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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/3029/2011 - EX[DB] WITH E/S/3888/2011-EX   Date **04/06/2012**

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

To :
M/S NTF(INDIA)PVT LTD
PLOT NO 49, SECTOR-3,IMT MANESAR, GURGAON.

M/S NTF(INDIA)PVT LTD Appellant

Vs

C.C.E. DELHI III **STAY ORDER NO. 879/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/643 2012 EX[DB]** dated 23-5-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult
MR.SUMIT KUMAR GAUR, ADVOCATE
E/122, PATEL NAGAR-II, GHAZIABAD-201001.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
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 - 110005
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
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 23.5.2012

Stay Application No.3888 of 2011 and
Central Excise Appeal No.3029 of 2011

Arising out of the Final Order No.356/BK/GGN/11 dated 14.9.2011 passed by Commissioner of Central Excise (Appeals), Delhi III.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 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?	
4	Whether Order is to be circulated to the Departmental authorities?	

NTF (India) Pvt. Ltd. ... Appellant

Vs.

C.C.E., Delhi III .. Respondent

Present for the appellant : Shri Sumit Kumar Gaur, Advocate

Present for the respondent : Shri S.K.Panda, A.R.

STAY order NO 879/2012-EX (BR)
FINAL Order No. A/643/2012-EX (BR)

Per Mr. Rakesh Kumar:

The point of dispute in this case is whether the appellant who are manufacturer of auto parts, are eligible for cenvat credit of service tax paid on house keeping services keeping the factory premises neat and clean and construction services for construction of certain office rooms in the factory premises. The original adjudicating authority being of the view that these two services are not eligible for cenvat credit, vide order in original dated 5.7.2010 denied the same and confirmed the cenvat credit demand of Rs.2,27,224/- along with interest. By this order penalty of equal amount was also imposed on the appellant . On appeal , this order was confirmed by Commissioner (Appeals) vide order -in- appeal 14.9.2011, against which this appeal along with stay application has been filed.

2. Heard both sides. Though this matter is listed for hearing of the stay application, after hearing the same for some time, we are of the view that since a short issue is involved , there is no point in keeping this appeal pending and accordingly, the requirement of pre-deposit is waived and with the consent of both the sides, we take up the appeal for final disposal.

3. Shri Sumit Kumar Gaur, Advocate, the learned Counsel for the appellant, pleaded that so far as construction services are concerned, the same were used for construction of certain office rooms in the factory premises of the appellant; that this service is specifically included in the definition of 'input service'; 'input service' is defined in Rule 2(l) of Cenvat Credit Rules, 2004 during the period of dispute i.e. 2006-2009, includes services used in relation to setting up, modernization , renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises; that in view of this, the appellant are eligible for cenvat credit of construction services used by them; that so far as cleaning and housekeeping service is concerned, the same has been availed for keeping the factory neat and clean, which is mandatory ~~required~~ requirement under Section 11 of the Factories Act, 1948 and hence this service has to be treated as service used in or in relation to the manufacture of final product.

He therefore, pleaded that the impugned order denying the cenvat credit in respect of these services is not sustainable.

4. Shri S.K.Panda, the learned Joint Chief Departmental Representative reiterated the findings of the Commissioner (Appeals).

5. We have carefully considered the submissions from both sides and perused the record.

6. So far as "construction services" is concerned, the same undisputedly has been used for construction of office room in the factory premises. During the period of dispute, the definition of 'input service' means any service, -

> *used by a provider of taxable service for providing an output service, or*
>
> *used by the manufacture, whether directly or indirectly, in or in relation to the manufacture of final product and clearance of final product 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 relating to such factory or premises, advertisement or sales promotion, market research, storage upto 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 upto the place of removal.*

From the perusal of the definition of 'input service', it is clear that the input service specifically covers the services used in relation to setting up, modernization , renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises. Thus the construction service used for construction of office rooms of the appellant's factory was specifically covered by the definition of ' input service' during the period in dispute.

7. As regards the housekeeping service, the same undisputedly has been used for keeping the factory premises neat and clean which is a statutory requirement of Section 11 of the Factories Act, 1948. In view of this , the services have to be treated as services used by the manufacturer in or in relation to the manufacture of final product ~~and~~ as without compliance with the provisions of the Factories Act, manufacturing operations are not possible. In view of this, we hold that housekeeping services is also eligible for cenvat credit during the period of dispute.

8. In view of the above discussion, the impugned order is set aside. The appeal as well as stay application is allowed.

(Order dictated and pronounced in the open Court)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/