216

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CEA No.15 of 2016 (O&M)
Date of decision : 23.08.2018**

Commissioner of Central Excise

... Appellant

Versus

M/s Neel Metal Products Ltd.

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Amit Goyal, Advocate
for the appellant.

Mr. Amrinder Singh, Advocate
for the respondent.

****

<u>RAJESH BINDAL, J.</u>

The appellant in the present appeal has challenged the order dated 24.06.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, arising out of Appeal No.E/60745/2013, raising the following substantial questions of law:-

> "(i) Whether the CESTAT was right in dismissing the appeal of the revenue by placing reliance on the decision in the case of CCE, Nagpur Vs Ultratech Cement Ltd. 2010 (260) ELT 369 (Bom), when an appeal has been preferred against the said decision and the Hon'ble Supreme Court has been pleased to grant leave in the said matter?
>
> ii) Whether the CESTAT was right in holding that the respondent was entitled to CENVAT Credit especially when the services availed by the respondent were not used

directly or indirectly, in or in relation to the manufacture of the final products or clearance of the final goods?

iii) Whether CENVAT Credit on inputs service would be admissible in a case where the output service is not liable to Service Tax.

iv) Whether the respondent is entitled to avail the CENVAT Credit on outdoor 'catering services' provided in the factory for employees of the factory as an input service credit despite the fact that outdoor catering service does not fall under the ambit of the definition of "Input service" specified under Rule 2 (l) of CENVAT Credit Rules, 2004 as these services are neither used in or in relation to the manufacture or clearance of final product nor can it be said, to be an activity relating to business?

v) Whether the use of the outdoor catering services is integrally connected with business of manufacturing of their final product and therefore, credit of service tax paid on outdoor catering services would be allowable in spite of specific ruling of the Hon'ble High Court, Kolkata Bench in the case of M/s Peico Electronics & Electricals Ltd., Vs. Commissioner of Income Tax-IV Kolkata (Appeal No.353 of 2004) reported in 2001 ITR 477 that even if a factory has to maintain a canteen, it cannot be said that it is as integral part of manufacture or production carried on by the assessee?

vi) Whether Cenvat Credit could be allowed to the respondents even in respect of the part of Service Tax which is borne by the workers?

vii) Whether the findings of the CESTAT on the issue of limitation are substantial in view of the fact the earlier show cause notices did not cover Outdoor Catering Services and the information regarding availment of Cenvat Credit by the respondent on the said services was not in the knowledge of the department and had been withheld by the respondent?

At the very outset, learned counsel for the appellant submitted that the amount involved in the present appeal is ₹20.83 Lakhs. As the amount involved is less than the limit prescribed in the Circular issued by the Central Board of Indirect Taxes & Customs (Judicial Cell) dated 11.07.2018, the present appeal be dismissed as not maintainable.

Ordered accordingly.

However, it is made clear that dismissal of present appeal will not be taken as upholding the order passed by the Tribunal as the legal issue raised therein is left open to be considered in an appropriate case.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

23.08.2018
Yogesh Sharma

✓

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**