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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. ST/112 /2009-113 /2009 – SM[BR] Date 01/09/2009

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

To :
M/S KOREA PLANT SERVICE & ENGINEERING CO. LTD.
PJT OFFICE CHANDERIYA LEAD ZINC SMELTER,
PUTHOLI, DISTT. CHITTORGARH.

M/S KOREA PLANT SERVICE & ENGINEERING CO. LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1096 - 1097 2009–SM[BR]** dated 13.8.2009 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. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.R.G.SETH &CO,ADVOCATE

KUSUM VIJAY HOUSE, 1STFLOOR, 174, MODY STREET,FORT, MUMBAI

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)

8. M/S KOREA PLANT SERVICE & ENGINEERING CO. LTD.
PST OFFICE PUTHOLI, DISTT. CHITTORGARH.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Service Tax Appeal Nos. 112-113 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 207-208 (DK) ST/APPL/JPR-II/2008 dated 24/10/2008 passed by The Commissioner of Central Excise (Appeals), Jaipur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Korea Plant Service & Engineering Co. Ltd.] Appellant

Versus

CCE & ST, Jaipur – II Respondent

Appearance

Shri R.G. Seth, Advocate – for the appellant.

Shri S.K. Bhaskar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 13/08/2009.

Final Order No. 1096-1097/2009 Dated : SM(BR)

Per. Rakesh Kumar :-

These two appeals have been filed against order-in-appeal No. 207-208 (DK) ST/JPR-II/2008 dated 24/10/2008 by which the Commissioner (Appeals) upheld the orders-in-original passed by Assistant Commissioner and Joint Commissioner denying the Cenvat credit in respect of input services namely coal unloading, GTA Services, Mobile Phones, Advertisement and Publicity, Equipment Rent, Vehicle Rent, Security Guard Services and Group Insurance. The appellants are a South Korea based company having an office at Chittorgarh and they are providing the service of operation and maintenance of captive power plant owned by M/s Hindustan Zinc Ltd. Though the agreement of the appellant with M/s Hindustan Zinc Ltd. specify separate charges for the services relating to operation and services relating to maintenance including certain services which are provided from the Head Office of the company located in

South Korea, the Department has treated their entire services including plants operation as "repair and maintenance services" and accordingly service tax is being charged on the gross amount being received by the appellant from M/s Hindustan Zinc Ltd. The appellant take Cenvat credit of the duty paid on the goods and input services, which is utilized towards payment of service tax on their output service. The Department, however, while treating their entire services consisting of operation and maintenance of the power plant as "repair and maintenance services" and charging service tax on this basis on the gross amount being charged by the appellant for their services, seeks to deny Cenvat credit in respect of certain input services, which according to the Department, pertain only to the operation and not to maintenance. It is on this basis that Cenvat credit amounting to Rs. 3,80,156/- (Rupees Three Lakh Eighty Thousand One Hundred Fifty Six) for period from April 2005 to September 2005 and credit amounting to Rs. 8,82,081/- (Rupees Eight Lakh Eighty Two Thousand and Eighty One) for the period from October 2005 to March 2006 was sought to be denied by the Department in respect of input services namely coal unloading services, GTA Services, Mobile Phones, Advertisement and Publicity, Equipment Rent, Vehicle Rent, Security Guard Services and Group Insurance. The Assistant Commissioner vide order-in-original No. 179/2007-ST dated 20/09/2007 and the Joint Commissioner vide order-in-original No. 10/ST/JP-II/2007 dated 22/08/2007 confirmed the Cenvat credit demands of Rs. 3,80,156/- (Rupees Three Lakh Eighty Thousand One Hundred Fifty Six) and Rs. 8,82,081/- (Rupees Eight Lakh Eighty Two Thousand and Eighty One) respectively and beside this, penalty of Rs. 2,000/- (Rupees Two Thousand) and Rs. 5,000/- (Rupees Five Thousand) respectively under Rule 15 (3) of Cenvat Credit Rules, 2004 was imposed. On appeal to Commissioner (Appeals) against these two orders, the Commissioner (Appeals) vide impugned order-in-appeal dated 27/10/08 made an apportioning exercise and allowed input credit in respect of above-mentioned services only to the extent of Rs. 28,797/- (Rupees Twenty Eight Thousand Seven Hundred Ninety Seven) for the period from April 2005 to September 2005 and Rs. 47,767/- (Rupees Forty Seven Thousand Seven Hundred Sixty Seven) in respect of period from October 2005 to March 2006 and disallowed the remaining amount of Cenvat credit and upheld the demand for the remaining amount of Cenvat credit. Beside this, he also upheld the penalty. It is against this order, that these two appeals have been filed.

2. Heard both the sides.

2.1 Shri R.G. Seth, Advocate the learned Counsel for the Appellant, pleaded that even though in the appellant's agreement with M/s Hindustan Zinc Ltd., the separate amount for maintenance and operation have been mentioned, the Department has treated both the activities as "repair and maintenance" and on this basis, the service tax is being charged on the gross amount including the amount being charged for the plant operation, that when for the purpose of charging service tax, the entire activity is being treated as "repair and maintenance" for the purpose of permitting the Cenvat credit, their activity cannot be split into for operation and maintenance and disallow the input credit in respect of the input goods and services for plant operation and that even the Commissioner (Appeals) has considered that all the disputed input services are the "activities relating to business" and hence covered by the definition of input services. In view of this, he pleaded that there is no basis for Department to disallowed input credit in respect of these services.

2.2 Shri S.K. Bhaskar, the learned Departmental Representative, defended the impugned order pleading that the agreement of the appellant with M/s Hindustan Zinc Ltd. itself mentions separate charges for operation and maintenance and it is the services of maintenance which is taxable that since the service of the plant operation is not taxable, the appellant would not be eligible for Cenvat credit in respect of input goods and services are being used in relation to plant operation. He also pleaded that even if the appellant have agreed to pay service tax on the entire amount including the amount being charged for plant operation, they would not be eligible for input duty credit in respect of the input goods and services being used for plant operation.

3. I have carefully considered the submissions from both the sides and perused the records.

3.1 The service being provided by the appellant to M/s Hindustan Zinc Ltd. is operation and maintenance of the captive power plant owned by M/s Hindustan Zinc Ltd. Even though the appellant's agreement with M/s Hindustan Zinc Ltd. mentions separate charges for plant operation and plant maintenance, the Department treating the entire service of operation and maintenance as one composite service classifiable as "repair and maintenance service", has charged service tax on the entire amount including the amount towards plant operation. In view of this, having treated the appellant's activity as one composite service, the Department cannot split it into plant operation and plant maintenance for the purpose of permitting Cenvat credit and deny Cenvat credit in respect of input goods and services used for plant operation. In view of this, I hold that the impugned order is not sustainable. The same is set aside. The appeals are allowed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK