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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/142 /2008 – SM [BR] Date 05/01/2010

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

To :
M/S MONNET ISPAT & ENERGY LTD.
VILLAGE - NAHARPALI, KHARSIA ROAD, RAIGARH,
C.G.

M/S MONNET ISPAT & ENERGY LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 6 / 2010 –SM[BR] dated 22.12.2009 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. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult SHRI K.K. GUPTA ADV.
   B-137, RAMPRASTHA GAZIABAD [U.P.]
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. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 22.12.2009

Central Excise Appeal No.142 of 2008-SM

Arising out of the order in appeal No.201/RPR-I/2007 dated 9.10.2007 passed by the Commissioner (Appeals), Central Excise, Raipur (C.G.).

For Approval and Signature:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

1	Whether Press Reporter 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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Monnet Ispat & Energy Ltd. ... Appellant

Vs.

C.C.E., Raipur .... Respondent

Appearance:

Shri K.K.Gupta, Advocate for the appellant
Shri M.K. Rastogi, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Oral Order No. 06/2010 SM(BR)

Per Rakesh Kumar:

The facts leading to this appeal are as under:

1.1 The appellant manufacture sponge iron and other iron and steel products chargeable to central excise duty under Chapter 72 of the Central Excise Tariff Act and they also avail Cenvat credit of duty on various inputs , capital goods and input services in terms of Cenvat Credit Rules, 2004. The Department issued a show cause notice dated 3.11.2006 seeking to deny service tax credit amounting to Rs.4,36,650/- and its recovery along with interest and also imposition of penalty on the appellant under Rule 15 of the Cenvat Credit Rules. The Assistant Commissioner vide order in original dated

23.2.07 allowed the cenvat credit of Rs.3,98,142/- but disallowed the cenvat credit of Rs.38,510/- in respect of the services of "Marine Inland Transit Insurance" in connection with the procurement of plant and machinery of the captive power project, "money insurance for money in transit from the factory to bank to & fro", "insurance for personnel working in the appellant's factory in the case of accident or loss"; "the follow-up services in connection with installation of plant and machinery of captive power plant " and, telephone services in respect of telephones installed at the residence of General Manager and Company's guest house. The Assistant Commissioner vide order in original dated 23.2.2007, confirmed the Cenvat credit demand of Rs.38,510/- along with interest and imposed penalty of Rs.25,000/- on the appellant under Rule 15 (1) of Cenvat Credit Rules, 2004. On appeal, the Commissioner (Appeals) vide impugned order in appeal No. 201/RPR-I/2007 dated 9.10.2007 upheld the Assistant Commissioner's order. It is against this order, that the present appeal has been filed by the appellant.

2. Heard both sides.

3. Shri K.K. Gupta, Advocate, the learned Counsel for the appellant, pleaded that the services of transit insurance for plant and machinery, insurance for money in transit from factory to bank to & fro, and the insurance of the personnel working in the appellant's factory for injury to employees in the case of accident, are the services availed in connection with the activities relating to business whose cost forms part of the cost of finished products and hence as per the ratio of the Tribunal (Larger Bench) decision in the case of C.C.E., Mumbai V vs. GTC Industries Ltd. reported in 2008 (12) STR 468 (Tri-LB), these services have to be treated as input services, that as per the definition of input service, the inward transportation of inputs or capital goods is specifically covered in the definition of input service, that when inward transportation of inputs is covered by the definition of input service, the transit insurance would also be covered, that the follow-up services are business auxiliary services availed in connection with installation of captive power plant which is very much covered by the definition of input services; that telephone services installed at the residence

of general manager or in the guest house had been used in connection with business operation and hence are eligible for Cenvat Credit and the insurance of money in transit is also an essential service relating to day to day business and hence the same has to be treated as input service , that in view of this all these services are covered by the definition of 'input service', that the Tribunal in the case of Finolex Cables Ltd. vs.C.C.E., Pune I reported in 2009 (14) STR 303 (Tri-Mumbai) had held that insurance services in respect of plant and machinery is expenditure which goes into the costing and hence service tax on insurance premium for plant and machinery would be admissible as cenvat credit and that the Tribunal in the case of Millipore India Ltd. vs. C.C.E., Bangalore II reported in 2009 (236) ELT 145 (Tri-Bang.) has held that medical and personnel accident policy and group personnel accident policy are the items considered for costing of the final product in terms of CAS -4 and, therefore, these services have to be treated as services received in relation to the manufacture of final product and would be covered in the definition of input service. Shri Gupta also pleaded that one of the ground for denial of cenvat credit in respect of transit insurance policy for the plant and machinery for captive power plant is that the plant and machinery is meant for generating electricity for captive use and since the electricity does not attract any central excise duty, no cenvat credit would be available in respect of any services used for bringing and installation of the captive power plant and machinery the ground for denial of cenvat credit is wrong as the electricity generated by the captive power plant is used in or in relation to the manufacture of dutiable final product and therefore, just because electricity generated does not attract any central excise duty. Cenvat credit of service tax on the transit insurance of plant and machinery cannot be denied, and that in this regard, he relies upon the Board's Circular No.665/56/2002-CX dated 25th September 2002 wherein it has been clarified that cenvat credit in respect of capital goods used in manufacture of intermediate goods exempt from payment of duty which are used captively in the manufacture of finished goods chargeable to duty cannot be denied.

4. Shri M.K.Rastogi, learned Departmental Representative, pleaded that the services for being eligible for cenvat credits must be used in the factory in relation to manufacture of finished product, that marine inland transit insurance was in respect of transportation of plant & machinery, that the insurance policy for the money in transit from the factory to bank to & fro cannot be said to be in relation of manufacturing activity, that the "follow-up services" for installation of plant and machinery of captive power plant are also not in relation to manufacture of the finished goods and similarly, the telephone services in respect of telephones installed at the residence of general manager and the company's guest house cannot be said to have been used in or in relation to the manufacture of finished product. As regards the services of insurance of persons working in the Appellant's factory for injury in loss of life due to accident he pleaded that this insurance is in respect of workers supplied by the contractor who are not the employees of the Appellant. He , therefore, pleaded that cenvat credit in respect of these services had been rightly denied.

5. I have carefully considered the submissions from both sides and perused record. Service tax credit of Rs.23,460/- has been denied in respect of marine inland transit insurance availed for insurance of the captive power plant during transportation from the supplier's premises (BHEL) to the appellant's premises. When inward transportation of input or capital goods is specifically covered by the definition of 'input services', the insurance during inward of the transport of capital goods would also be covered. In view of this, I hold that the appellant is eligible for cenvat credit of service tax on the insurance premium for the transit of the machinery from the supplier's premises to the appellant's premises.

5.1 As regards the Revenue 's plea that the power plant had not been used for manufacture of dutiable finished goods but had been used in the generation of electricity which is not excisable , this is not a valid ground for denial of cenvat credit as the power plant is meant for generation of electricity which, in turn had been used in or in relation to the manufacture of dutiable finished products.

6. As regards the cenvat credit of service tax on the premium for insurance policy for money in transit, which is for insurance of the money in transit from the factory to the bank to and fro, , I am of the view that this is a part of the activity relating to business of the appellant, as any prudent business man requiring cash for day to day operations would arrange its insurance during its transit from the factory to the bank and back to the factory. I therefore, hold that service of insurance of money in transit is covered by the definition of "Input Service".

7. As regards the follow-up services, that same are business auxiliary services availed by the appellants in connection with installation of captive power plant. Since these services are in connection with installation of captive power plant and since the services in relation to setting up or modernisation are specifically by the definition of input service , I hold that these services are also eligible for cenvat credit.

8. As regards the service tax in respect of telephone services installed in the residence of general manger and company's guest house, the appellant have not shown as to how these services are in relation to his manufacturing business or in or in relation to manufacture of finished goods. The use of these telephones may be substantially for non-business purposes ~~alone~~ also while for being covered by the definition of 'input service' the service availed must be in or in relation to manufacturing business of the Assessee. Service tax credit in respect of telephone services in respect of telephone installed in the G.M.s residence and the company's guest house has, therefore, been rightly denied.

9. As regards the cenvat credit of service tax on the premium for insurance of the personnel working in the appellant factory, the learned Departmental Representative pleads that this insurance is for drivers, security man employed through contractors and they are not the employees of the appellant's factory and hence, the cenvat credit of service tax in respect of accident insurance for them would not be available. The appellant's plea is that as per the provisions of Factory Act, the appellant as principal employer has vicarious liability for any compensation in the case of

injury etc. to even contract workers and for this reason, the accident insurance covered is provided even to the workers supplied by the contractors. I agree with the appellant's plea in this regard. As per the Tribunal's judgement in the case of Millipore India Ltd., medical and personnel accident policy, group personnel accident policy etc. are covered by the definition of "input service'" and cenvat credit of service tax is available. In view of this, I hold that appellants are eligible for Cenvat credit of service tax on the insurance premium for the insurance of the personnel working in the factory.

10. In view of the above discussion, except for the portion of the impugned order upholding the denial of cenvat credit taken in respect of telephone services, in respect of telephone installed at the residence of the General Manager and at the Appellant's guest house, the rest of the order upholding the cenvat credit demand by denying cenvat credit in respect of marine inland transit insurance, money insurance for money in transit from bank to factory to & fro, follow up services in connection with installation of plant & machinery of captive power plant and insurance of personnel working in the factory for accident or loss and upholding the penalty on the Appellant, is set aside.

11. The appeal stands disposed of as above.

(Rakesh Kumar)
Member (Technical)

scd/