

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/1071/2007-1072/2007 – SM[BR]

Date 29/10/2009

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

To :
M/S MANGALAM CEMENT LTD.

MORAK, KOTA.

M/S MANGALAM CEMENT LTD.

C.C.E. JAIPUR I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 1330 – 1331 / 2009 –SM[BR] dated 14.10.2009 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. JAIPUR I

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

2. Adv. / Consult SHRI BIPIN GARG ADV.

B-1/1289-A, VASANT KUNJ 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 Publications 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 Kuni, 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 (Harvana)

16 Office Copy

17 Guard file

2. M/S VINAY KUMAR JAIN, MANAGER (ACCOUNTS)
C/O M/S MANGALAM CEMENT LTD., ADITYA NAGMORAK,
KOTA.


Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing/decision: 14.10.2009

Excise Appeal No. 1071-1072 of 2007-SM

[Arising out of order-in-Appeal No. 244-245(GRM)CE/JPR-I/2006 dated 13.10.06 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

For approval and signature:

Hon'ble Shri 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 should 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 Departmental authorities?	✓

M/s Mangalm Cement Ltd.
Shri Vinay Kumar Jain, Manager

Appellant

Vs.

CCE, Jaipur-I

Respondent

Appearance:

Appeared for the Appellant – Shri Atul Gupta, Co. Secy.

Appeared for the Respondent- Shri R.K. Saini, SDR

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1330 - 1331 / 2009 SM (B)

Per: P.K. Das:

These Appeals are arising out of the common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of cement and clinker classified under Chapter 25 of the schedule to the Central Excise Tariff Act, 1985. It has been alleged that the Appellant availed Cenvat credit on input services viz. business auxiliary services, C&F service and cargo handling service. The original Authority confirmed the demand of Rs.3,38,476/- and imposed penalty of equal amount under Section 11AC of Central Excise Act 1944 along with interest. He also imposed penalty of Rs.5000/- on the Appellant No. 2 Shri Vinay Kr. Jain, Manager of the Appellant Company. The Commissioner (Appeals) upheld the Adjudication order.

3. Heard both the sides and on perusal of records, it is seen that from the order of Commissioner (Appeals) that the Adjudicating Authority disallowed the Cenvat credit on the ground that these services were used after the removal of final product cement from the "place of removal" which was factory. It is seen from the impugned order that the business auxiliary services, C&F services and cargo handling services taken at depot in relation to sale of goods from depot. The Commissioner (Appeals) observed that service tax on the services after clearance of the goods from the place of removal would not cover within the definition of input services under Cenvat Credit Rules 2004.

4. I find that the Larger Bench of the Tribunal in the case of **ABB Ltd. & Ors. Vs. CCE & ST, Bangalore & Ors.** – 2009 (92) RLT 665

(CESTAT-LB) held that the definition of "input service" ^{word} ~~word~~ to be interpreted in the light of the requirement of business. The relevant portion of the said order is reproduced below :-

"In the light of the discussion, we hold that the definition of "input service" has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine only upto the factory or upto the depot of manufacturers.

In the result, we answer the reference by holding that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(1)(ii) of the CENVAT Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services."

5. The Tribunal in the case of **CCE, Raipur Vs. Bhilai Auxiliary Industries** - 2009 (92) RLT 97 (CESTAT-Del.) held that commission agent service is included under business auxiliary service, is admissible for Cenvat credit. The relevant portion of the said order is reproduced below :-

"I have carefully considered the submissions from both the sides. The commission agents procured the orders for the Respondent and thus the services provided by them are in the nature of sales promotion. The definition of "input service" as given in Rule 2(1) of the Cenvat Credit Rules, 2004, covers, in addition to the services used by a manufacturer whether directly or indirectly in or in relation to manufacture of final products and clearance of final products from the place of removal, other service also, including the services used in relation to advertisement or sales promotion. Therefore, the services provided by the commission agents have to be treated as "input services". I find that the same view has also been taken by the Tribunal in the above mentioned cases in the judgments in the cases of *Metro shoes Pvt. Ltd. Vs. CCE, Mumbai-I* (supra) and *CCE, Ludhiana*

Vs. Abhishek Industries Ltd. (supra). Therefore, the Commissioner (Appeals) has rightly allowed the Cenvat credit of service paid on the commission received by the commission agents. As such, I find no infirmity in the impugned order. The Revenue's appeal is, therefore, dismissed."

6. In the present case, there is no dispute that the 'input service' viz. business auxiliary service, C&F agent services and cargo handling services have utilised in the depot for managing the depot for delivery of final products, are relating to the activities of business, within the definition of 'input service' is under Cenvat Credit Rules, 2004.

7. In view of that the demand of tax and penalties are not sustainable. Accordingly, impugned orders are set aside and both the Appeals allowed with consequential relief.

(Dictated & pronounced in open Court)

(P.K. DAS)
MEMBER (JUDICIAL)

RM