

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.02.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MR. JUSTICE R.KARUPPIAH

C.M.A. Nos.2,86, 158,159, 356, 357, 359, 515, 730, 1014, 1468, 1647, 1648, 3199, 3288 of 2010, 314, 315, 316, 317, 968, 1006 of 2011 and 1482 of 2013 and Connected Miscellaneous Petitions

1.The Commissioner of Central Excise
Chennai III Commissionerate
121, Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.

... Appellant in CMA Nos.2, 86,
356, 357, 359, 515/10 & 1482/13 and
R2 in CMA Nos.3199/10, 314 to 317/11

2.The Commissioner of Central Excise
Chennai II Commissionerate
MHU Complex, Anna Salai,
Nandanam, Chennai - 35.

... Appellant in CMA Nos.730, 1014, 1468
R1 in CMA.314/11, 315/11, 316/11, 317/11

3.Commissioner of Central Excise and
Service Tax, No.1, Williams Road,
Contonment, Tiruchirapalli.

... Appellant in CMA.No.1647/10, 1648/10

4.* **M/s Sterling** Biotech Ltd.,
Sholur Town Panchayat, Ooty.

... Appellant in CMA.3288/10

5.M/s Sundaram Brake Linings Ltd.,
rep. By its Financial Controller & Secretary,
S.Ramabadran, Padi, Chennai

... Appellant in CMA.314/11

6.M/s Modular Auto Ltd., rep by its
Director V.Raman, Ambattur, Chennai

... Appellant in CMA.315/11

7.M/s Lueas Indian Service Ltd.,
rep by its V.P. Finance
S.Ramanathan, Chennai

... Appellant in CMA.317/11

8.M/s ITC Ltd., PsPd Division
Mettupalayam, Coimbatore

... Appellant in CMA 968/11,1006/11

9.Commissioner of Central Excise &
Service Tax, Large Tax Payer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai.

... Appellant in CMA.Nos.158 & 159/10

- Vs -

1. M/s.Visteon Powertrain Control Systems (P) Limited,
Keelakattalai Village,
Chengalpet - 603 204.

... 1st Respondent in CMA. 2/10

2. M/s I.M.Gears (P) Ltd.,
Vengaivasal Main Road,
Madambakkam, Chennai - 73

... R1 in CMA.86/10 and Appellant in CMA.3199/10

3. M/s Brakes India Ltd.,
Brake Division, Sholingar

... Respondent in CMA.158/10

4. M/s Brakes India Ltd.,
Foundry Division,
Sholingar

... Respondent in CMA.159/10

5. M/s Showa Engineering Ltd.,
Melvenkatapuram, Ranipet

... Respondent in CMA.356/10

6. M/s Thirumalai Chemicals Ltd.,
SIPCOT Industrial Complex, Ranipet

... R1 in CMA.357/10

7. M/s Forge 2000 Pvt Ltd.,
Pulivalam, Banavaram, Vellore

... R1 in CMA.359/10

8. M/s Real Talen Engineering Ltd.,
Pulivalam, Vellore
... R1 in CMA.515/10
9. M/s Freins Metal Ltd.,
Ambattur Industrial Estate,
Chennai
... R1 in CMA.730/10
10. M/s Commercial Vehicle Product Unit
A Division of Automotive Coaches &
Components Ltd., Ambattur Industrial
Estate, Chennai.
... R1 in CMA.1014/10
11. M/s Lumiere Coolants Ltd.,
Industrial Estate, Ambattur,
Chennai.
... R1 in CMA.1468/10
... Appellant in CMA.316/11
12. M/s Rane TRW Sterling Systems Ltd.,
Boothakudi Village, Viralimalai
... Respondent in CMA 1647/10, 1648/10
13. The Commissioner of Central Excise
Annai Medu, Salem
... R2 in CMA 3288/10, 968/11, 1006/11
14. Assistant Commissioner of Central Excise
Chennai III Division, II Commissionerate,
Anna Salai, MHU Complex, Nandanam,
Chennai
... R3 in CMA.314/11
15. Deputy Commissioner of Central Excise
Chennai II Division, Chennai II Commissionerate,
Anna Salai, MHU Complex, Nandanam,
Chennai
... R3 in CMA.315/11
16. Deputy Commissioner of Central Excise
Chennai IV Division, Chennai II Commissionerate,
Anna Salai, MHU Complex, Nandanam,
Chennai
... R3 in CMA.316/11

17. Assistant Commissioner of Central Excise
Chennai I Division, II Commissionerate,
MHU Complex, Nandanam,
Chennai

... R3 in CMA.317/11

18. M/s Friens Engineering Ltd.,
Maraimalai Nagar, Chennai

... R1 in CMA.1482/13

19. Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench,
1st Floor, Shastri Bhavan Annexe
26, Haddows Road, Chennai 600 006.

... R2 in CMA.Nos.2, 86, 356,
357, 359, 515, 730, 1014,
1468/10 & 1482/13

... R1 in CMA. Nos.3199,3288/10,
968 & 1006/11

Appeal filed under Section 35-G of the Central Excise Act,
against the order of the Customs, Excise & Service Tax Appellate
Tribunal, South Zonal Bench, Chennai, dated

(i) 15/7/09 in Final Order No.848/09

(ii) 15/7/09 in Final Order No.849/09

(iii) 5/6/09 in Final Order No.677/09

(iv) 5/6/09 in Final Order No.678/09

(v) 5/6/09 in Final Order No.675/09

(vi) 5/6/09 in Final Order No.670/09

(vii) 5/6/09 in Final Order No.677/09

(viii) 5/6/09 in Final Order No.676/09

(ix) 7/9/09 in Final Order No.1177/09

(x) 15/2/10 in Final Order No.195/10

(xi) 15/2/10 in Final Order No.194/10

(xii) 23/11/09 in Final Order No.1798/09

(xiii)23/11/09 in Final Order No.1799/09
(xiv)18/6/10 in Final Order No.652/10
(xv)18/6/10 in Final Order No.659/10
(xvi)18/6/10 in Final Order No.649/10
(xvii)18/6/10 in Final Order No.650/10
(xviii)18/6/10 in Final Order No.656/10
(xix)18/6/10 in Final Order No.661/10
(xx)18/6/10 in Final Order No.657/10
(xxi)18/6/10 in Final Order No.658/10 and
(xxii)19/2/10 in Final OrderNo.207/10 respectively.

For Appellant in C.M.A.Nos.2, 86, 356,
357, 359, 515 of 2010 : Mr.T.Chandrasekaran
Standing Counsel

For Appellant in C.M.A.Nos.158, 159
1647 & 1648 of 2010 : Mr.K.Ravi Ananthapadmanabhan
Standing Counsel

For Appellant in C.M.A.Nos.730 & 1014
of 2010 : Mr.E.Vijay Anand
Standing Counsel

For Appellant in C.M.A.No.1468 of 2010 : Mr.S.Xavier Felix
Standing Counsel

For Appellant in C.M.A.Nos.3199 & 3288
of 2010 : Mr.S.Jaikumar

For Appellant in C.M.A.Nos.314 to 317
of 2010 : Mr.P.R.Renganath

For Appellant in C.M.A.Nos.968 & 1006
of 2011 : Ms.L.Maithili

For Appellant in C.M.A.No.1482 of 2013 : Mr.A.C.ManiBharathi

For Respondent in C.M.A.No.2 of 2010 : Mr.R.Parthasarathy
for M/s.Lakshmi Kumaran

For Respondent in C.M.A.Nos.158, 159
of 2010

: Mr.S.Murugappan

For Respondent in C.M.A.Nos.356, 357,
359, 515, 730, 1014, 1468 of 2010
& 1482 of 2013

: Mr.P.R.Renganath
for M/s.R.Raghavan

For Respondent in C.M.A.Nos.1647
& 1648 of 2010

: Mr.S.Jaikumar

For Respondent in C.M.A.No.3199/2010

: Mr.A.C.Mani Bharathi - R2

For Respondent in C.M.A.Nos.3288/2010
and 968 & 1006 of 2011

: Mr.V.Sundareswaran - R2

For Respondent in C.M.A.Nos.314 to 317
of 2011

: Ms.Mallika Srinivasan

C O M M O N J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

C.M.A.Nos.2,86, 158,159, 356, 357, 359, 515, 730, 1014, 1468, 1647, 1648 of 2010 and 1482 of 2013 are filed by the Revenue as against the order of the Customs, Excise and Service Tax Appellate Tribunal allowing the appeal filed by the assessee granting the benefit of Cenvat credit on the service tax paid on outdoor catering services provided in the factory for employees of the factory.

2. C.M.A.Nos.3199 and 3288 of 2010, 314 to 317 of 2011, 968 and 1006 of 2011 are filed by the assessee as against the order of the Customs, Excise and Service Tax Appellate Tribunal dismissing the appeal filed by the assessee denying the benefit of Cenvat credit on the service tax paid on outdoor catering services provided in the factory for employees of the factory.

3. The brief facts, which are common in all the above Civil Miscellaneous Appeals, are as follows:

The assessee in each one of the case availed Cenvat Credit facility on outdoor catering services provided in the factory premises to its employees and that was objected to by the Department stating that outdoor catering services does not fall within the ambit of definition 'input service', specified under Rule 2(1) of the Cenvat Credit Rules, 2004. The Department was of the view that catering/canteen services are neither used in or in relation to the manufacture or clearance of final product nor it can be said to be an activity relating to business. Almost on an identical issue, in all above these cases, the Department proceeded to disallow the cenvat

credit. The Adjudicating Authority vide order-in-original, allowed cenvat credit holding that the persons to whom food supplied are employed in a factory directly or indirectly for the manufacture of goods and when they were supplied with food through the services of outdoor caterers, then such service is definitely in relation to the manufacture and thus qualify to be called an 'input service'. Aggrieved by the Order-in-Original, the Department pursued the matter before the Commissioner (Appeals), who dismissed the appeals, thereby upheld the order of the Adjudicating Authority. As against the said order of the Commissioner (Appeals), the Department went before the Tribunal.

4. The Tribunal in majority of the cases following the Larger Bench decision of the Tribunal in the case of Commissioner of Central Excise, Mumbai V. GTC Industries Ltd. reported in 2008 (12) STR 468 (Tri.-LB) dismissed the appeals holding that Cenvat credit is admissible on 'outdoor catering service' as the same is an input service relating to business. In some of the cases, the Tribunal followed the decision of the Supreme Court in the case of Maruti Suzuki Ltd. V. CCE reported in 2009 (240) ELT 641 (SC) dismissed the appeal, thereby upheld the contention of the Department where Cenvat credit has been denied.

5. Being aggrieved by the orders of the Tribunal, both the Revenue as well as the assessee filed appeals before this Court.

6. Learned standing counsel appearing for the Revenue submitted that the decision in the case of Maruti Suzuki Ltd. V. CCE reported in 2009 (240) ELT 641 (SC) should hold the field in respect of input service and that Notification No.3 of 2011 dated 01.03.2011, which excludes such outdoor catering services from the purview of input service, would relate back to the period in question, as the Notification is only by way of substitution and therefore it will have retrospective effect.

7. Learned counsels appearing for the assessee submitted that under Rule 3 of the Cenvat Credit Rules, a manufacturer of final products is entitled to take credit of the service tax leviable under Section 66 of the Finance Act paid on any input service received by the manufacturer of final product. It is not in dispute that canteen services were being provided by the assessees to its employees, in view of the statutory requirement under Section 46 of the Factories Act. Hence, for the purpose of carrying out manufacturing activities, it is necessary for the assessees to provide canteen facilities to its workers. Hence, the assessees were availing Cenvat Credit in respect of the service tax paid on outdoor catering services.

8. In support of their contention, they relied upon the decision of the the Bombay High Court in the case of CCE V. Ultratech Cement Ltd. reported in 2010 -TIOL - 745 - HC- MUM - ST, wherein the Bombay High elaborately dealt with the issue and held in favour of the assessee holding that outdoor catering services fall within the ambit of 'input service'. They further submitted that Notification No.3 of 2011 dated 01.03.2011 clearly mentions that the said notification is with effect from 1st April, 2011, which means, the benefit of input service in respect of outdoor catering service will not be available with effect from 01.03.2011. In the present cases, the availment of cenvat credit is prior to 2011. Hence, the Notification will not apply to the facts of the present case.

9. Heard learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed before this Court.

10. It is seen from the orders of the Authorities below that the assessees in these cases are availing Cenvat credit of duty paid on inputs, capital goods and service tax paid on services used in or in relation to manufacture of their final products. The Revenue found that the assessee had availed and utilized input service tax credit relating to outdoor catering services. According to the Department, outdoor catering services could not be treated as 'input service' as defined under the Cenvat Credit Rules. Hence, the core issue involved in the above Civil Miscellaneous Appeals is whether the assessee can utilise the cenvat credit facilities in respect of outdoor catering services, provided in the factory for its employees, as input service.

11. The issue raised in the present batch of appeals has been elaborately considered by the Bombay High Court in the case of CCE V. Ultratech Cement Ltd. reported in 2010 -TIOL - 745 - HC- MUM - ST and all the contentions raised by the Revenue has been considered in extenso including the definition of 'input service' as defined in the case of Maruti Suzuki Ltd. V. CCE reported in 2009 (240) ELT 641 (SC) . The Bombay High Court came to the conclusion that the decision of the Larger Bench of the CESTAT in the case of CCE V. GTC Industries Ltd. 2008 (12) STR 468 is a correct law, however, with a rider that where the cost of the food is borne by the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer.

12. For better clarity, the relevant portion of the decision of the Bombay High Court in the case of CCE V. Ultratech Cement Ltd. reported in 2010 -TIOL - 745 - HC- MUM - ST reads as follows:

"28. In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of "input service". The services

covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing ... etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product.

29. The expression "activities in relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under rule 2(1) of the 2004 Rules.

30. The Apex Court in the case of Maruti Suzuki Ltd. (supra) has considered the expression 'used in or in relation to the manufacture of final product' in the definition of "input" under rule 2(k) of 2004 Rules and held as follows :-

"14. ... Moreover, the said expression, viz., "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input" and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a

packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in relation to the manufacture" stands complied with. In our view, one has to therefore, read the definition in its entirety."

31. In our opinion, the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra) in the context of the definition of 'input' in rule 2(k) of 2004 Rules would equally apply while interpreting the expression "activities relating to business" in rule 2(l) of 2004 Rules. No doubt that the inclusive part of the definition of 'input' is restricted to the inputs used in or in relation to the manufacture of final products, whereas the inclusive part of the definition of input service extends to services used prior to/during the course of/after the manufacture of the final products. The fact that the definition of 'input service' is wider than the definition of 'input' would make no difference in applying the ratio laid down in the case of Maruti Suzuki Ltd. (supra) while interpreting the scope of 'input service'. Accordingly, in the light of the judgment of the Apex Court in the case of Maruti Suzuki Ltd. (supra), we hold that the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under rule 2(l) of 2004 Rules.

32. As rightly contended by Shri Shridharan, learned Counsel for the respondent - assessee, in the present case, the assessee carrying on the business of manufacturing cement by employing more than 250 workers is mandatorily required under the provisions of the Factories Act, 1948 to provide canteen facilities to the workers. Failure to do so entails penal consequences under the Factories Act, 1948. To comply with the above statutory provision, the assessee had engaged the services of a outdoor caterer. Thus, in the facts of the present case, use of the services of an outdoor caterer has nexus or integral connection with the business of manufacturing the final product namely, cement. Hence, in our opinion, the Tribunal was justified in following the Larger Bench decision of the Tribunal in the case of GTC Industries Ltd. (supra) and holding that the assessee is entitled to the credit of service tax paid on outdoor catering service.

33. It is argued on behalf of the revenue that not only the ratio but the decision of the Apex Court in the case of Maruti Suzuki Ltd. (supra) must be applied ipso facto to hold that the credit of service tax paid on outdoor catering services is allowable only if the said services are used in relation to the manufacture of final products. That argument cannot be accepted because unlike the definition of input, which is restricted to the inputs used directly or indirectly in or in relation to the manufacture of final products, the definition of 'input

service' not only means services used directly or indirectly in or in relation to manufacture of final products, but also includes services used in relation to the business of manufacturing the final products. Therefore, while interpreting the words used in the definition of 'input service', the ratio laid down by the Apex Court in the context of the definition of 'input' alone would apply and not the judgment in its entirety. In other words, by applying the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra), it cannot be said that the definition of 'input service' is restricted to the services used in relation to the manufacture of final products, because the definition of 'input service' is wider than the definition of 'input'.

34. Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.

35. The argument of the revenue, that the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service' purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing etc. Thus, the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is nothing in the definition of 'input service' to suggest that the Legislature intended to define that expression restrictively. Therefore, in the absence of any intention of the Legislature to restrict the definition of 'input service' to any particular class or category of services used in the business, it would be reasonable to construe that the expression 'such as' in the inclusive part of the

definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacturing the final product are covered under the definition of 'input service' and in the present case, the outdoor catering services being integrally connected with the business of the manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal.

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37.....

38. We concur with the above decision of this Court in the case of Coca Cola India (P.) Ltd. (supra). However, in that case, this Court has also held that the cost of any input service that forms part of value of final products would be eligible for CENVAT credit. That observation of the Division Bench is made in the context of a service which is held to be integrally connected with the business of manufacturing the final product. Therefore, the observation of the Division Bench in the case of Coca Cola India (P.) Ltd. (supra) has to be construed to mean that where the input service used is integrally connected with the business of manufacturing the final product and the cost of that input service forms part of the cost of the final product, then credit of service tax paid on such input service would be allowable.

39. The Larger Bench of CESTAT in the case of GTC Industries Ltd. (supra) has also observed that the credit of service tax would be allowable to a manufacturer even in cases where the cost of the food is borne by the worker. That part of the observation made by the Larger Bench cannot be upheld, because, once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer. Shri Shridharan, learned Counsel for the assessee fairly conceded to the above position in law and in fact filed an affidavit affirmed by a responsible officer of the assessee wherein it is stated that the proportionate credit to the extent embedded in the cost of food recovered from the employee/worker has been reversed.

40. For all the aforesaid reasons, the question of law framed by the revenue is answered in the affirmative, i.e., in favour of the assessee and against the revenue. However, the CENVAT credit reversed by the assessee, belatedly, having not been verified by the Excise Authorities, the Excise Authorities are directed to verify the same and pass an appropriate order in that behalf. "

13. The Karnataka High Court in the case of CCE V. Stanzen Toyetetsu India (P) Ltd. reported in 2011 (23) STR 444 (Kar.) has also concurred with the above-said principle and held as follows:

"12. It is in this context that when the assessee provides outdoor canteen facilities because of a statutory obligation imposed on him under Section 46 of the Factories Act, it becomes a condition of service as far as the employees are concerned. He has paid the service tax on outdoor canteen services. The said expenses incurred by the assessee will also be taken into consideration before fixing the price of the final product. It may be a welfare measure but certainly it is not a charity provided by the employer to the employees. It is an onerous legal obligation imposed on him. The cost incurred in rendering such service will be included in the cost of production.

14. Again the Karnataka High Court in the case of Resil Chemicals Pvt. Ltd. Vs. CCE, Bangalore - I reported in 2014 (36) STR 1260 (Kar.) and in the case of CCE, Bangalore V. Ace Designers reported in 2011-TIOL-931-HC-Kar-CX followed the decision in the case of CCE V. Stanzen Toyetetsu India (P) Ltd. reported in 2011 (23) STR 444 (Kar.) held in favour of the assessee.

15. The Gujarat High Court, in an identical circumstance, has taken a similar view in the case of Commissioner of Central Excise, Ahmedabad - I V. Ferromatik Milacron India Ltd. reported in (2010) 36 VST 376, wherein, the Gujarat High Court held as follows:

"6. As noted herein above, under the provisions of section 46 of the Factories Act, it is mandatory for the employer to provide canteen services to the staff. Thus, the provision of canteen services is a statutory requirement. Provision of canteen services being indispensable, it is incumbent on a manufacturer of goods, to provide the same if he desires to run his factory. In view of the definition of "input service" which means any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products, the input service does not have to be used directly in the manufacture of final products, it may be a service which is only indirectly used in relation to the manufacture of final products. In the circumstances, canteen services which are indispensable in relation to manufacture of the final products, would certainly fall within the ambit of "input service" as defined under the Rules."

16. Following the above-said decision of the Gujarat High Court, the Allahabad High Court in the case of Commissioner of Central Excise V. M/s.HCL Technologies, reported in 2014 - TIOL - 20010HC-

ALL-CX held as follows:

"The next category is Outdoor Catering Services. The Commissioner furnished a cogent justification for allowing the Cenvat Credit save and except for a partial disallowance in respect of the consumption of alcoholic beverages. In this regard, reference may be made to the decision of the Gujarat High Court in Commr. of C. Ex., Ahmedabad Vs Ferromatik Milacron India Ltd. 2011 (211) STR 8 (Guj.) = 2010-TIOL-851-HC-ADM-ST"

17. The only other argument raised by the Revenue is that Notification No.3 of 2011 dated 01.03.2011, which excluded the services in the question by amendment dated 01.03.2011, is by way of substitution and therefore, it should take into effect in respect of the period in dispute also.

18. Such a plea, at the threshold, has to be rejected, since Rule 1b of the Rules clearly states that the said amendment shall come into force on 1st day of April 2011. The said amendment reads as follows:

"1.(a) These rules may be called the CENVAT Credit (Amendment) Rules, 2011.

(b) Save as otherwise provided in these Rules, they shall come into force on the 1st day of April, 2011."

19. Rule 2(1), as amended with effect from 01.03.2011 vide Notification No.3/2011 dated 01.03.2011, reads as follows:

(v) for clause (1), the following shall be substituted, namely:-

(1) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, 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, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of

the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;";

20. Therefore, the issue as decided by the Tribunal and the various Courts clearly settled the issue that the Cenvat Credit has been properly availed in respect of outdoor catering services.

21. For the foregoing reasons, we pass the following order:

i) Following the above-said decisions, the issue involved in these appeals is answered in favour of the assessee and against the Revenue;

ii) Accordingly C.M.A.Nos.2,86, 158,159, 356, 357, 359, 515, 730, 1014, 1468, 1647, 1648 of 2010 and 1482 of 2013 are dismissed affirming the order of the Tribunal;

iii) C.M.A.Nos.3199 and 3288 of 2010, 314 to 317 of 2011, 968 and 1006 of 2011 are allowed setting aside the order of the Tribunal.

No costs. Consequently, connected M.Ps are closed.

Sd/-

Assistant Registrar

Dated : 18/3/15

*** corrected as per letter
dated:20/4/15
Sd/- Assistant Registrar
Dated : 20/4/15**

//True Copy//

Sub Assistant Registrar

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To

1. The Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench, 1st Floor, Shastri Bhavan Annexe
26, Haddows Road, Chennai 600 006.

2. The Commissioner of Central Excise
Annai Medu, Salem

3. The Assistant Commissioner of Central Excise
Chennai III Division, II Commissionerate,
Anna Salai, MHU Complex, Nandanam, Chennai

To be Substituted
to the order

4. The Deputy Commissioner of Central Excise
Chennai II Division, Chennai II Commissionerate,
Anna Salai, MHU Complex, Nandanam, Chennai

already

despatched on

5. The Deputy Commissioner of Central Excise
Chennai IV Division, Chennai II Commissionerate,
Anna Salai, MHU Complex, Nandanam,
Chennai

15/04/2015.

6. The Assistant Commissioner of Central Excise
Chennai I Division, II Commissionerate,
MHU Complex, Nandanam, Chennai

7. The Commissioner of Central Excise
Chennai II Commissionerate,
MHU Complex, Anna Salai, Nandanam, Chennai

+3cc's to Mr.T.Chandrasekaran, Advocate, S.R.No.7978, 7977 & 7979

+4cc's to Mr.Lakshmi Kumaran, Advocate, S.R.No.8356

+6cc's to Mr.S.Jai Kumar, Advocate, S.R.No.7858, 7834,

7859, 7849, 7850 and 7857

+1cc to Mr.K.Ravi Anantha PadmaNabhan, Advocate, S.R.No.8522

+10cc's to Mr.R.Raghavan, Advocate, S.R.No.8584 to 8591

+1cc to Mr.E.VijayAnand, Advocate, S.R.No.7942

+1cc to Mr.A.C.Mani Bharathi, Advocate, S.R.No.8459

+2cc's to Mr.V.Sundareswaran, Advocate, S.R.No.8358 & 8359

+4cc's to Mr.Mallika Srinivasan, Advocate, S.R.No.8294

+1cc to M/s.L.Mythili Associates, Advocate, S.R.No.7860

C.M.A. Nos.2,86, 158,159, 356, 357,
359, 515, 730, 1014, 1468, 1647, 1648,

3199, 3288 of 2010, 314, 315, 316,

317, 968, 1006 of 2011 and 1482 of 2013

and Connected Miscellaneous Petitions

KSJ(CO)

CA(24/03/2015)

CA(20/04/2015)