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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

Date 20/12/2010

eal No. E/882 /2009 – SM[BR] E / CO / 163/2009-SM[BR]

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

Appellant

C.C.E. INDORE

Vs

Respondent

M/S J.K.TYRE & IND. LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 1442 / 2010-SM[BR] dated 26.10.2010 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 J.K.TYRE & IND. LTD.
   C-1,INDUSTRIAL AREA, BANMORE, DISTT. MORENA (M.P.) PIN-476444.
2. Adv. / Consult SHRI J.N.KAUSHIK, CHIEF MANAGERCO.
   M/S RESPONDENT:--------------------

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.882 of 2009
Excise Cross Objection No.163 of 2009
(Arising out of Order-in-Appeal No.IND-I/01/2009 dated 15.1.09 passed by the CCE (A), Indore)

Date of Hearing: 26.10.2010
Date of Decision: 26.10.2010

For approval and signature:
**Hon'ble Mr.Ashok Jindal, Member (Judicial)**

| | | |
|---|---|---|
| 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 should 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 Departmental authorities? | |

CCE, Indore — Appellant
Vs.

M/s.J.K.Tyre & Industries Ltd. — Respondent

Present for the Appellant: Shri Anil Khanna, SDR
Present for the Respondent: Shri J.N.Kaushik, Chief Manager of Co.

**Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)**

Final **ORDER NO.** 1442/2010 SM (BR)

**PER: ASHOK JINDAL**

The short issue involved in this case whether the assessee is entitled for outdoor catering services as input service.

2. Learned SDR submits that there is no nexus between the services availed by the appellant and as well as they are not entitled for outdoor catering services as input service. He places reliance on the decision of this Tribunal in the case of CCE, Mumbai-V vs. GTC industries Ltd. reported in 2008 (12) STR 468

Tri.-LB), CCE, Chennai vs. Sundaram Brake Linings reported in 2010 (19) STR 172 and in the case of Kirlosakar Oil Engines Ltd. vs. CCE, Aurangabad reported in 2009 (16) STR 321 (Tri.-Mum).

3. On the other hand, Shri J.N.Kaushik, Chief Manager of the Company appeared for the respondent company and submitted that the canteen is in the factory premises of respondent company and only employees of the company are availing the catering services. The expenses incurred on canteen service are borne by the respondent company and they form part of the production. He also relies on the decision of the Larger Bench of This Tribunal in the case of GTC industries Ltd wherein it has been held that cenvat credit was available on outdoor catering service as input service if the expenses incurred on canteen service form part of the assessable value for payment of excise duty.

4. Heard both sides.

5. I have examined the submissions made by both sides. I find that the show cause notice is not available on record. Hence, the allegation as per show cause notice is not available before me. As per the adjudication order, the allegation against the respondents is that input service credit for outdoor catering is not available as per provision of Cenvat Credit Rules, 2004.

6. The issue is whether the assessee is entitled for input service credit as per definition of Rule 2(L) of CCR or not has been dealt with by this Tribunal in the case of Semco Electrical Pvt.Ltd vs. CCE, Pune reported in 2010 (18) STR 177 following

the decision of Hon'ble Bombay High Court in the case of Coca Cola Ltd. vs. CCE reported in 2009 (242) ELT 168 (Bom.) wherein it was held that the services used for business of manufacturing activities, the assessee is entitled for input service credit. Moreover, in the case of GTC Industries Ltd., the issue has been dealt with in totality wherein it was held that if the expenses incurred towards canteen form part of the production, the assessee is entitled to input service credit on outdoor catering services. In the case of Kirloskar Oil Engines Ltd.has held the same view. The decision in the case of Sundaram Brake Lining has been stayed by Hon'ble High Court of Chennai. Hence, that is not relevant.

7. In view of these, observations, the issue has been finally settled by the Larger Bench of this Tribunal in the case of GTC Industries. Hence, the respondents are entitled for input service credit.

8. Accordingly, I do not find any infirmity in the impugned order of the Commissioner (Appeals) and the same is upheld. The appeal filed by the department is rejected.

9. The Cross objection is also disposed in the above manner.

(Pronounced in the open court)

**(ASHOK JINDAL)**
**MEMBER (JUDICIAL)**

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