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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 / 1409 – 1410 / 2007 –SM[BR] Date 24/08/2009

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

To :
(1-2)M/S HEG LTD.
(SPONGE IRON DIVISION), BORAI INDUSTRIAL
GROWTH CENTRE, DURG.
M/S HEG LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1060 – 1061 / 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
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI B.L.NARASIMHAN 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 & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT - III

CENTRAL EXCISE APPEAL NO. 1409-10 OF 2007-SM

[Arising out of Order-in-Appeal No. 72-73/RPR-II/2007 dated 28.03.2007 passed by the Commissioner (Appeals-II), Central Excise & Customs, 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?	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

M/s. H.E.G. Ltd., Appellants

Vs.

CCE, Raipur Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the Appellants;
Shri R.K. Verma, D.R. for the Revenue

Coram:

Hon_ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 11th June, 2009

FINAL ORDER NO. 1060 – 1061/2009 SM(Br) **dated**

Per P.K. Das:

These appeals arise out of common order and, therefore, both are taken up together for disposal.

2. The appellants filed these appeals against denial of credit on input services namely - Landline telephone, Cleaning & Maintenance of Garden, Pandal Samiyana services and Group insurance to the employees.

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

(a) Landline Telephone _ The Commissioner (Appeals) observed that these telephones are installed at the residence of the staff. So, the denial of credit is correct.

The Hon_ble Gujarat High Court in the case of CCE, vs. Excel Crop Care Ltd., reported in 2008 (12) STR 436 (Guj.) held that the phones were not installed in the factory premises, cannot be termed to be a ground to deny the credit. In the present case, there is no allegation that the Landline was not used in relation to business activity. I find that the credit was denied only on the ground that Landline telephone were installed at the residence of staff. Hence, denial of credit on Landline telephone is not justified.

(b) Cleaning & Maintenance of Garden - The Commissioner (Appeals) observed that the cleaning and maintenance of garden and tank near power plant and gardening at transit house; which is at Bhilai. It is also observed that specialized cleaning activity such as disinfecting, exterminating or sterilizing of object or premises in relation to agriculture, horticulture, animal husbandry or dairying are not under the purview of cleaning service and credit is not admissible.. Learned D.R. submits that cleaning and gardening services were rendered outside the factory and, therefore, they are not eligible for credit.

Learned Advocate submits that cleaning and gardening service was rendered in relation to the factory and, therefore, they are eligible for credit. He further submits that credit was denied on the ground that service tax was leviable on cleaning and gardening.

I find that the Commissioner (Appeals) denied the credit on the ground that the service tax is not leviable on cleaning and gardening services. There is no dispute that service tax was paid on "Cleaning & Maintenance of Garden" service. The levy of tax
at the recipient end.
cannot be disputed while availing Cenvat credit on input service

So, denial of credit on this ground is not justified. But credit on "Cleaning and Gardening service" would be allowed, as it is in relation to the business activity.

(c) Pandal & Shamyana - Commissioner (Appeals) observed that the services were availed in case of some exigency and it has no relation with the business of the appellants.

Learned D.R. submits that there is no material available that Pandal & Shamyana services were rendered in the business activities. He also submits that bills were not raised in the name of appellant Pandal & Shamyana services.

Learned Advocate relied upon the decision of the Larger Bench of the Tribunal in the case of CCE, Mumbai-V vs. GTC Industries Ltd., reported in 2008 (12) STR 468 (Tri. _ LB). He submits that Pandal & Shamyana services were rendered for the business activities insofar as the functions of the factory.

I find that the Larger Bench of the Tribunal in the case of GTC Industries Ltd. (supra) held that employment of outdoor caterer for providing catering services has to be considered as an input service relating to the business and Cenvat credit in respect of the same will be admissible. Finding of the Larger Bench is reproduced below:-

-The context in which and the purpose for which the credit rules have been issued are clear from the press note dated August 12, 2004 issued by the Ministry of Finance, prior to introduction of the credit rules wherein the draft rules were circulated for inviting comments from trade and industry. This note clearly states that _In principle, credit of tax on those taxable services would be allowed that go to form a part of the assessable value of which excise duty is charged._

The finding of the Commissioner (Appeals) is that Pandal & Shamyana services has no relation with the business activities of the appellants is without any basis. The appellant contended in the appeal as under:-

"In fact, during the period when pandal and shamiyana services was rendered, there was a strike called by the workers and as per the decision of the Management, Staff/Managerial staff continued their work inside the plant for which Company had made some arrangements like Pandal, caterer etc. in order to safeguard the employees working inside the plant from any strike disturbances.

As such, pandal and shamiayana services in this duration was commercially inexpedient to conduct the business of the appellants. Use of the service is purely for business purpose, hence, it is squarely covered under the definition of service."

As such, there is no reason to deny the credit on Pandal & Shamyana.

(d) Group Insurance Services _ It is seen that the Commissioner (Appeals) allowed the credit relating to Insurance of cars & Two wheelers which are owned by the appellants and are used in performing the business activities but, he denied the credit on personal insurance policies of the employees covered by the National Insurance Company. I find that the Tribunal allowed the credit on Group Mediclaim policy and Workmen_s Accident Policy in the following cases:-

(i) CCE&C, Aurangabad vs. Endurance Systems India Pvt. Ltd.

- 2009 (237) ELT 204 (Tri.-Mumbai);

(ii) Millipore India Ltd. vs. CCE, Bangalore - II - 2009 (236) ELT 145 (Tri. _ Bang.)

In view of the above decisions of the Tribunal, denial of credit on Group Insurance is not justified.

4. In view of the above discussion, denial of credit on Landline Telephone, Pandal & Shamyana and Insurance services are set aside. Regarding denial of credit on Cleaning & Gardening services the

original authority is directed to allow the credit subject to the verification as to whether services are rendered in relation to business activities. Penalties are set aside. Both the appeals are allowed in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK