IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 328 of 2010

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COMMISSIONER OF CENTRAL EXCISE & CUSTOMS - Appellant(s)
Versus
M/S GUJARAT HEAVY CHEMICALS LTD - Opponent(s)

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Appearance :
MR YN RAVANI for Appellant(s) : 1,
MR BL NARASIMHAN for Opponent(s) : 1,
MR AP NAINAWATI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS JUSTICE SONIA GOKANI

Date : 11/05/2011

ORAL ORDER

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Revenue is in appeal against the judgment of the CESTAT dated 15.7.2009 raising following question for our consideration:

> “Whether in the facts and circumstances of this case the CESTAT is correct in holding that service tax credit on security services utilized in residential colony of respondent is admissible when such services are not related to manufacture directly or indirectly in or in relation to the manufacture of final products and especially when the service rendered in residential colony of the factory are not covered in the definition of 'input service' defined under rule 2(1) of Cenvat Credit Rules, 2004?

On 13.1.2011, this Court issued notice of final

disposal passing following order:

> "1. Heard Mr. Y.N. Ravani, learned senior standing counsel for the appellant.
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> 2.It is pointed out that the Tribunal has placed reliance upon an earlier decision in case of Manikgarh Cement Vs. Commissioner of Central Excise & Customs, Nagpur, 2008 (9) STR 554 (Tribunal-Mumbai). It is further pointed out that the said decision of the Tribunal has been set aside by the Bombay High Court in case of Commissioner of Central Excise, Nagpur Vs. Manikgarh Cement, 2010 (20) S.T.R. 456 (Bombay). It is contended that the controversy in issue, even otherwise, stands concluded by two decisions of the Supreme Court rendered in the case of Collector of Central Excise Vs. Solaris Chemtech Limited, 2007 (214) ELT 481 (S.C.) and in the case of Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi, 2009(240) E.L.T. 641 (S.C.).
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> 3.In the light of the aforesaid, notice for final disposal returnable on 24th February, 2011."

In response to the notice issued by this Court, learned advocate Shri Jigar Shah appeared for the respondent assessee and raised the preliminary objection with respect to maintainability of appeal on the ground of smallness of the claim. Learned counsel for the Revenue, however, drew our attention to Circular of CBEC dated 10th November 2008 wherein in following cases despite smallness of claim, appeal could be filed:

> "5. It is further added that adverse orders/judgments relating to the following should be contested irrespective of the quantum of duty:-
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> a) where the constitutional validity of the

provisions of an Act or rule is under challenge.

b) where notification/instruction or circular has been held illegal or ultra vires.

c) where audit objection in case has been accepted by the Department.

d) where issue is recurring in nature."

Counsel for the respondent conceded that the issue is one of recurring nature. In that view of the matter, instead of closing the appeal merely on the ground of smallness of claim, we have proceeded to hear both sides on merits of the issues presented before us.

Respondent-assessee is engaged in manufacture of soda ash. The Assessing Officer noticed that the assessee had taken Cenvat Credit for providing security services in residential colony maintained by the Company for its workers. The Assessing Officer, therefore, considered the entitlement of the assessee to such Cenvat Credit along with other contentious issues. After issuance of show cause notice and hearing the assessee, by the order in original dated 12th December 2006, the Assessing Officer disallowed Cenvat Credit on the service tax paid on security services in the residential colony.

The issue was carried in appeal. The Commissioner (Appeals) while redressing the grievance of the respondent-assessee on number of issues maintained the order of the adjudicating authority with respect to service tax on security services. The

Assessee carried the issue further in appeal before the CESTAT. The Tribunal by the impugned judgment dated 15.7.2009 allowed the appeal making following observations :

> "3. Learned DR has drawn my attention to the Hon'ble Supreme Court's judgment in the cases of Collector of Central Excise vs. Solaris Chemtech Limited reported in 2007(214) ELT 481 (SC). However, I find that the said judgment was in the context of Central Excise Law and as such is not applicable to the definition of input services as defined in Rule 2(1) of the Cenvat Credit Rules. On the other hand, I find that the Tribunal in the case of Manikgarh Cement v. Commissioner of C.Ex. & Customs, Nagpur reported in 2008 (9) STR 554 (Tri. Mumbai) after considering the definition of input service held as under in para 4 of their judgment.
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> > "4. The appellants' contention as reflected in the reply to the show cause notice that their factory situated at a remote place where no facilities were available for stay of their engineers and workmen, and it was, therefore, necessary to construct a residential colony for the employees for being available on the spot in order to maintain continuity in the process of cement manufacture, has not been disputed. Therefore, service provided is relatable to business and credit of service tax is admissible as the service in respect of repairs and maintenance, civil construction in relation to the residential colony are input services. My view find support from the Tribunal's order in the case of Indian Rayon & Industries Limited v. CCE, Bhavnagar – 2006 (4) S.T.R. 79 holding that credit is admissible on service tax paid on mobile phones provided to employees to carry out business transactions. Credit has been held to be admissible even though the telephones are not installed within the factory premises. The decisions of the Hon'ble Allahabad High Court in the case of

> ITAT v. B.Hill and Co. (P) Ltd., 1983 (142) ITR 185 and the Hon'ble Bombay High Court in the case of Greaves Cotton and Co. Ltd. v. Commissioner of Income Tax (2005) 279 ITR 42 (Bom) also lend support to my view - Allahabad High Court has held that expenditure incurred on restoration of buildings and residential quarters or factory was available as revenue expenditure for the reason that repair and reconstruction enable the assessee company to carry on its business, while the Bombay High Court held that expenditure incurred on maintenance of transit quarters used for accommodating employees visiting Bombay from outstation for business purpose was to be allowed in computing the income chargeable under the head "profit and gain of business or profession" under the provisions of Section 37(1)."
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> In view of the above, I hold that the appellants are entitled to avail the credit of duty paid on the security services utilized for residential purposes and allow the appeal with consequential relief to the appellant."

Learned counsel for the Revenue submitted that service tax paid on security service maintained by the assessee in the residential quarters cannot be covered under the definition 'input service' as defined in rule 2(l) of the Cenvat Credit Rules. He submitted that there is no nexus between the business activity of the assessee and service provided. Reliance was placed on the decision of the Bombay High Court in the case of **CCE, Nagpur v. Manikgarh Cement,** 2010(20) STR 456 (Bom.). He pointed out that the Tribunal in the impugned judgment has placed reliance on a decision of Bombay Tribunal in the case of Manikgarh Cement v. Commissioner of C.Ex. & Customs, Nagpur reported in

2008(9) STR 554 (Tri.-Mumbai) which was reversed by the Bombay High Court in the case Manikgarh Cement (supra). Counsel also relied on the decision of the Apex Court in the case of **Maruti Suzuki Ltd v. CCE, Delhi,** 2009 (240) ELT 641 (SC).

On the other hand, counsel for the respondent assessee contended that the definition of the term 'input service' contained in section 2(l) of the Cenvat Rules is sufficiently wide to include range of services used by the manufacturer for and or in relation to business. Counsel pointed out that the Bombay High Court subsequently in the case of **CCE, Nagpur v. Ultra Tech Cement Ltd.**, 2010 (20) STR 577(Bom.) has examined the issue at length and held that outdoor catering services provided by the manufacturer is an 'input service' within the meaning of rule 2(l) of the Cenvat Credit Rules. Counsel further relied on the decision of the Bombay High Court in the case of **Coca Cola India Pvt. Ltd v. CCE Pune, III**, 2009 (15) STR 657 (Bom.) wherein the Bombay High Court was pleased to allow benefit of Cenvat Credit on service tax to the manufacturer of concentrate on advertising service used for marketing of soft drink. Counsel also relied on a decision of the Apex court in the case of **Ramala Sahkari Chini Mills Ltd. v. CCE, Meerut -I**, 2010 (260) ELT 321 (SC) by which, the decision of the Apex Court in the case of Maruti Suzuki Ltd (supra) has been referred to a Larger Bench.

Having thus heard the learned counsel for the

parties, short question that confronts us is whether the security service provided by the respondent at the residential quarters maintained for the workers would be included in the term 'input service' as defined in rule 2(l) of the Cenvat Credit Rules. Term 'input service' has been defined in section 2(l) as under:

> (l)""Input service" means any service -
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> (i)used by a provider of taxable service for providing an output service, or
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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 from the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relation 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;"

Definition of input service is expressed in the form of 'means' and 'includes'. 'Means' part of the definition contains, inter alia, service used by the manufacturer whether directly or indirectly or in relation to the manufacture of final products and clearance of final products from the place of

removal. This definition, of course, is worded to include variety of services used not only for, but in relation to manufacture of final products and also for clearance of final products upto the place of removal. This Court in Tax Appeal No.419 of 2010 and connected matters decided on 6th April 2011 held that the said definition is exhaustive in nature.

Despite such wide connotation of the term 'input service' as defined in rule 2(l) of the Cenvat Rules, the question is whether the present case would be covered in the said definition. Facts are short and not in dispute. Respondent assessee, manufacturer of soda ash, has provided residential quarters for its workers. In such residential quarters, the assessee also provided security services. Can such security services be stated to be service used by the manufacturer directly or indirectly in or in relation to the manufacture of final product ? Our answer has to be in the negative. We do not see any connection between the security service provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation in the activity of manufacture of the final product. This is also the view of the Bombay High Court in the case of Manikgarh Cement (supra).

We may notice that the Apex Court in the case of Maruti Suzuki Ltd. (supra) was of the opinion that the electricity generated by the assessee and cleared to grid for distribution would not be part of manufacturing activity and be categorized as input

used in manufacture of final product. We are conscious that the said decision of the Apex court is referred to Larger Bench. However, at this stage, the ratio laid down therein prevails.

In the case of Ultra Tech Cement Ltd. (supra), on which counsel for the respondent has placed heavy reliance, the Bombay High Court was considering outdoor catering service provided by the employer for its employees. It was a case wherein to provide for the canteen facilities to the workers was mandatory and failure to do so would entail penal consequences. It was on this background, the Bombay High Court held that outdoor catering services provided by the manufacturer to its workers would be covered within provisions of rule 2(l) of the Rules. In the present case, the act of providing residential quarters by the manufacturer to its employees was voluntary. Providing further security service in such residential quarters was also an act voluntary in nature. Independently, we find that such activity cannot be termed within the sweep of expression of 'input service' as provided in rule 2(l) of the Rules.

In the result, Revenue's appeal is allowed. The question is answered in favour of the Revenue and against the assessee. The impugned judgment of the Tribunal is set aside. Appeal is disposed of accordingly.

(Akil Kureshi, J.)

(Ms.Sonia Gokani, J.)

(vjn)