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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/745 /2009 – SM [BR]** Date **25/04/2011**

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

**C.C.E. JAIPUR II** Appellant
Vs
**M/S J.K.INDUSTRIES LTD** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 205 / 2011-SM[BR]** dated 31.3.2011 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 J.K.INDUSTRIES LTD**
JAYAKAYGRAM, KANDKROLI,
DISTT- RAJSAMAND(RAJ)

2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI-29.

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

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

**COURT NO. III**

**Date of Hearing : 31.3.2011**

# Excise Appeal No. 745 of 2009-SM

[Arising out of the Order-in-Appeal No. 02(DK) CE/JPR-II/09 dated 19.1.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

**Coram:**

**Hon'ble Mr. Mathew John, 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? | Yes |
| 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 Whether their Lordships wish to see the fair copy of the order? | Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | NO |

CCE, Jaipur-II — Appellant

Vs.

M/s J.K. Industries Ltd. — Respondent

**Appearance:**

Appeared for Appellant : Shri K.P. Singh, DR
Appeared for Respondent : Shri Hemant Bajaj, Advocate

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 205 / 2011 SM (Br) dated............

Per Mathew John:

This is a case where Revenue has come up against the order of the Commissioner (Appeals) allowing Cenvat credit relating to tax paid on outdoor catering services availed by them in their factory.

2. The ld. DR relies on the following case laws to argue that this credit cannot be allowed.

1) **Maruti Suzuki Ltd. Vs. CCE** - 2009 (240) ELT 641 (SC).

2) **CCE Vs. Manikgarh Cement** - 2010 (20) STR 456 (Bom.).

He argues that services of "outdoor catering services" used for providing food to the employees is not used in or in relation to the manufacturing activity of the respondent company and therefore credit cannot be extended.

3. Ld. Counsel for the respondent submits that his case is squarely covered by the decision of **CCE Vs. Ultratech Cement Ltd.** reported in 2010 (20) STR 577 and the issue is no longer res integra.

4. Considered arguments on both sides.

5. It is seen that in the case of **Ultratech Cement Ltd.** has given a clear finding that service tax paid on outdoor catering is to be allowed as credit. The only issue raised in that decision is that if any charges are recovered from the employees, the assessee is not eligible to claim credit of service tax paid. In this context, para-39 of the decision of the Bombay High Court in the case of **CCE Vs. Ultratech Cement Ltd.** has been examined which reads as under :-

> "The Larger Bench of CESTAT in the case of *GTC Industries Ltd.* (supra) has also observed that the credit of service tax would be allowable to a manufacturer even in cases where the cost of the food is borne by the worker. That part of the

observation made by the Larger Bench cannot be upheld, because, once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer. Shri Shridharan, learned counsel for the assessee fairly conceded to the above position in law and in fact filed an affidavit affirmed by a responsible officer of the assessee wherein it is stated that the proportionate credit to the extent embedded in the cost of foods recovered from the employee/worker has been reversed.

6. From the above, it can be seen that the High Court has only stated that assessee cannot take credit of any part of the Service tax borne by the consumer. In this case, the respondent has engaged a contractor for providing outdoor catering services in the factory premises. The respondent provides infrastructure and subsidy. ~~to the workers.~~ In view of the subsidized rates, the caterer is raising a bill to the respondent company and on such bills service tax is paid. The Respondent has taken credit of such tax paid. Therefore, the aspect emphasised in para-9 of the judgement of the **Ultratech Cement Ltd.** is not applicable to this case. Accordingly, the appeal of the department is rejected with consequential relief.

(Dictated & pronounced in open Court)

(Mathew John)
Member (Technical)

RM