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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/3268/2009 – SM[BR] **Date 18/10/2011**

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

To :
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307

C.C.E. NOIDA Appellant
Vs
M/S WOCO MOTHERSON ELASTOMER LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 700 / 2011-SM[BR]** dated 18.8.2011 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 WOCO MOTHERSON ELASTOMER LTD.
D-3, SECTOR-11, NOIDA. DISTT.
G.B.NAGAR (U.P.)

2. Adv. / Consult SHRI VASUDEWAN ADV.
M/S RESPONDENT:-------------

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. 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 NEW DELHI

Date of Hearing:18.08.11
Date of decision:18.08.11

Excise Appeal No.3268 of 2009-SM

[Arising out of Order-in-Appeal No.249/CE/Appl./Noida/2009 dated 18.09.2009 passed by the Commissioner of Central Excise (Appeals), Noida].

CCE, Noida — Appellant

Vs.

M/s. Woco Motherson Elastomer Limited — Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri A. Khanna, DR for the appellants.
Rep. by Shri Vasudewan, Advocate for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No...700/2011 SM (BR)........../Dated: 18.08.2011

Per Rakesh Kumar

The respondents are manufacturers of automobile rubber parts chargeable to central excise duty under Heading No.4016 of the First Schedule to the Central Excise Tariff Act, 1985. They availed cenvat credit of central excise duty paid on inputs and capital goods and of service tax paid on input services used in or in relation to the manufacture of their final products. The dispute in this case is as to whether during the period from October, 2005 to July, 2008, the respondents were eligible for cenvat credit of service tax paid on outdoor catering services availed by them for providing canteen facilities to their workers. The Joint Commissioner vide Order-in-Original dated 19.03.2009 denied the cenvat credit in respect of outdoor catering services and confirmed the cenvat credit demand of Rs.92,345/- along with interest and also imposed penalty of equal amount on the respondent on this count. On appeal being filed to the Commissioner (Appeals), the Commissioner (Appeals) by the impugned order dated 18.09.2009 set aside the Joint Commissioner's ordeer and allowed the cenvat credit in respect of outdoor catering services holding that the same is covered by the definition of input service. Against this order of the Commissioner (Appeals), the present appeal has been filed by the Department challenging the order of the Commissioner (Appeals) permitting the cenvat credit in respect of outdoor catering services by treating the same as input services covered in terms as given under Rule 2 (l) of the Cenvat Credit Rules, 2004.

2. Heard both the sides.

3. Shri Anil Khanna, ld. Sr. Departmental Representative reiterates the impugned order by reiterating the grounds of appeal and pleaded that the providing of catering services to the workers is a welfare activity and not an activity relating to the manufacturing business of the respondent, that the **Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nagpur Vs. Manikgarh Cement reported in 2010 (20) STR 456** (Bombay) has held that the services of repair, maintenance and civil construction used in residential colony of respondent's employees , establishing residential colony for employees and maintenance of the same is a welfare activity and not an activity relating to business activities of the assessee and hence the same is not covered by the definition of input service even if the expenditure incurred on such welfare activity may be allowable under Income Tax Act, 1961 and that the activity must have nexus with business of assessee to qualify as input services, that such services are not related to manufacture whether directly or indirectly in or in relation to the manufacture of final product; that in this case such a case has not been proved, that the Single Member Bench of this Tribunal in the case of **CCE, Chennai Vs. Sundaram Brake Linings reported in 2010 (19) STR 172 (Tribunal-Chennai)** has held that the outdoor catering services availed by a

manufacturer for providing catering services to its workers has no nexus with the manufacture of the final products even if the expenses incurred on providing catering services are taken into under CAS-4, that just because the cost of services availed is required to be taken into consideration under CAS-4, it does not mean that it has to be treated as input services, that in this regard, the judgement of **Larger Bench of the Tribunal in the case of GTC Industries reported in 2008 (12) STR 468 (Tribunal-LB)** was appealed against by the department before the **Hon'ble Bombay High Court which vide judgement reported in 2010 (20) STR 456** set aside the order and remanded the matter for de novo decision on this issue in accordance with its judgement in case of **Ultratech Cement Ltd. reported in 2010 (20) STR 577 (Bombay)**, that in this case, there is no evidence that the respondent were required under law to provide food/canteen facilities to their workers under any law of the Central Government or the State Government, that if in absence of any law requiring the respondent to provide canteen facilities/food to their workers, if the respondent still provided the food free of cost, it will be treated as welfare activity and not an activity relating to business and would not be covered by the definition of input service, and that in view of this, the impugned order is not correct.

4. Shri S. Vasudewan, Advocate, ld. Counsel for the respondent, pleaded that the issue of eligibility of outdoor catering services for cenvat credit is not longer res integra and the same has been decided in favour of

the respondent by the judgement of the **Hon'ble Bombay High Court in the case of CCE, Nagpur Vs. Ultratech Cement Ltd.** and also by the **Hon'ble Gujarat High Court in the case of Ferromatik Milacron India Ltd. reported in 2011 (21) STR 8 (Gujarat)**, that the same view has been taken by this **Tribunal in the Final Order No.205/2011-SM (BR) dated 31.03.2011 in the case of M/s. J.K. Industries Ltd.** wherein the Tribunal has held that outdoor catering service availed by the respondent for providing catering services to their workers is covered by the definition of 'input service', that in the case of respondent, the respondent under the labour law are required to provide catering facilities to their workers and hence, the service, in question, received by them is an activity related to the manufacturing business and would be covered by the definition of input service, that since the providing of catering facilities is a requirement of law, the same cannot be termed as welfare activity and that there is no infirmity in the impugned order.

5. I have carefully considered the submissions from both the sides and perused the records. Various parts of the definition of 'input service' in relation to manufacture, during the period of dispute, as given in Rule 2 (l) of Cenvat Credit Rules, 2004 are as under:-

> **Main definition** - "any service used by the manufacturer, directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal";

Inclusive part of the definition – "services used in relation to the setting up, modernization, renovation or repairs of a factory or an office relating to such factory; advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs; activities relating to business, such as accounting, auditing, financing, recruitment and quality control & coaching and training, computer networking, credit rating, share registry and security; inward transportation of inputs or capital goods and outward transportation upto the place of removal."

Thus while the main definition clause covers the services used by the manufacturer whether directly or indirectly, in or in relation to the final products and clearance of the final products upto the place of removal, the inclusive part of the definition covers other services including "activities relating to business" relating to the main definition clause and services received directly or indirectly in manufacture of final products and clearance upto the place of removal.

6. There may be some services which are directly required in or in relation to the manufacture, while there may be some other services which though not directly required for manufacture for manufacture, may be required for compliance with certain Central, State Government, or local Laws and since without availing such services, manufacturing activity would not be allowed, such services would be covered by the main definition's part. Moreover, the inclusive part of the definition also covers the "activities relating to business" and this has been interpreted

by the Hon'ble Bombay High Court in the case of **Ultratech Cement Ltd. reported in 2010 (20) STR 577 (Bombay)** as the activities which have nexus with the manufacturing business of the assessee. Services required to be used for compliance with certain Central or State Govt. laws or local laws would have to be treated as services having nexus with the manufacturing business. In the case of **Ultratech Cement Ltd. (supra),** since the assessee employed more than 250 workers, under the provisions of Factory Act, they were required to provide catering services to their workers and the Hon'ble High Court held that in such a situation outdoor catering services received by them would have to be treated as activity relating to manufacturing and for these reasons, the same would be eligible for Cenvat credit. Hon'ble Gujarat High Court in the case of **CCE, Ahmedabad-I Vs. Ferromatik Milacron India Ltd. reported in 2011 (21) S.T.R. 8 (Gujarat),** for the same reasons held that "outdoor catering service" when it is required to be provided to workers under provisions of Factories Act, would be covered by the definition of "Input Service" as the same would be indispensable in relation to manufacture of final products. In the case of **Manikgarh Cement reported in 2010 (20) STR 456 (Bombay),** wherein the Hon'ble High Court has held that the activities relating to services of repair, maintenance and civil construction used in residential colony of the employees is the welfare activity and not an activity relating to business and the same is not covered by the definition of input services. From a reading of the above judgments, it is clear that the activities which have a clear nexus with the manufacturing business of an assessee would have to be treated as covered by the definition of input services and one of the criteria for determining such nexus is whether the service is necessary for compliance with the Central/State Govt. or local laws.

7. In this case, the original adjudicating authority as well as Commissioner (Appeals) have not discussed as to whether providing of food/catering services to the workers was the requirement of the Factory Act or any other Labour Laws of the Central Government or State Government, which were applicable to them. If under the Factory Act or any other Labour Laws, the respondent are required to provide catering services to their workers, the same would have to be treated as input services and would be eligible for cenvat credit, while if they are not required to provide under the Factory Act or any other Labour Laws, catering facilities to their workers, but still they are providing the same as a welfare measure, in such a situation, the outdoor catering services would not be covered by the definition of "input services". Since in the impugned order, this issue has not been examined from this angle, the same has to be set aside and the matter has to be remanded for de novo examination from this angle. Accordingly, the impugned order is set aside and the matter is remanded back to the original adjudicating authority for de novo examination of this issue after examining as to whether the providing of catering facilities/food to the workers was the

requirement of Factory Act or any other Laws applicable to them. Revenue's appeal is allowed by way of remand to the original adjudicating authority.

(Rakesh Kumar)
Member (Technical)

Ckp.