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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/2681/2008 – SM[BR]

Date 15/12/2010

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

To :
M/S SAMSUNG ELECTRONICS INDIA PVT. LTD.

B-1, SEC-81, PHASE II, NOIDA (U.P.)

M/S SAMSUNG ELECTRONICS INDIA PVT. LTD. : Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1425 / 2010-SM[BR] dated 8.12.2010 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. NOIDA

   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult

   MR.V. LAXMIKUMARAN

   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 S.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

14 Office Copy

15 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2681 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 109/CE/APPL-Stay/NOIDA/ 2008 dated 30.9.2008 passed by the Commissioner of Customs & Central Excise (Appeals), NOIDA]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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?	:	Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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M/s. Samsung Electronics(I) Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
NOIDA — Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing: 08.09.2010
Date of decision : 8-12-2010

Final **ORAL ORDER NO. 1425/2010 SM (BR)**

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 109/CE/APPL-Stay/NOIDA/ 2008 dated 30.9.08.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are engaged in the manufacture of electronicand electrical goods such as computer monitor, air conditioner, refrigerator and colour television sets. falling under the Chapter Heading Nos. 84 and 85 of the first schedule to the Central Excise and Tariff Act, 1985. The appellants have utilised cafeteria/ catering services by entering into contract with Outdoor Catering Services for the purpose of providing food and beverages to their workers. The appellants took credit on service tax amounting to Rs.6,97,948/- on the catering services utilised by them relating to the period from 18.11.05 to June, 2006. A show cause notice dated 1.12.06 was issued alleging that the said services cannot be treated as an input services and consequently proposing denial of credit and demand of equal amount as duty along with interest and proposing penalty. Original authority confirmed the demand along with interest and imposed equal amount as penalty. On appeal by the party, the Commissioner (Appeals) upheld the demand of duty along with interest. However, she reduced the penalty from Rs.6,97,948/- to Rs.15,000/-.

4. Learned advocate submits that they have more than 250 workers on their pay roll and as per Section 46 of the Factories Act, 1948, they are

required to provide and maintain a canteen for the use of the workers. This is a mandatory requirement and failure to maintain such canteen facility attracts penal action under section 92 of the Factories Act. He, further submits that the Outdoor Catering Services utilised by them relates to their business activity of manufacture of excisable goods and therefore, should be treated as 'input services'. It was also contended that cost of providing such catering services forms part of cost of their final products. He relies on the decision of Larger Bench of the Tribunal in the case of CCE, Mumbai V vs. GTC Industries Ltd. reported in [2008 (12) STR 468] wherein it has been held that employment of outdoor caterer for providing catering services has to be considered as 'input services' relating to the business and Cenvat credit in respect of same would be admissible.

5. Learned DR submits that any services to be considered as 'input services' must have nexus with the process of manufacture of final goods. Relying on the decision of the Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported as [2010 (253) ELT 440 (Tri-LB)], he contends that no credit can be allowed in respect of 'inputs' or 'input services' unless the same is integrally connected to the manufacture of finished excisable goods. Relying on the decision of Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. vs. CCE, Delhi III reported in [2009 (240) ELT 641 (SC)], he submits that mere inclusion of value in assessable value of the final product is not enough and there should be nexus between the inputs on the one hand and the finished goods on the other. He also relies on the decision of the Tribunal in the case of Commissioner of Central Excise,

Chennai vs. Sundaram Brake Linings reported in [2010 (19) STR 172 (Tri-Chennai)]. In the present case, no nexus has been established between the outdoor catering services and the manufacture of finished excisable goods. The final products could be manufactured without the aid of outdoor catering services and, therefore, the credit has been rightly denied.

6. Learned Advocate for the appellants, in his rejoinder submits that the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki cited supra relates to inputs and the same cannot be adopted in respect of 'input services' as the term 'input services' has been liberally defined and interpreted. He also submits that the decision of the Single Member Bench of the Tribunal in the case of Sundaram Brake Linings cited supra stands stayed by the High Court of Madras vide order dated 27.8.2010 passed in CM : 2363 of 2010 in C.E. No. 1 of 2010.

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

7.2 It would be appropriate to reproduce the definition of 'inputs' and 'input services' as per the Cenvat Credit Rules :

> " **Inputs**:
> All goods, except High Speed Diesel Oil (H.S.D.), Light Diesel Oil (L.D.O.) and petrol (motor spirit), used within the factory of production in or in relation to manufacture of final products directly or indirectly and whether contained in the final products or not. It includes
> ~ accessories of the final products cleared along with the final product, or
> ~ goods used as paint, or as

~ packing material (including the raw material used for making the packing material within the factory of production), or as

~ fuel, or

~ for generation of electricity or steam used for manufacture of final products or for any other purpose within the factory of production, and

~ lubricating oils, greases, cutting oils and coolants."

"input services means any service-

(i) used by the provider of taxable service for providing an output services or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal.

And includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office or repairs relating to such factory or premises, advertisement or sales promotion, market research, storage up to 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 up to the place of removal."

8. It could be seen from the definition of the input services that it includes a variety of services starting from the stage of setting up of a plant till dispatch / removal of final products. It also includes services like accounting, financing, security etc. which are relevant at all times starting from setting of the factory. It includes services used in relation to setting up of a factory. It includes services relating to market research,

advertisement or sales promotion; it includes services relating to procurement of inputs; it includes services relating to storage up to the place of removal.

9. In the light of the above inclusive definition, it requires to be considered as to whether the outdoor catering services utilised by the appellants can be treated as input services or not. When the factories Act stipulates that any Company employing more than 250 workers have to maintain the canteen facility and also provides punishment for violation of the stipulation, providing of such services has to be treated as integrally connected to the manufacture of the finished excisable goods by the appellants.

10. The decision of the Supreme Court in the case of Maruti Suzuki Ltd. cited supra relating to inputs has laid down that mere inclusion of value of certain items in the assessable value cannot be treated as sufficient to treat the said item as inputs. In the present case, it is not merely a case of inclusion of value of the services for the purpose of costing of the final products but it is to be noted that the services are required to be utilised mandatorily and the failure of which attracts penal action. I find the decision of the Single Member Bench in the case of Sundaram Brake Linings is stayed by the Hon'ble Madras High Court.

11. I hold that, in the facts and circumstances of the case, the outdoor catering services utilised by the appellants have to be treated as 'input services' and therefore, the appellants are eligible for the credit. In view

of the above, the order of the lower authorities are set aside and the appeal is allowed with consequent relief as per law.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

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