

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/2 /2010 – SM[BR]

Date 02/11/2011

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

To :
M/S BRY AIR ASIA PVT. LTD.
PLOT NO. 18, SECTOR-18, HUDA INDSTRIAL
AREA, GURGAON. (HARYANA)
M/S BRY AIR ASIA PVT. LTD.

Appellant

Vs
Respondent

dated 13.10.2011

Assistant Registrar
(SM Appeal Branch)

C.C.E. DELHI III

I am directed to transmit herewith a certified copy of **Final order No. 739 / 2011-SM[BR]**
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**

Copy to :

1. Respondent

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

2. Adv. / Consult

MR.R. KRISHNAN

297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.

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 (Haryana)

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Date of Hearing:13.10.2011

Excise Appeal No.02 of 2010-SM

(Arising out of Order-in-Appeal No.307-MA/GGN/2009 dated 28.10.2009
passed by the Commissioner of Central Excise (Appeals),Delhi-III)

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?
-

M/s. Bry Asia Pvt.Ltd.

Appellants

Vs

CCE, Delhi-III

Respondent

Appeared for the Appellant: Rep. by Shri R. Krishnan, Advocate

Appeared for the Respondent: Rep. by Shri S.K. Panda, Jt.CDR

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

Final ORDER.....739/2011 SM (Br) Dated:13.10.2011

Per Rakesh Kumar:

The appellant are engaged in the manufacture of dehumidifier for industrial use. The point of dispute in this case is as to whether the repair and maintenance services used for air-conditioning plant for the office space of their factory would be eligible for cenvat credit or not. The original adjudicating authority as well as the first appellate authority being of the view that the services, in question, have no nexus with the manufacture of the final products, have denied the cenvat credit and have confirmed the cenvat credit taken along with interest and also imposition of penalty on them.

2. Heard both the sides.

3. Shri R.Krishnan, Advocate, the learned Counsel for the appellant, pleaded that the air-conditioning plant in the factory is used for air-conditioning of the office space where the employees of the factory work, that the services of repair and maintenance of such air-conditioning plant have to be treated as ["]activities["] related to manufacturing business["] of the appellant, as the employees in the office were working in connection with the manufacturing business of the appellants, that the services, in question, have direct nexus with the manufacturing business of the appellant and

hence, in view of the judgement of the Hon'ble Bombay High Court in the case of **Commissioner of Central Excise, Nagpur Vs. Ultratech Cement Ltd. Reported in 2010 (20) STR 577 (Bombay)**, the services, in question, have to be treated as covered by the definition of "input services". He, therefore, pleaded that the impugned order is not correct.

4. Opposing the contention of the appellant, Shri S.K. Panda, the learned Jt. CDR, pleaded that the services, in question, have no nexus with the manufacturing business of the final products, that the manufacture of the final products was possible without air-conditioning of the office space of the factory premises, that the cenvat credit has been correctly denied in respect of these services, that in this regard, he relies upon the judgement of the Hon'ble Apex Court in the case of **Maruti Suzuki Ltd. Vs. CCE, Delhi-III reported in 2009 (240) ELT 641 (SC)**, the judgment of the Hon'ble Tribunal in the case of **Commissioner of Central Excise, Nagpur Vs. Manikgarh Cement Works reported in 2010 (18) STR 275 (Tribunal-Mumbai)**, the judgement of the Tribunal in the case of **CCE, Chennai Vs. Sundaram Brake Linings reported in 2010 (19) STR 172 (Tribunal-Chennai)** and the judgement of the Tribunal in the case of **Ellora Times Ltd. Vs. CCE, Rajkot reported in 2009 (235) ELT 661 (Tribunal-Ahmd.)**, that in all these judgements, it has been held that a service can be

treated as covered by the definition of 'input services' only if such service has nexus with the manufacture of final products and that in this case, the services of repair and maintenance of the air-conditioning plant for office space of the factory, has no nexus with the manufacture of final products. He, therefore, pleaded that there is no infirmity in the impugned order.

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

6. There is no dispute that the air-conditioning plant, in respect of which repair and maintenance services had been used, was for air-conditioning of the office space of the factory, which is used by the employees of the Appellant, who work in connection with the manufacturing business of the appellant. In my view, the air-conditioning of the office space and the repair and maintenance services availed for the same have nexus with the manufacturing business of the appellant, more so, when the definition of 'input service' specifically includes the "Services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or office relating to such factory or premises. Moreover, air-conditioning of an office space not only increases the efficiency of the staff but may ^{also} be essential for the computer systems installed therein. The Hon'ble Bombay High Court in para 35 in the case of **CCE, Nagpur Vs.**

Ultratech Cement Ltd. (supra) has held that all the services used in relation to the manufacturing of final products are covered under the definition of input services and the definition of input services covers all the services which are used in relation to the business of manufacture of final products. On this basis, the Hon'ble Bombay High Court in this cases held that the service of outdoor catering having nexus with the business of manufacture of final products would be covered by the expression "activities related to business". In this case, during the period of dispute, definition of "input services" covered the "activities related to business" and in my view, the repair and maintenance of the air-conditioning plant for the office space has to be treated as activities having nexus with the manufacturing business of the appellant. There is difference between the activities having nexus with the manufacturing business" and the "activities having nexus with the manufacture of the final product", the former expression is much wider. For determining as to whether a particular service availed by a manufacturer is covered by the definition of 'input service', it has to be examined as to whether that service has nexus with the manufacturing business of the assessee. On the other hand, for an 'input' to be cenvatable in respect of manufacture of a final product, that input must have nexus with the manufacture of the final product. In my view, the judgement of the Apex

Court in case of **Maruti Suzuki Ltd. Vs. CCE, Delhi-III** (supra) cited by the learned Jt. CDR, which is on the question of eligibility for cenvat credit of fuels used for generation of electricity, which instead of being used in the factory for manufacture of final product, was sold outside or was used in other Joint Ventures of the assessee (MUL), can not be applied in the case of input services, which need not be used inside the factory and whose definition, during the period of dispute, included “activities relating to business” which has been interpreted as “all activities relating to manufacturing business of the Assessee”, which is a expression much wider than the expression ‘manufacture of final product’.

7. The impugned order is, therefore, not correct. The same is set aside. The appeal is allowed.

(Rakesh Kumar)
Member (Technical)

Ckp.