TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2778/2007 – SM[BR]** Date **13/04/2011**

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

To :
J K SUGAR LTD

THE GENERAL MANAGER, MEERGANJ, DISTT-
BAREILLY(UP)

J K SUGAR LTD Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 182 / 2011 –SM[BR]** dated 15.2.2011 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.KAPIL VAISH
B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.2778/2007-SM

(Arising out of Order-in-Appeal No.138-CE/MRT-II/2007 dt.29.6.2007 passed by the CCE (A), Meerut)

For approval and signature:
Hon'ble Mr. 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 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.J.K.Sugar Ltd. Appellants

Vs.

CCE, Meerut-II Respondent

Present for the Appellant: Shri Kapil Vaish, Advocate
Present for the Respondent: Shri K.P.Singh, SDR

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/Decision: 15.02.2011

Final **ORAL ORDER NO.** 182/2011 SM(BR)

PER: RAKESH KUMAR

Heard both sides.

2. There are three main issues involved in this case. The first point of dispute is as to whether HR plate/coil, jointing sheet & M.S.Stud and welding electrodes used for repair and maintenance of plant and machinery eligible for cenvat credit as capital goods or inputs. The second point of dispute is as to whether rent a cab service for hiring vehicle used by the company, service of maintenance and repair and

mobile telephone service are covered by the definition of the "input service" and whether the cenvat credit of the service tax paid on these service is available to the appellant. Third point of dispute, in respect of cenvat credit of the service tax paid on GTA service received by the appellant. In terms of the provisions of Rule 4 (7) of Central Excise Rules, 2002 the Cenvat credit in respect of input services shall be allowed, on or after the day on which payment is made of the value of input service as is indicated in the invoice, bill or challan as the case may be. In this case, according to the department, the appellant had taken service tax credit prior to this date and hence according to the department they were not eligible for credit on the basis of these invoices in respect of which the payment had not been made to service provider. The Assistant Commissioner vide Order-in-Original dated 30.10.2006 disallowing the credit in respect of inputs service used for repair and maintenance, credit of service tax paid on rent a cab service, and mobile phones and also in respect of GTA service where on the date of taking credit, the payment had not been made to the service provider, confirmed cenvat credit demand of Rs.2,57,700/- and imposed penalty of equal amount. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide Order-in-Appeal dated 29.6.07 upheld the order of the Assistant Commissioner. It is against this order, that the present appeal has been filed.

3. Heard both sides.

4. Shri Kapil Vaish, CA, learned Counsel for the appellant, pleaded that in view of the judgement of the Hon'ble High Court of Rajasthan in the case of **Union of India vs. Hindustan Zinc Ltd. reported in 2007 (214) ELT 510**, an SLP has been dismissed by the **Hon'ble Supreme Court vide order reported in 2007 (214) ELT A-115 (SC)**, the judgement of **Hon'ble Chhattisgarh High Court in the case of**

Amubja Cement Eastern Ltd. vs. CCE, Raipur reported in 2010 (256) ELT 690 (Chatt) and the judgement of Hon'ble Karnataka High Court in the case of CCE, Bangalore vs. Alfred Herbert (India) Ltd. reported in 2010 (257) ELT 29 (Kar.) of the items used for repair an maintenance of plant and machinery are eligible for credit, that as regards the rent a cab service used for hiring vehicles for transportation of inputs, in view of the judgment of the Tribunal in the case of J.K.Cement Works reported in 2009 (14) STR 538, and in the case of **Caliber Point Business Solutions Ltd. reported in 2010 (18) STR 737**, this service has to be treated as input service, that maintenance and repair service is also covered by the definition of the input service, that mobile phone service are used by the official of the company for the work and hence as held in the case of **ITC Ltd. reported in 2009 (14) STR 847** and also in the case of **J.K.Cement Works reported in 2009 (14) STR 538**, the service tax to be paid on mobile phone service would be available to the appellant, that as regards GTA service, the same had been received for procurement of inputs, the credit was taken prior to the date of making payment to service provider, since difference between the date of taking credit and the date of payment of service tax is only five days, that this is only a technical fault which must be ignored in view of the Tribunal's judgement in the case of **White En-all (P) Ltd. reported in 2004 (175) ELT 119**, that the Commissioner (Appeals)'s order is totally silent on the penalty, and that since the point of dispute in this case pertains to interpretation of as there is no interpretation Cenvat Credit, no penalty is imposable.

5. Shri K.P.Singh, learned DR defending the impugned order, while reiterating the findings of the Commissioner (Appeals) pleaded that HR plate/coil, jointing sheet & M.S.Stud and welding electrodes used for repair and maintenance of plant and machinery are not eligible for cenvat

credit as the same are neither covered by the definition of capital goods nor by the definition of "input"; that the repair and maintenance is not part of the manufacture, that since on the date on which service tax credit has been taken, the service tax had not been paid, the same has rightly been denied and that service tax credit in respect of rent a cab service for hiring vehicle used by the company, for maintenance and repair and mobile phones has also been rightly denied.

6. I have carefully considered the submissions from both sides and perused the records. So far as the first issue regarding eligibility of credit to HR plate/ coil, jointing sheet & M.S.Stud and welding electrodes used for maintenance and repair of plant and machinery is concerned, I find that this issue has been considered by the Hon'ble Rajasthan High Court in the case of **UOI vs. Hindustan Zinc Ltd.** (supra), by Karnataka High Court in the case of **CCE, Bangalore vs. Alfred Herbert (India) Ltd.** (supra), by Hon'ble Chhattisgarh High Court in the case of **Amubja Cement Eastern Ltd. vs. CCE** (supra), and in these cases Hon'ble High Courts have held that the items used for repair and maintenance are eligible for credit. In the case of UOI vs. Hindustan Zinc Ltd. (supra), Hon'ble Rajasthan High Court has held that MS/SS plates used in workshop meant for repair and maintenance of machinery, which are used for manufacturing are covered by the definition of capital goods and would be eligible for credit. In the case of Amubja Cement Eastern Ltd. vs. CCE (supra), Hon'ble Chhattisgarh High Court has held that welding electrodes used in repair/maintenance of plant and machinery are eligible for credit. Similarly, Hon'ble Karnataka High Court in the case of CCE, Bangalore vs. Alfred Herbert (India) Ltd. (supra) has held that the items used for repair and maintenance are eligible for credit. In view of the above judgements of the High Courts, I am of the view that the items, in

question, would be eligible for credit and hence the Commissioner (Appeal)'s order denying the credit is not sustainable.

7. As regards rent a cab service, the same has been used for various activities of the appellants including procurement of inputs and hence the same is covered by the definition of the "input service", in view of the judgment of the Tribunal in the case of J.K.Cement Works reported in 2009 (14) STR 538, the service of maintenance and repair/ service of the company owned vehicle which are used for the company's work, is clearly an activity related to the business of the appellant and hence would be covered by the definition of "input service".

8. As regards mobile phone services, it is not disputed that the mobile phones are used by the company official for the company work. Hence mobile phone service has to be treated as input service. I find that the same view has been taken in the case of **ITC Ltd. reported in 2009 (14) STR 847**, in the case of **J.K.Cement Works reported in 2009 (14) STR 538**, and in the case of Indian Rayon & Industries Ltd. reported in 2006 (4) STR 79. Hence, the cenvat credit of the service tax paid on mobile phone service would be available to the appellant. In view of this, the Commissioner (Appeals) denying the credit in respect of rent a cab and maintenance and repair of motor vehicle owned by the company and for hiring vehicles for transportation for procurement of inputs is not sustainable.

9. As regards denial of credit in respect of GTA service amounting to Rs.65,506/-, the department's objection is that while the credit was taken at the end of the month, payment to service provider was made for the service tax was paid only on the fifth of the month, the credit could not be taken on or before the date on which the service tax has been paid. However, it is not denied that the service tax has been paid and hence there is gap of only five days between the date of taking credit and

payment of service tax. Since the lapse is only of technical nature, it would not be correct to deny the credit. Therefore, denial of credit of Rs.65,506/-, in respect of GTA service is not sustainable.

10. In view of the above discussion, the impugned order denying the credit in respect of - (a) HR plate/coil, jointing sheet & M.S.Stud and welding electrodes (b) rent a cab service for hiring vehicle used by the company, maintenance and repair service and mobile phone service and (c) GTA service, is not sustainable and the same is set aside. The appeal is allowed with consequential relief.

(Pronounced in the court)

(RAKESH KUMAR)
MEMEBR (TECHNICAL)

mk