IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 736 of 2009

For Approval and Signature:

HONOURABLE MR. JUSTICE D.A.MEHTA
HONOURABLE MS. JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF CENTRAL EXCISE AHMEDABAD-I - Appellant(s)
Versus
FERROMATIK MILACRON INDIA LTD - Opponent(s)

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Appearance :
MS SEJAL K MANDAVIA for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE D.A.MEHTA

and

HONOURABLE MS. JUSTICE H.N.DEVANI

Date : 01/04/2010

ORAL JUDGMENT
(Per : HONOURABLE MS. JUSTICE H.N.DEVANI)

1. Appellant – Revenue has challenged order dated 28th November, 2008 made by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal) proposing the following two questions stated to be substantial questions of law:-

i. *Whether the canteen service/facility, provided in the factory of the assessee was an input service, in or in relation to manufacture, directly or indirectly of the final products, within the meaning and comprehension of Rule 2(i) of the CENVAT Credit Rules, 2004?*

ii. *Whether the CENVAT credit of the service tax, so paid for receiving the outdoor caterer's services by them for providing canteen services to their employees, was eligible for availment and utilization in terms of Rule 3 read with Rule 2(l) of the CENVAT Credit Rules, 2004?*

2. The respondent is a manufacturer of Injection Moulding Machines and parts thereof, falling under Chapter 84 of the first Schedule to the Central Excise Tariff Act, 1985. During the course of audit of the central excise records maintained by the respondent, it was noticed that during the period 01st March, 2006 to 30th September, 2006, the respondent had availed of CENVAT credit amounting to Rs.52,614/- on service tax in respect of canteen services. According to the appellant the assessee was not entitled to the credit on the ground that canteen services cannot be treated as “input service” as defined under the CENVAT Credit Rules, 2004. Accordingly, show-cause notice came to be issued for

recovery of the aforesaid amount which came to be adjudicated vide order dated 14th March, 2008 whereby the said demand was confirmed and penalty was imposed along with interest. Being aggrieved, the respondent preferred appeal before Commissioner (Appeals) who vide order dated 30th June, 2008, dismissed the appeal. The respondent carried the matter in further appeal before the Tribunal and succeeded.

3. Ms. S. K. Mandavia, learned Standing Counsel for the appellant – Revenue submitted that the main definition of input services extended CENVAT credit of service tax paid on services which were used in or in relation to the manufacture of finished excisable goods. That the inclusive part of the definition which covers additional business activities cannot be stretched beyond what is prescribed in the main definition. Accordingly, canteen services even if they are assumed to be activities relating to the main business of manufacture, the same would not be covered under the inclusive part of the definition, because extension of such facilities would not have any direct or indirect nexus to the manufacture of goods. It was accordingly submitted that the definition of the term “input service” as appearing in rule 2(l) of the Rules would not bring the service in question within the scope of “input service” so as to be eligible for credit under rule 3 of the Rules.

4. Under rule 3 of the 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 the final product on or after the 10th day of September, 2004. In the facts of the present case, it is not in dispute that canteen services were being

provided by the respondent to its employees, in view of the statutory requirement under section 46 of the Factories Act. Thus, for the purpose of carrying out its manufacturing activities, it was mandatory for the respondent to provide canteen facilities to its workers. The respondent-assessee was availing of CENVAT credit in respect of the service tax paid on canteen services. The issue which arises for consideration is as to whether canteen services can be said to be “input service” within the meaning of rule 2(l) of the Rules so as to entitle the respondent to avail CENVAT credit in respect of service tax paid thereon.

5. 'Input Service' is defined under Rule 2(l) of the Rules, which insofar as the same is relevant for the purpose of the present appeal, reads thus:

> *“(l) 'input service' means any service,-*
>
> *(i) xxxx*
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> *(ii) used by the 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,*
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> *and includes the services in relation to setting up, modernization, 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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and*

security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

6. As noted hereinabove, under the provisions of section 46 of the Factories Act, it is mandatory for the employer to provide canteen services to the staff. Thus, 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 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.

7. Moreover, rule 3 of the Rules insofar as the same is relevant for the present purpose provides that the manufacturer shall be allowed 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 on or after the 10th day of September, 2004. A plain reading of the said rule makes it clear that the said provision does not qualify the nature of input service availed of by the manufacturer.

8. In the above factual and legal background, the Tribunal was justified in holding that the service tax paid on

outdoor catering services by the canteen located in the respondent's manufacturing premises has to be considered as an input service relating to business and that CENVAT credit is admissible in respect of the same. The view taken by the Tribunal being in consonance with the provisions of the Rules does not suffer from any legal infirmity so as to warrant interference. In absence of any question of law, much less any substantial question of law, the appeal is dismissed.

(D.A. Mehta, J.)

(Harsha Devani, J.)

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