[2012] 17 taxmann.com 7 (Kar.)

HIGH COURT OF KARNATAKA

Commissioner of Central Excise, Bangalore-I Commissionerate

v.

IFB Industries Ltd.*

N. KUMAR AND RAVI MALIMATH, JJ.

CEA NO. 113 OF 2010 APRIL 8, 2011

CASE REVIEW

CCE v. *Stanzen Toyotetsu India (P.) Ltd.* [2011] 32 STT 244/12 taxmann.com 101 (Kar.) (para 6) *followed.*

CASES REFERRED TO

CCE v. *GTC Industries Ltd.* [2008] 17 STT 26 (Mum. - CESTAT) (LB) (para 2) and *CCE* v. *Stanzen Toyotetsu India (P.) Ltd.* [2011] 32 STT 244/12 taxmann.com 101 (Kar.) (para 4).

N.R. Bhaskar *for the Appellant.*

JUDGMENT

Ravi Malimath, J. - This appeal is by the revenue being aggrieved by the order of the Tribunal holding that the assessee is entitled for cenvat credit of the service tax paid on catering services.

2. The assessee is engaged in the manufacture of excisable goods *i.e.* 'Fine Blanking Components'. It was observed by the revenue that the assessee had availed credit of service tax to the extent of Rs. 47,523/- paid on catering service for the period January 2008 to June 2008. Accordingly, a show cause notice dated 23.10.2008 was issued to show cause as to why the cenvat credit irregularly availed should not be demanded and recovered from them along with interest and penalty. On reply to the show cause notice, the Assessing Authority confirmed the demand, interest and penalty. Thereafter, the assessee preferred an appeal to the Commissioner of Central Excise, wherein the Appellate Authority rejected the same. Thereafter, the assessee preferred an appeal

before the Tribunal. The Tribunal by placing reliance on the Larger Bench decision of the Tribunal in the case of *CCE* v. *GTC Industries Ltd.* [2008] 17 STT 26 (Mum. - CESTAT), allowed the appeal and set aside the impugned orders therein by holding that the assessee is entitled to avail cenvat credit for the service tax paid on catering services. Being aggrieved by the same, the revenue preferred the present appeal.

3. Therefore, the question that arises for consideration in this appeal is as to whether the assessee is entitled to avail the cenvat credit for service tax paid on outdoor catering service.

4. An identical question came up for consideration before the Division Bench of this court in the case of *CCE* v. *Stanzen Toyotetsu India (P.) Ltd.* [2011] 32 STT 244/12 taxmann.com 101.

5. While considering the issue whether the services utilised by the assessee is in the course of manufacturing of a final product or not, the Court held as follows:

"As is clear from the definition any service used by the manufacturer whether

directly or indirectly in or in relation to the manufacture of final products constitutes input service. Various services are set out in the definition expressly, as constituting input service. It also includes transportation of inputs or capital goods and outward transportation upto the place of removal. Therefore the test is whether the service utilized by the assessee is for the manufacture of final product. Such service may be utilized directly or indirectly. Such service may be in the nature of transportation of inputs or capital goods, up-to the factory premises or if the final product is removed from the factory premises for outward transportation up-to the place of removal. It is only an inclusive definition. The services mentioned in the Section are only illustrative and it is not exhaustive. Therefore when a particular service not mentioned in the definition clause is utilised by the assessee/manufacturer and service tax paid on such service is claimed as Cenvat Credit, that the question is what are the ingredients that are to be satisfied for availing such credit. If the credit is availed by the manufacturer, then the said service should have been utilized by the manufacturer directly or indirectly in or in relation to the manufacture of final

products or used in relation to activities relating to business. If any one of these two tests is satisfied, then such a service falls within the definition of "input service" and the manufacturer is eligible to avail Cenvat credit of the service tax paid on such service.

Canteen Service

10. 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.

11 and 12 ** ** **

13. Therefore, merely because these services are not expressly mentioned in the

definition of input service it cannot be said that they do not constitute input service and the assessee is not entitled to the benefit of CENVAT credit. Infact, Rule 3 of the Cenvat Rules, 2004, specifically provides that the manufacturer of final products shall be allowed to take credit. The service tax is leviable under Section 66 of the Finance Act and paid on any input service received by the manufacturer of a final product. Therefore under the scheme of the Cenvat Credit Rules, 2004, the service tax paid on all those services which the assessee has utilized directly or indirectly in or in relation to the final product is entitled to claim the credit. Therefore, the Judgment of the Tribunal is legal and valid and is in accordance with law and does not suffer from any legal infirmity which calls for any interference. Hence, the substantial questions of law framed in these appeals are answered against the revenue and in favour of the assessee."

6. Therefore, the question that arises for consideration in this appeal having since been answered by the Division Bench of this Court in the aforesaid judgment, this appeal is disposed off on the very same terms as in CEA Nos.96/2009 c/w 97/2009, 98/2009, 99/2009, 124/2009 and 125/2009.

For the aforesaid reasons, the appeal is dismissed.

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