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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/1343/2009 – SM[BR] **Date 30/11/2011**

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. 853 / 2011-SM[BR]** dated 9.11.2011 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 (U.P.)

2. Adv. / Consult SHRI HEMANT BAJAJ 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 (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
PRINCIPAL BENCH, NEW DELHI
Court No.IV

E/Appeal No.1543/2009-SM

(Arising out of order in appeal No. 24/CE/Appl/Noida/09 dated 30.1.09 passed by the Commissioner of Customs & Central Excise, (Appeals), Noida)

Date of Hearing: 9.11.2011

For Approval and signature:

Hon'ble Mr.Mathew John, Technical Member

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 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, Noida — Appellant

Vs

M/s Wood Motherson Elastomer Ltd — Respondent

Appeared for the Appellant: Smt. R. Jagdev, SDR
Appeared for the Respondent: Shri Hemant Bajaj, Advocate

Coram: **Hon'ble Shri Mathew John, Member (Technical)**

Final ORDER – 853/2011 SM (BR)

Per Mathew John:

The respondents are manufacturer of excisable goods. They also availed benefit under Cenvat Credit Rules to take credit of excise duty paid on inputs and service tax paid on input services. The dispute at hand is about eligibility on the issue whether Cenvat credit is available on certain specified services. The period of dispute is September 06 to May, 07.

2. A show cause notice was issued proposing denial of credit on various such input services and has been adjudicated by the adjudicating Authority who gave benefit in respect of some of the services but disallowed benefit in respect of some other cases and confirmed a demand of Rs. 7,77,249/- along with appropriate interest. Further a penalty of Rs.10,000/- was imposed on the respondents.

3. On appeal against this order, the Commissioner (Appeals) further allowed credit on certain services and remanded the matter to the adjudicating authority for verification of certain aspects of the credit taken. Aggrieved by the order of the Commissioner (Appeals), Revenue has filed this appeal. There is no appeal by the assesse.

4. After hearing both the sides, we find that the Revenue has come in appeal in respect of the following services used by the respondents:

Sl No.	Services	Amount involved
1	Management Consultancy	3,67,200
2.	CHA Service	2,88,588
3.	Outdoor catering services	56,425
4.	Genral Insurance Service	35,438
5.	Air	15,571
6.	Online Information Service	1019
7.	Chartered Accountant	3715
8.	Rent a cab service	990
9.	Service provided by authorized service stations	7477

5. The Revenue's contention is that these services cannot be considered as input service. The appeal is filed on two broad grounds:-

1) The document on which credit has been taken do not give all the details specified in Rule 4A of Service Tax Rules, 1994;
2) The services in question does not qualify to be input service within the definition of the term at Rule 2(l) of Cenvat Credit Rules, 2004.

6. The Counsel for the respondent submits that the procedural irregularity is mainly that the invoice is in the name of the head office as in the case of Management Consultancy Service or the invoice is in the name of previous owner of the factory, in as in the case of Online information service. It is contended that these are not substantial defects. He submits that the company had only one factory and therefore, the services availed by the head office could have been utilized only by this factory and there was no need to get registered as input service distributor because the Tribunal has in many cases decided that the fact that the invoice is addressed to the head office of a company cannot be a reason enough to deny cenvat credit if it is otherwise available to assessee.

7. On the merits of the issue, the Counsel points out various decisions as follows:-

(i) CCE Vs. D.N. Tanjan Pvt Ltd 2011 (32) STT 244. In the matter of Rent-a-cab service and insurance to cover health risk of employees.

(ii) CCE Vs Ultratech Cement 2010 TOIL 745 HC Mum-ST in the matter of outdoor catering services.

(iii) CCE Chandigarh Vs. M/s Federal Mogul Goetze (India) Ltd in E/A No. 592/09-SM of Tribunal, New Delhi affirmed by High court of Punjab & Haryana in Service tax Appeal No. 8 of 2011.

(iv) Modern Petrofils Vs CCE Vadodara 2010 (18) STR 625 (Tri. Ahmd) holding that the place of removal in case of exported goods is the port of export. He argues that tax on CHA service should therefore, be allowed.

(v) CCE Guntur Vs CCL Products (India) Ltd 2009 (16)STR 305 (Tri. Bang) in respect of service tax on repair of vehicles.

(vi) Tata Steel Ltd Vs CCE Mumbai 2011 (21) STR 444 (Tri. Mum) in the matter of CHA services

(vii) Monnet Ispat & energy Ltd Vs CCE Raipur 2010 (19) STR 417 (Tri. Del) in the matter of insurance of personnel working in factory and insurance of motor vehicles of the company.

8. The learned A.R (Additional Commissioner) is not able to point out any reasons why above decisions should not be followed in this case.

9. After considering various decision of the Tribunal and High Courts quoted by the responded, I do not see any reason to find fault with the order of the Commissioner (Appeals) allowing cenvat credit on the impugned services and therefore, the appeal filed by the Revenue is dismissed.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)

MPS*