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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/2993 – 2994 / 2009 –SM[BR]** Date **09/06/2011**

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

To :
1. **M/S HINDUSTAN COCA-COLA BEVERAGES PVT. LTD.**
2. **M/S HINDUSTAN COCA-COLA BEVERAGES PVT. LTD.**

5TH KM STONE, MASURI-GULAPTHI ROAD,
GHAZIABAD, UTTAR PRADESH.
M/S HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. Appellant

Vs

Respondent

C.C.E. MEERUT II

I am directed to transmit herewith a certified copy of **Final order No. 294 – 295 / 2011 –SM[BR]** dated 31.5.2011 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 SHRI SHIRIN KHAJURIA ADV.
S-336, FF GREATER KAILASH PARTII,
NEW DELHI-1.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi -
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 2993-2994 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 221-222/ST/MRT-II/2009 dated 31.7.2009 passed by the Commissioner of Central Excise (Appeals), Meerut II]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Hindustan Coca Cola Beverages Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise Meerut — Respondent

Appearance:

Ms.Shirin Khajuria, Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 31.05.2011

Final

ORAL ORDER NO. 294-295/2011 SM (Br)

Per M. Veeraiyan:

These two appeals, by the same appellants involve identical / similar issues and, therefore, they are being dealt with by this common order. In the case in Appeal No. 2993/09, credit amounting to Rs.1,17,809/- taken during April, 2006 on various services have been denied holding that they were not input services and similarly in the case in Appeal No. 2994/2009, a sum of Rs.52,846/- taken during December, 2005 stands denied besides imposition of penalties.

2. Heard both sides extensively.

3.1 The credit stands denied on services utilised by the appellants. In Appeal No. 2993/2009, the appellants claim that the credit service tax paid on the activities listed below has been denied:

1. Annual maintenance contract for weighing scale installed in factory;
2. Maintenance of effluent treatment plant, earth work etc. within factory premises;
3. Manpower supply service / checkers to physically check the bottles manufactured;
4. Manpower supply and recruitment services provided for marketing audit;
5. Sales promotion activity where hotel rooms were booked for participants and dinner was organised in the hotel outside the factory premises;

6. Services in relation to technical inspection and certification by specialised agency.
7. Security services provided at sales office of appellants and at residence of manager;
8. Manpower recruitment service provides in respect of 'checkers' who mechanically verify the bottles during manufacturing process;
9. 'Tour operator' services for transportation of employees to and from factory;
10. Technical testing and analysis services to ensure compliance with environmental laws.

In Appeal No. 29934/2009, the appellants claim that the credit of service tax paid on the following activities of service tax paid on the following activities has been denied:

1. 'Tour operator' services for transportation of employees to factory and back;
2. 'Training expenses' – reimbursement of expenses incurred for stay of marketing personnel during training;
3. 'Manpower supply' service – providing persons to physically check the bottles manufactured;
4. Manpower recruitment for Sales promotion and market development through 'Team Lease'.

3.2 The original authority, in some cases found mismatch between the claim of the appellants about the nature of services and the services which were mentioned in invoices and denied the credit. In some of the cases, the original authority denied the credit on the ground that the invoices were not produced before him for verification.

4.1. Learned advocate for the appellants assailed the order on various grounds.

4.2 He submitted that annual maintenance contract for weighing scale installed in the factory was done by the service provider and the said service provider has paid service tax under the category of maintenance or repair services. The invoices were also produced before the Superintendent of Central Excise. Therefore, denial of credit was not correct.

4.3 Similarly, the services of man power supply services were availed to get checkers who physically check the bottles manufactured. They have by mistake taken credit under the heading 'maintenance and repair services'.

4.4 She submits that sales promotion activities were undertaken necessarily outside the factory and the services provided included hotel rooms for the participants and dinner organised. These activities are clearly sales promotion activities and service tax has accordingly been paid by the service provider and, therefore, credit should have been allowed as input services.

4.5 The security services provided at sales depots as well as at office of the company should be treated as inputs services. However, she has conceded that security services provided at the residence of Manager of the company is not being claimed by them as input services.

4.6 It is also submitted that the credit taken under the category of rent-a-cab was actually taken for the services of tour operators in which bus was used for transportation of their employees to and fro from the factory. The denial of credit merely based on description given by the service provider in the invoices without actually going in details of the nature of activities was not justified.

4.7 She relies on the following decisions:-

1. CCE, Nagpur vs. Ultratech Cement Ltd. [2010 (260) ELT 369 (Bom);

2. CCE Bhopal vs. Hindustan Coca Cola Beverage Pvt. Ltd. [2009-TIOL-2356-CESTAT-DEL];

3. Hindustan Coca Cola Beverages Pvt. Ltd. vs. CCE, Hyderabad [Final Order No. 1003/2009 dated 1.5.09 (Appeal No.ST/138/2007)

5.1 Learned DR submits that as recipient, the appellants were required to justify from the documents that what they have received would qualify as input services. The appellants are claiming the services described as checker services as man power recruitment services which is not substantiated. Similarly, when the provider has paid Service Tax under the category of 'rent-a-cab', the appellants claiming that the service provider has paid the Service Tax under the category of 'tour operators' is not justified. Further, in certain case the appellants have failed to produce the relevant documents before the original authorities which resulted in dispute.

5.2. Learned DR also submitted that some of the invoices produced do not indicate the appellants as the recipients of services as the factory address was referred to as Coca Cola Company Gurgaon.

6. I have carefully considered the submissions from both sides and perused the records. As the service recipient who are entitled to take the credit, the burden of proof that they are eligible for the credit as input services based on the documents is upon the assessee. Neither the assessee nor the Central Excise authorities incharge of any particular assessee can be permitted to question the category under which the provider of services have paid the Service Tax. The documents produced, in some cases refer to 'checker services', while there is no such category of services under the taxable services. These activities have been differently claimed and explained by the appellants. However, no evidence from the provider of service regarding the category under which the Service Tax was paid by them was furnished by the appellants. Further, the weighing scale installed in the factory for weighing the goods should be treated as capital goods and the maintenance of such weighing scale has to be treated as input services. Similarly, maintenance of effluent treatment plant has to be considered as input services. Service tax on sales promotion activities cannot be denied on the ground that such activities have taken place outside the factory premises. Sales promotion activity is necessarily outside the

factory. However, it is noticed that, in certain cases, the appellants have failed to produce the necessary evidence, in support of their claim before the original authority but later produced the documents before the Commissioner (Appeals).

7. The finding of the authority that in reply to man power recruitment services, the Service charge was Rs.55,696/- but service tax was calculated at Rs.62,491/- appears to be erroneous. The Service Tax provider has given, according to the appellants a bill for Rs.6,94,945 including the service tax. They have given service charges under different category. However, they have paid service tax on the entire service charges under the category of man power recruitment services. This submission requires to be considered afresh.

8. In view of the above, I deem it appropriate that the impugned order should be set aside and matter remanded to original authority for fresh consideration after taking into account the observations above and the judgements relied upon by the appellants. The appellants are permitted to file written submissions and produce the evidence within 45 days of receipt of this order and thereafter the original authority shall decide the matter expeditiously and preferably within 3 months from the date of expiry of time limit for getting written submissions. The original authority shall also grant opportunity of hearing to the appellants.

9. The appeals are allowed by way of remand on the above terms.

(M. Veeraiyan)
Member(Technical)

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