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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/1262/2007 – SM[BR] Date 17/08/2009

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 HEG LTD. (SPONGE IRON DIVISION) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 921 / 2009 –SM[BR] dated 30.7.2009 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 HEG LTD. (SPONGE IRON DIVISION)
   BORAI INDUSTRIAL GROWTH CENTRE, POST RASMADA, DURG (C.G.)
2. Adv. / Consult SHRI A.K.TYAGI ASSISTANT MANGER
   M/S RESPONDENT;-----------------

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 30.7.2009

Central Excise Appeal No.1262 of 2007-SM

Arising out of the order in appeal No.38/RPR-II/2007 dated 21.2.2007 passed by the Commissioner (Appeals I), Customs & Central Excise, Raipur (C.G.).

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	NO
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.& C.Ex., Raipur .... Appellant

Vs.

M/s HEG Ltd. (Sponge Iron Division) .... Respondent

Appearance:

Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue and Shri A.K.Tyagi,Assistant Manger for the respondent

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Oral Order No. 921/2009 SM (Br)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 38/RPR-II/2007 dated 21.2.2007 in so far as the same relates to allowing of Cenvat credit of ~~services~~ service tax paid on mobile services, rent-a-cab services, commission on sales and courier services.

2. Heard both sides and perused record.

3. Learned DR submits that the above services are not used by the manufacturer whether directly or indirectly , in or in relation to the manufacture of final product (which is sponge iron in their case) or in connection with the clearance of the final product from the place of removal. He reiterates the finding of the original authority in this regard. He seeks setting aside the order of the Commissioner (Appeals) in so far as the decision relating to these four services are concerned and restoring the order of the original authority.

4. The learned authorised representative made the following submissions:

a) The term 'input services' has been defined and it includes variety of services used in relation to setting up, modernization, renovation or repairs of factory, premises 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 upto the place of removal etc.

b) The commission on sale is clearly related to sales promotion activities .

c) Courier services, are analogous to goods transport agency as the respondents are using the same in respect of receiving and sending of communication in relation to their business sale purchase and related activities.

d) As regards the mobile services, he relies on the decision of the Tribunal in the case of C.C.E., Bhavnagar vs. Saurashtra Chemicals Ltd. – 2008 (12) STR 67 (Tri-Ahmd.) and Grasim Industries vs. C.C.E., Jaipur II – 2008 (11) STR 168 (Tri-Del.).

e) As regards the rent-a-cab services, he submits that the same are used in or in relation to transport of employees and the officials involving manufacturing and related activities of the company. He also relies on the decision of the Tribunal in the case of C.C.E., Nasik, vs. Cable Corporation of India Ltd. – 2008 (12) STR 598 (Tri-Mumbai).

5. I have carefully considered the submissions from both sides. The admissibility of credit on service tax paid on mobile services has to be

allowed in the light of the decision of the Tribunal in the case of Grasim Industries and Saurashtra Chemicals Ltd. cited supra.

5.2 Similarly, credit in respect of rent-a-cab services has to be allowed in the light of the decision of the Tribunal in the case of Cable Corporation of India Ltd. cited supra wherein it has been held as under:

> ***"From the above definition it is very clear that the input services besides being used in or in relation to the manufacture of final products and clearances of final products from the place of removal includes a plethora of other services such as service used in relation to setting up, modernization, renovation or repairs of factory, premises of provider of input service or an office relating to such factory or premises, advertisement or sales, activities of business, accounting, auditing, financing, recruitment, quality control, training and coaching etc. and therefore its scope is much larger than being used directly or indirectly in relation to manufacture. The decision cited by Revenue are therefore not relevant as those decision have not considered the inclusive part of input service as defined under Rule 2(l) of Cenvat Credit Rules and these decisions have only considered the term in or in relation to the manufacture. Since Rent-a-Cab service is used for bringing employees to work in the factory for manufacture of goods it has to be considered as being used indirectly in relation to the manufacture or as part of business activity for promoting the business as any facility given to the employees will result in greater efficiency and promotion of business."***

5.3 Commission on sale is clearly expenses relatable to "sales promotion" and is covered under the definition of input services which specifically includes "sales promotion" and therefore, the same are to be allowed.

5.4 Credit on courier services has been allowed by the Commissioner (Appeals) holding that the same has been used in connection with the business activities of the company. Similar is the finding in respect of the other three services like mobile services, rent-a-cab service and the services for which commission on sale was paid. These services are clearly used in connection with the business activities of the company. Therefore, the finding of Commissioner (Appeals) in this regard is legal , proper and reasonable..

7. In view of the above, I do not find any valid reason to interfere with the order of the Commissioner (Appeals). The appeal by the Department is rejected.

(M. Veeraiyan)
Member (Technical)