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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/2891/2009 , E / 599 / 2010 –SM[BR] **Date 02/11/2011**

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

To :
RAJRATAN GLOBAL WIRES LTD
PLOT NO 200 B, SECTOR-1, PITHAMPUR, DISTT-DHAR(MP)

[2] M/S ORISSA CONCRETE & ALLIED INDUSTRIES LTD. RAILWAY STEEPER PLANT, RSD STATION P.O.KAPA, RAIPUR[C.G

RAJRATAN GLOBAL WIRES LTD Appellant

Vs

C.C.E. INDORE / C. C. E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.734 – 735 / 2011-SM[BR]** dated 12.10.2011 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. INDORE **[2] C.C.E. RAIPUR**
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54,
VIJAYNAGAR, INDORE(MP)
[2] SHRI M.P. SINGH ADV.
43, SAMAJ KALYAN APARTMENT F- BLOCK
VIKASPURI NEW DELHI

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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 2891 of 2009 (SM)

M/s Rajratan Global Wires Ltd. Appellant

Versus

CCE, Indore Respondent

[Arising out of the Order-in-Appeal No. IND-I/133/2009 dated 30/06/2009 passed by The Commissioner, Central Excise, Indore.]

Excise Appeal No. 599 of 2010 (SM)

M/s Orissa Concrete & Allied Industries Ltd. Appellant

Versus

CCE, Raipur Respondent

[Arising out of the Order-in-Appeal No. 70/RPR-I/2009 dated 01/12/2009 passed by The Commissioner, Central Excise, Raipur.]

For Approval and signature :
Hon'ble Shri 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 would 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 Department Authorities? :

Appearance

S/Shri Manish Saharan, M.P. Singh, Advocates – for the appellant.

Shri B.L. Soni, Authorized Representative (DR) – for the respondent.

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

DATE OF HEARING : 12/10/2011.

Final Order No. 734-735/2011-SM (BR) Dated : ____________

Per. Rakesh Kumar :-

Since the facts and the issue involved in these two appeals are identical, the same were heard together and are being disposed of by a common order.

1.1 In the case of M/s Rajratan Global Wires Ltd., the appellant manufacture stranded wire in their factory at Pitampur (M.P.) and they receive electricity for this factory from their wind mill at Dewas through wheeling arrangement in terms of their agreement with M.P. State Electricity Board. In the case of M/s Orissa Concrete & Allied Industries Ltd., the appellant's factory located at Raipur receives electricity from their wind mill at Dewas, through wheeling arrangement in terms of their agreement with the electricity board. In both the cases, the appellant in respect of their wind mills in Dewas availed the services of erection, installation and commissioning, repair and maintenance and also insurance and took Cenvat credit of the service tax paid on these services. The department was of the view since the wind mills are located far away from the factory and the power generated by the wind mill is not directly received in the factories of the appellants, the appellants would not be eligible for Cenvat credit. On this basis, the show cause notices were issued to the appellants for denying the Cenvat credit, its recovery alongwith interest and imposition of penalty on them. The original Adjudicating Authority confirmed the Cenvat credit demands alongwith interest and imposed penalty. The orders of the original Adjudicating Authority were upheld by the Commissioner (Appeals). Against these orders of the Commissioner (Appeals), these two appeals have been filed.

2. Heard both the sides.

2.1 Shri M.P. Singh, Advocate, the learned Counsel representing M/s Orissa Concrete & Allied Industries Ltd. and Shri Manish Saharan, Advocate, the learned Counsel representing M/s Rajratan Global Wires Ltd., pleaded that the appellant had established the wind mills at Dewas as captive power plant for generation of electricity for use in their respective factories, that since the power generated by the wind mill, could not be directly supplied to the factories, they entered into an agreement with M.P. State Electricity Board under which the electricity generated by the wind mill was to be supplied to M.P. Electricity Grid and the M.P. State Electricity Board was to supply 98% of the electricity to the appellants after deducting 2% wheeling charges, that the letter dated 26/9/96 of M/s Orissa Concrete & Allied Industries Ltd. to the M.P. State Electricity Board itself shows that the appellant sought permission for installation and running of wind mill, ~~generated~~ generators at Dewas for captive use and the permission granted by the electricity board was also for generation of electricity by the wind mill for the captive use of the appellant, that this is not the case where the electricity generated by the appellants was sold to the electricity board and the appellants, thereafter, purchased electricity from the electricity board, that though the appellant's agreements with M.P. Electricity Board are titled "Power Purchase Agreement", from the perusal of the agreements, it will be clear that these are the agreements for transmission of the electricity generated by the wind mill after deducting 2% wheeling charges, that the services for erection, installation and maintenance of the wind mills have direct nexus with the manufacture of the final products by the appellant, as the electricity generated by the wind mill has been used for manufacture of the final product, that there is no provision in the Cenvat Credit Rules, 2004, that the input service has to be used within the factory premises, that Tribunal in the case of **Endurance Technologies Pvt. Ltd. vs. CCE, Aurangabad** reported in **2011 – TIOL – 1045 – CESTAT – MUM** and in the case of **Maharashtra Seamless Ltd. vs. CCE, Raigad** reported in **2011 - TIOL – 1059 – CESTAT – MUM** has held that when the electricity is produced in the wind mill, which is situated far away from the factory and the electricity is transferred to the State Electricity Board grid which, in turn, supplies the electricity to the appellant's factory, the services used for such wind mill are to be treated input services and Cenvat credit of Service Tax paid on such inputs services would be available, that though the Tribunal in the case of **Rajhans Metals Pvt. Ltd. vs. CCE, Rajkot** reported in **2007 (8) S.T.R. – 498 (Ahmd.)** has taken ~~the~~ a contrary review, this judgment of the Tribunal has been discussed by the Tribunal in the case of **Maharashtra Seamless Ltd. vs. CCE, Raigad** (supra) and the Tribunal has not agreed with the view on the ground that the judgment of the Hon'ble Bombay High Court in the case of **CCE vs. Ultratech Cement Ltd.** reported in **2010 (20) S.T.R. 577 (Bom.)** was not considered, and that in view of this, the impugned orders are not correct.

2.2 Shri B.L. Soni, the learned Senior Departmental Representative defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the Tribunal in the case of **Rajhans Metals Pvt. Ltd. vs. CCE, Rajkot** (supra) and also in the case of **Atul Auto Ltd. vs. CCE, Rajkot** reported in **2009 (237) E.L.T. 102 (Tri. – Ahmd.)** has taken a contrary view and has held that when electricity generated by wind mill situated far away from factory premises is transferred to independent State

Government company and equivalent quantum of electricity is supplied to the factory from that State Government company, the services of repair and maintenance etc. used in respect of the wind mill cannot be treated as input service. He also pleaded that electricity generated by the wind mill has not been directly used in the factories of the appellants and for this reason also the services used in the wind mills cannot be treated as input services for the appellant. He, therefore, pleaded that there is no infirmity in the impugned orders.

3. I have carefully considered the submissions from both the sides and perused the records.

4. There is no dispute about the fact that if the inputs are used or in input services are availed in respect of a captive power plant situated within the factory or adjacent to the factory, Cenvat credit would be available. But if the captive power plant happens to be wind power generator, it may not be always possible to locate the same in the close vicinity of the factory, as the wind power Generators have to be located at the places where the wind with sufficient speed is available throughout the year. In this case, though the factories of the

appellant are located at Raipur and Pitampur, since they have chosen to use electricity generated by their captive wind power generators, the wind mills are situated in Dewas. These wind mills have been established with the permission of the M.P. State Electricity Board and from the permission given by the M.P. State Electricity Board it is seen that the wind mills are mentioned as for captive use by the appellant. Since, the wind mill are located far away from the factories, the power cannot be transmitted directly and the appellant would necessarily have to enter into an agreement with the State Electricity Board for its transmission. In both these cases, it is seen that the appellants had entered into the agreements with the M.P. State Electricity Board for transmission of power under which the electricity generated by the wind mills is first transferred to the M.P. Electricity grid and, thereafter, the M.P. State Electricity Board supplies 98% of that power to the appellants after deducting 2% power as wheeling charges. In view of this, I hold that the wind mills in this case have to be treated as captive power plant and hence the services of erection, installation, commissioning, repair and maintenance and insurance used in respect of the wind mills would be eligible for Cenvat credit. Moreover one of the main factors for deciding the question as to whether Cenvat credit is available in respect of the service used by a manufacturer is as to whether the service received has nexus with the manufacture of the final product or with the business of manufacture and in this case, I find that there is clear nexus as the electricity generated by the wind mills has been used for running of the factories of the appellant and just because the electricity has not been directly supplied, but has been supplied through M.P. Electricity grid, it cannot be said that the wind mills are not captive power plant. I find that same view has been taken by the Tribunal in the case of **Maharashtra Seamless Ltd. vs. CCE, Raigad** (supra) and **Endurance Technologies Pvt. Ltd. vs. CCE, Aurangabad** (supra). In the first judgment, the Tribunal has also discussed the judgment of Tribunal in the case of **Rajhans Metals Pvt. Ltd. vs. CCE, Rajkot** (supra), where a contrary view had been taken and has observed that view taken in that judgment is not correct. In view of judgment of Bombay High Court in the case of **CCE vs. Ultratech Cement Ltd.** (supra). In view of the above discussion, I hold that the services, in question, received by the appellants have to be treated as input services eligible for Cenvat credit. The impugned orders, therefore, are not correct. The same are set aside. The appeals are allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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