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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/956/2012-EX[DB], E/957/2012-EX[DB]
E/S/1180-1181/2012-EX

Dated: **03/05/12**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
Ranjeev Puri Finance Head
India Yamaha Motor (p) Ltd 19/6, Mathura Road, Faridabad Haryana (Appellant)
Ranjeev Puri Finance Head

VS

(Respondent)
C.C.E.-Delhi-iv

I am directed to transmit herewith a certified copy of **Final Order No.** A/495-496/2012 & **S.O. No.** 734-735/12- **EX[DB]** dated 27-4-12____________ passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
C.C.E.-Delhi-iv
NEW CGO COMPLEX...NH-IV... NIT... FARIDABAD, DELHI,121001
2. **Advocate(s) / Consultant(s):**
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3. **C.D.R**
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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
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Assistant Registrar
EXCISE Appeal Branch

14. **India Yamaha Motor (p) Ltd**
19/6 Mathura Road, Faridabad Haryana

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No.1

Excise Stay application No.1180-1181 of 2012 in Excise Appeal No.956-957 of 2012

(Arising out of OIO No.31/DM/Adjn/2011-12 dt.31.01.12 passed by the CCE, Faridabad)

Date of Hearing/Decision: 27.04.2012

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

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?	

Shri Ranjeev Puri, Finance Head
M/s.India Yamaha Motors Pvt.Ltd. Appellants

Vs.

CCE, Delhi-IV Respondent

Present: Shri B.L.Narsimhan, Advocate for the Appellant
Present Shri Nagesh Pathak, AR

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

STAY order No 734-735/2012-EX(BR)
FINAL Order No. A/495-496/2012-EX(BR)

Per: Rakesh kumar

The point of dispute in this case is as to whether credit of service tax paid on certain catering service for providing canteen facility to the workers is admissible or not. The period of dispute in this case from is February, 2006 to December, 2010. The appellant during this period, took credit of Rs.84,57,264/- in respect of this service The department was of the view that cenvat credit in respect of outdoor catering service received by the appellant for providing canteen facility to the workers is not admissible; the Jurisdictional Commissioner vide Order in Original dated 31.1.12, therefore confirmed cenvat credit demand of Rs.84,57,264/- alongwith interest and imposed penalty of equal amount on the appellant and also penalty of Rs.50,000/- on Shri Ranjeev Puri, Head, Finance of the company. Against this order of the Commissioner, these appeals alongwith stay petitions have been filed.

2. Heard both sides.

3. Though these matters were taken for hearing the stay petitions only, after hearing the same for some time, we are of the view that the appeals can be taken up for final disposal. Accordingly, the requirement of pre-deposit is waived and with the consent of both sides, the matter is taken up for final disposal.

4. Shri B.L.Narsimhan, Advocate, learned Counsel for the appellant pleaded that the factory has more than 250 workers and hence as per the provisions of Factories Act, the appellant are required to provide canteen facility to the workers for which outdoor catering service is required to be availed, that though a part of the expenses for providing canteen facility is recovered from the salary and that extent, the appellants not availed the cenvat credit and they reversed the credit and this point is not disputed. that the issue of eligibility of outdoor catering service for cenvat credit is squarely covered by the judgement of **Hon'ble Bombay High Court in the**

case of **CCE, Nagpur vs. Ultra-Tech Cement-2010 (20) STR 577 (Bom.)** and that in view of this, the impugned order is not correct.

5. Shri Nagesh Pathak, learned Departmental Representative defended the impugned order by reiterating the finding of the Commissioner (Appeals) and emphasised that the outdoor catering service availed by the appellant has no nexus with the manufacturing of final products.

6. We have carefully considered the submission from both sides and perused the records.

7. In this case, there is no dispute about the fact that on the basis of number of workers in the factory, the appellant as per provision of Factories Act, are required to provide the canteen facilities to their workers for which the service of outdoor catering service is availed. There is no dispute about the fact that to the extent the expenses for providing canteen facilities are received from the salary of the employees, the cenvat credit is reversed. Thus, the issue is covered by the judgement of the Hon'ble Bombay High Court in the case of **CCE, Nagpur vs. Ultra-Tech Cement (supra)**. In view of this, the impugned order is not sustainable and the same is set aside.

The appeals well as the stay petitions are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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