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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/3922/2010 – SM[BR] &E / STAY /3774 /2010-SM[BR] **Date 19/12/2011**

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

To :
M/S ULTRATECH CEMENT LIMITED,
(UNIT-BIRLA WHIT) (FORMERLY WHITE CEMENT
DIVISION OF GRASIM INDUSTRIES LIMITED)
KHARIA KHANGAR DISTT. JODHPUR.- 342606.

M/S ULTRATECH CEMENT LIMITED, Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 882/2011-SM[BR]&S/844/2011** dated 16.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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
NEW DELHI

Date of Hearing:16.11.2011
Date of Decision:16.11.2011.

Excise Stay Application No.3774 of 2010-SM
In Appeal No.3922 of 2010-SM

[(Arising out of common Order-in-Appeal No.342(CB/CE/JPR-II/2010 dated 9.9.2010 passed by the Commissioner of Central Excise (Appeals-II), Jaipur]

For Approval and signature:

Hon'ble Shri Rakesh Kumar, 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?

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.Ultra Tech Cement Limited (Unit-Birla White) Appellants

Vs

CCE, Jaipur-II Respondent

Appearance:
Rep. by Shri Hemant Bajaj, Advocate for the appellant.
Rep. by Shri S.K. ~~Bhatnagar~~, DR for the respondent
Bhaola

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

Final ORDER 882/2011 SM (BR) & Dated:16.11.2011

Per Rakesh Kumar: S-844/2011 SM (BR)

The appellant are manufacturers of White Cement. They availed Cenvat credit of central excise duty paid on inputs and capital goods and service tax paid on the input services used in or in relation to the manufacture of final products. A show cause notice was issued on 11.06.2009 to the appellant alleging that they have taken Cenvat credit of Rs.1,90,200/- in respect of the Service Tax along with Education Cess paid on Mandapkeeper Service, used in holding of various conferences and that this service is not an input service eligible for Cenvat credit. The show cause notice sought recovery of this Cenvat credit demand along with interest and also imposition of penalty on the appellant under Rule 15 (1) of Cenvat Credit Rules, 2002. The show cause notice was adjudicated by the jurisdictional Asstt. Commissioner vide Order-in-Original dated 18.08.2009 vide which the Cenvat credit demand as made in the show cause notice was upheld along with interest and penalty of equal amount was imposed on the appellant. In the original adjudication order, the Asstt. Commissioner specifically held that the services of mandapkeeper cannot be said to be an activity relating to business and the same cannot be said to be the services used in or in relation to the manufacture of or clearance of the final products.

Against this order of the Asstt. Commissioner, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) disposed of this appeal vide Order-in-Appeal dated 26.08.2010 by which, he rejected the appeal on the ground that the appellant have not produced any evidence, showing that the bills of hotels are related to the business meetings. In the order-in-appeal, the Commissioner (Appeals) specifically observed that it is not the issue as to whether the credit is admissible in respect of the Mandapkeeper service received from the hotels for holding sales meetings, but the correct issue in this case is as to whether the appellant have produced any evidence showing that the bills of hotels are related to business meetings. Against this order of the Commissioner (Appeals), this appeal along with stay application have been filed.

2. Heard both the sides.

3. After hearing both the sides, I am of the view that though this matter is listed today for hearing of the stay application only, the same can be finally disposed of. Accordingly with the consent of both the sides, this matter was heard for final disposal.

4. Both the sides agree that the basic issue in this case is as to whether the services of mandapkeeper - renting of halls in hotels for the purpose of sales meetings is covered by the definition of 'input service' and whether the cenvat credit of service tax paid on this service is admissible. The Commissioner (Appeals) has gone in totally different direction on the

question as to whether the appellant produced any evidence that the bills of hotels are related to the business meetings. Since the basic issue involved in this case has not been decided by the Commissioner (Appeals), the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) for deciding the basic issue in this case as to whether the renting of halls in hotels for holding the conferences/sales meetings would be covered by the definition of 'input service'. The appeal stands disposed of as above.

[Order dictated & pronounced in open court]

(Rakesh Kumar)
Member (Technical)

Ckp.