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

Excise Appeal No. E/3003/2009-E[SM]
[Arising out of Order-In-Appeal No. 226/CE/Appl. Noida/2009 dated: 18.09.2009 passed by CCE(Appeals) Noida]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, 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?	

C.C.E. Noida ...Appellant

Vs.

M/s. Samsung India Electronics (P) Ltd. …Respondent

Appearance:
Mr. Devinder Singh, DR for the Appellant
Mr. Bipin Upadhyay, (Advocate) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 17.07.2015

Final Order No. 54332 /2015

Per S K Mohanty:

Revenue has filed this appeal against the impugned order dated 18.08.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Noida, on the ground that catering service cannot be termed as input service for the purpose of taking cenvat credit.

2. The Ld. Jt. CDR Sh. Devinder Singh appearing for the appellant submits that there is no nexus between the input service and output service provided by the appellant and thus, taking of cenvat credit is not permissible. He further submits that Respondent has not produced any evidence to show that the cost of catering service has not been recovered from the employees or the same has been borne by the employer.

3. Per contra, the Ld. Advocate Sh. Bipin Upadhyay appearing for the respondent submits that the issue arising out of the present dispute is no more res integra being squarely covered by the judgment of various High Courts. In this context, he relies on the following judgments. With regard to the submissions of the Ld. Jt. CDR regarding recovery of cost from the employees, the submissions of the Ld. Advocate are that the SCN has not alleged regarding such aspect and as such, the grounds of Revenue at this juncture is not maintainable.

(a) CCE Bangalore vs. Stanzen Toyotetsu India (P) Ltd. 2011 (23) STR 444 (Kar.)

(b) CCE vs HCL Technologies, 2015 (37) STR 716 (All.)

(c) CCE Nagpur vs Ultratech Cement, 2010 (260) ELT 369 (Bom.)

(d) CCE vs Ferromatik Milacorn India Ltd. 2011 (21) STR 8 (Guj.)

(e) Commr. C. Ex. & ST vs Ace Designers Ltd. 2012 (26) STR 193 (Kar.)

4. Heard the Ld. Counsel for both the sides and perused the records.

5. I find that the issue relating to the present dispute as to whether cenvat credit is permissible on the catering service, is no more *res integra* and is squarely covered by the judgments cited by the Ld. Advocate for the Respondent. Considering the principle decided in the said judgments, I am of the view that there is no merit in the appeal filed by the Revenue. Accordingly, the appeal is dismissed.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha