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

E/ROM/51457/2016

Appeal No. E/53562/2015-EX [SM]

[Arising out of Order-in-Appeal No. BHO-Excus-002-APP-142-15-16 dated28.7.2015, passed by the Commissioner of Central Excise, Raipur]

Jaypee Sidhi Cement Plant ....Appellant

Vs.

C.C.E. & S.T., Jabalpur ....Respondent

Appearance:
Ms. Sukriti Das, Advocate for the Appellant
Sh. M.R. Sharma, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 20.01.2017

Misc. NO. 50065/2017-EX[SM]

Per V. Padmanabhan

The application for rectification of mistake has been filed by Revenue against the **Final order no. 52165/2016- SM(DR)** dated 22.06.2016. In the said final order, the Tribunal allowed the cenvat credit availed by the assessee in respect of service of supplier of man power in the form of doctors and nursing staff in the appellant's factory. Revenue has submitted that the Hon'ble Tribunal has referred to the decision in the case of **M/s AET Laboratories Pvt Ltd. Vs. CCE, Hyderabad reported as 2015 TIOL 2828 CESTAT, Bangalore.** In the said decision, the Bangalore bench of Tribunal has denied the Cenvat Credit in respect of outdoor catering services used by the assessee after the date of amendment of Rule 2(l)(c) of the cenvat credit Rules, 2004 which has excluded services such as outdoor catering, health services etc. when such services are used primarily for personal use of the employee. After referring to the above judgments, the Hon'ble Tribunal in its conclusion has allowed cenvat credit in respect of man power supply services. In this background, Revenue has submitted that the concluding part of the impugned order appears to be contradictory to the findings in the present case.

2. Heard Shri Ms. Sukriti Das, Ld. Advocate appearing for the appellant as well as Shri M.R. Sharma, ld. AR for the respondent.

3. Heard both sides and perused the impugned order. In the beginning of para 7 of the order, the Hon'ble Tribunal has taken the view that posting of doctors and nursing staff is in terms of the statutory obligation under the Factory Act, 1948 and the Mines Act, 1952. Accordingly, it has been viewed that the same cannot be considered as procurement of services for personal consumption of workers.

4. The Tribunal has referred to decision of the Bangalore bench in the case of M/s AET laboratories Pvt Ltd. I find that in the said decision the Tribunal has decided to deny Cenvat credit in respect of services of outdoor catering and life insurance. I find that the reference to the decision of M/s AET Laboratories appears to be a mistake apparent on record. Accordingly, I delete the reference in

para 7 to the above decision as are not applicable to the facts of the present case. But for the above modification, the impugned order does not need any other rectification.

5. The ROM application is disposed off.

[Dictated and Pronounced in the open court]

V. Padmanabhan
(Member Technical)

RS