it is required to be examined by the Commissioner.

(D) Telephone Services:

It has been observed by the Commissioner that the credit availed on Service Tax paid on telephone services can be extended only in respect of the telephone installed in the factory of manufacturer. It has also been held that the telephone used in the Area Marketing Office cannot be said to be used in or in relation to manufacture of final product or clearance of the final products from the place of removal. The appellants relied upon the Board's Circular vide F.No.137/85/2007.Cx.4 reported in 2007 (7) STR C.6 as under:-

> "11.3 A doubt has also been raised regarding admissibility of Cenvat credit on service tax paid in respect of mobile phones. In the Service Tax Credit Rules, 2002, it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises. A clarification to this effect was also issued vide Circular No.59/8/2003-ST., dated 20.06.2003 [2006 (155) ELT T-7], in the context of the Service Tax Credit Rules, 2002. However, in the CENVAT Credit Rules, 2004, no such condition has been prescribed. Therefore, w.e.f. 10.09.2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods."

The Tribunal in the case of Indian Raymond Industries reported in 2006 (4) STR 79 (T-M) held that credit cannot be denied on telephone services as it was not installed in the factory. Further, the Tribunal in the case of Keltech Enginer Ltd. Vs. CCE – (2008) 14 STT419 (Bangalore-CESTAT) and ITC Ltd. Vs. CC & CCE

(2009) 203 TT 110 (Chennai-CESTAT) held that landline telephone installed in residence of officers and directors of Company are for business purposes and Cenvat credit is admissible. Hence, the denial of credit on telephone service is not justified.

(E) Mandap Keeper:

The Commissioner observed that expenses on Mandap Keeper incurred for Stockists Meet held for promoting sale of its final product. It has been observed that these services cannot be considered as input service even if the assessee claims this service is used for promoting sale of its product.

The Larger Bench of the Tribunal in the case of ABB Ltd. Vs. CCE – (2009) 21 STT 77 (Bangalore-CESTAT-LB) held that the activities relating to business would fall within the definition of "input service". In the present case, the Mandap Keeper services utilised in relation to business activities. In view of that, the denial of credit on input-service of Mandap Keeper is not proper.

2. In view of the above discussion, denial of credit on telephone service and Mandap Keeper are set aside. The denial of credit on Air Travel Agent, Rent-a-Cab and Maintenance and Repair Services are set aside and the matter is remanded back to the Commissioner to decide afresh after examining the evidences. The appellants are also directed to

produce the evidence before the Commissioner at the time of hearing.

Both the appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 28.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.