

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/2840/2009 – SM [BR]

Date 05/05/2011

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

To :
C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)
C.C.E. DELHI III

Appellant

Vs
Respondent

dated 27.4.2011

M/S SUZUKI POWERTRAIN INDIA LTD.

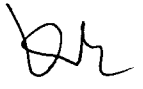
I am directed to transmit herewith a certified copy of Final order No. 265 / 2011-SM[BR]
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S SUZUKI POWERTRAIN INDIA LTD.
PLOT NO. 26-B, SECTOR-3 IMT
MANESAR, GURGAON.
(HARYANA)
2. Adv. / Consult SHRIR.S.TANDON ADV.
B-39, SFS SHEIKH SARAI PH-I
NEW DELHI-17.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publications 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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file


Assistant Registrar
(SM Appeal Branch)

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

COURT NO. II

Date of Hearing : 27.4.2011

Excise Appeal No. 2840 of 2009-SM

[Arising out of the Order-in-Appeal No. 169/MA/GGN/2009 dated 21.7.2009 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon]

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 Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Delhi-III

Appellant

Vs.

M/s Suzuki Powertrain India Ltd.

Respondent

Appearance:

Appeared for Appellant : Shri K.P. Singh, SDR

Appeared for Respondent : Shri R.S. Tandon, Advocate

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

final Order No. 265 / 2011 SM(B) dated

Per Mathew John:

In this case, the Revenue has filed an Appeal aggrieved by the order of the Commissioner (Appeals) allowing Cenvat credit on two services viz. catering service used in canteen within the factory

premises of the Respondent and services of tour and travel operators. The amounts of credit involved are Rs.2,07,085/- for catering service and Rs.1,41,532/- on tours and travel. The Id. DR argues that as per the definition of input services at Rule 2(l) of Cenvat Credit Rules any service will qualify as "input service" only if clear nexus between the service and the final products of the manufacturer is established. He also argues that it has to be clearly demonstrated that the cost of such service forms part of the cost of final product. He submits that the order of Commissioner (Appeals) does not deal with these issues.

2. In the case of tours and travels he argues that the service has no nexus with manufacturing activity. Such service could have been used for leisure of the employees or for any other purpose. It is pointed out that the purpose for which the service was used has not been explained in the reply to Show Cause Notice or in the submissions made before the Commissioner (Appeals). It is also argued that there is no way to know whether the cost of such tour and travels were recovered from the persons actually using the service. Therefore, Id. DR argued that Cenvat credit allowed by the Commissioner (Appeals) on either of the services is not legal and proper.

3. The Advocate for the Respondent submits that during the relevant time the number of employees in their factory was about 260 and he submitted a copy of Provident Fund challan for the month of December, 2007 to prove his claim. As per the Factory

Act, the Respondent was required to provide canteen facilities to its employees and giving canteen facilities to employees in the factory premises is very essential for carrying on the manufacturing activity smoothly because such facility improves the availability of employees for work and hence there is clear nexus between catering service and manufacturing process. He relies on the decision of the Bombay High Court in the case of **CCE, Nagpur Vs. Ultratech Cement Ltd.** reported in 2010 (260) ELT 369 (Bom.) He also relies on the decision of High Court of Gujarat in the case of **CCE Vs. Ferromatik Milacron India Ltd.** reported in 2011 (21) STR 8 (Guj.) Both these decisions specifically rule that catering services for providing food to employees in the factory qualifies to be "input service" in or in relation to the manufacture of final product.

4. In the case of tours and travels, his submission is that this service was utilised for bringing the employees from their residence to factory and back. This also is integrally connected with the manufacture of final product and therefore credit of tax paid on such service should be allowed. He relies on the decision of this Tribunal in the case of **CCE, Vadodara Vs. Haldyn Glass Gujarat Ltd.** reported in 2009 (240) ELT 729 and also the decision in **CCE, Hyderabad Vs. Deloitte Tax Services India Pvt. Ltd.** reported in 2008 (11) STR 266.

5. In reply to the submissions made on behalf of the Respondent, the Id. DR submits that the evidence now produced

showing the challan for payment of Employees Provident Fund is not an acceptable evidence because it was produced only at the stage of second appeal. Further, the challan is only for one particular month and it is not a representative challan. He also submits that EPF challan will be for all the subscribers of the company including those working in the head office, other factories and elsewhere. So he argues that decision may not be based on the copy of the challan produced.

6. Considered arguments on both the sides. As far as outdoor catering service is concerned, there is no law laid down anywhere that such service will be in relation to manufacture only if the number of employees is more than 250. In some of the decisions, the affected parties had argued that they were required under Factory Act to provide such services. The ratio of the decisions quoted by the Respondent cannot be understood to mean that catering will qualify as input service only if number of employees is more than 250. The effect of providing canteen within the factory is same whether the number of employees is more than 250 or less than 250. I am satisfied that providing catering services in the factory premises will improve their manufacturing efficiency and therefore, I respectfully follow the decision of Bombay High Court and Gujarat High Court (supra) and allow the credit in respect of catering services.

7. In the matter of tours and travels, I find that the Respondent did not submit at the stage of reply to the Show Cause Notice or at the stage of first appeal that the service was used for bringing employees from their homes to factory and back and nothing else. The service could have been utilised for leisure, entertainment or for any personal use by any of the employees. The Advocate produces the copy of reply furnished by them in reply to the Show Cause Notice. Para B(6) is reproduced below :-

"Similarly, tour and travel services, for which the credit has been taken during the relevant period, were exclusively used in relation to the manufacture/ clearance of final products or in relation to the business of the notice. These services were not used for leisure or entertainment or for any personal use by any of the employees. These services were, therefore, very much related directly or indirectly to the manufacture and clearance of final products from the factory of manufacture.

Moreover, expenses on tour and travel services, for the employees are permissible as business expenditure as per income tax law and fringe benefit tax is also paid on such expenses, making it clear beyond doubt that these services are definitely related to the business of the notice manufacturer and accordingly are eligible 'input service'."

8. The order-in-original gives the finding that "as regards tours and travels services the party has submitted that the service was used exclusively in relation to manufacture/clearance of final product or in relation to business of the noticee. They have not explained as to how tour and travel services were related to the manufacture and clearance of the final product and they have failed to bring on record any documentary evidence from which it can be concluded that the tour and travel services were in any way used

directly or indirectly relating to manufacture/clearance of final product."

9. The arguments of the Id. DR that the cost of input services should form part of the cost of the product is acceptable in principle. But the issue is that products are sold not based on cost prices but at prices the product can fetch in the market. So in each invoice for the final product the element of cost of the input service cannot be traced. The Cenvat Credit Rules do not envisage tracing such trail. However, there is an issue discussed in para-39 of the order in the case of **CCE, Nagpur Vs. Ultratech Cement Ltd.** (supra). The issue is that if the cost of any facility is recovered from the worker credit cannot be allowed on such service. Here the Respondent makes it clear that the Bill raised by the caterer is towards the subsidy which the Appellant is providing for running the canteen. Service Tax is paid only on that value and credit is taken only on such Service Tax. Such value of service tax is not recovered from the workers. So the claim for Cenvat credit is not hit by this observation.

10. The Id. Advocate says that if the matter is remitted back for verification of his claim that the transportation was for brining employees from their place of residence to the factory and back, his client will be able to prove his claim by supporting documents. Since the merits of the issue is already settled by the Tribunal in the case of **Deloitte Tax Service India Pvt. Ltd.**, I accept the

principle laid down by the Tribunal but remit the matter for verification of relevant facts that it was used exclusively for transporting employees from their place of residence to the factory and back. Such documents should be provided before adjudicating authority within 60 days of this order without waiting for further notice. If the respondent is not able to produce any supporting document to support his claim it will be deemed that they are not eligible for credit on this account. If such documents are produced and it is still proposed to deny such credit the adjudicating authority shall pass speaking order after putting the Respondent to notice. If such order is not passed within 3 months from date on which documents are produced, the credit shall stand allowed.

11. The appeal is disposed of accordingly.

(Dictated & pronounced in open Court)

(~~Mathew John~~)
Member (Technical)

RM