2009-TIOL-830-CESTAT-BANG-LB

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
LARGER BENCH AT BANGALORE

Sl.No.	Appeal No.	OIO/OIA	Passed by
1.	ST/336/2007	OIA No.14/2007 dated 23.07.2007	Commissioner of Central Excise & Service Tax, Bangalore
2.	ST/345/2006	OIO No.4/2006 (Ser. Tax) (Comm'r) dated 27.09.2006	Commissioner of Customs and Central Excise, Tirupati
3.	ST/347/2006	OIO No.2/2006 (Ser. Tax) (Comm'r) dated 27.09.2006	-do-
4.	ST/02/2007	OIO No.3/2006 (Ser. Tax) (Comm'r) dated 27.09.2006	-do-
5.	E/858/2006	OIA No.22/2006 (H-III) CE dated 10.5.2006	The Commissioner of Customs & Central Excise (Appeals-III), Hyderabad
6.	E/859/2006	OIA No.17/2006 (H-III) CE dated 28.04.2006	-do-
7.	E/860/2006	OIA No.38/2006 (H-III) CE dated 12.06.2006	-do-

1. M/s ABB LTD
2 & 4. THE INDIA CEMENTS LTD
3. M/s ZUARI CEMENT PVT LTD
5. THE COMMISSIONER OF CENTRAL EXCISE, HYDERABAD-III
6. THE COMMISSIONER OF CENTRAL EXCISE, TIRUPATHI
7. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, HYDERABAD

Vs

1. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, BANGALORE
2 to 4. COMMISSIONER OF CENTRAL EXCISE, TIRUPATI
5 . M/s PENNA CEMENT INDUSTRIES LTD
6. M/s THE INDIA CEMENTS LTD
7. M/s GREY GOLD CEMENTS LTD

Sl. No.	Advocates for the Appellants/Respondents	Departmental Representatives for the Revenue
1.	S/Shri G. Shivadass, V. Sridharan, V. Ravindran, V. Raghunathan, Siddharth Srivastava	Ms. Joy Kumari Chander, JCDR and Ms. Sudha Koka, SDR
2.	S/Shri V. Ravindran and J. Shankar Raman	-do-
3.	S/Shri V. Raghuraman, C.R. Raghavendra, J.S. Bhanumurthy and M/s. Chetna	-do-
4.	S/Shri V. Ravindran and J. Shankar Raman	-do-
5.	Ms. Joy Kumari Chander, JCDR and Ms. Sudha Koka, SDR	Ms. Rukmini Menon, Adv.
6.	-do-	-do-
7.	-do-	-do-

Date of Hearing: 28.01.2009
Date of decision: 18.05.2009

CORAM : MS. JYOTHI BALASUNDARAM, VICE-PRESIDENT
SHRI T.K.JAYARAMAN, MEMBER (TECHNICAL)
SHRI M.V. RAVINDRAN, MEMBER (JUDICIAL)

Service tax – Services received for outward transportation of goods from the place of removal is input service as defined in Rule 2(l) of CENVAT Credit Rules, 2004

Valuation of goods and availability of CENVAT credit are independent of each other and exclusion of freight cost from transaction value would not come in the way of allowing CENVAT credit on outward transportation – There is an additional reason for holding that CENVAT credit is admissible on services even if the value thereof is not part of the value subjected to duty. This is because the interpretation of the expression "input services" cannot fluctuate with the change in the definition of "value" in Section 4 of the Central Excise Act and cannot vary depending on whether the goods are levied to duty under Section 4A of the Central Excise Act or tariff value under Section 3 (2) of the Central Excise Act or the product attract specific rate of duty.

Expression 'activities relating to business' has a wide import and includes both essential and auxiliary activities of business including outward transportation – The expression "activities relating to business" admittedly covers transportation upto the customers place and, therefore, credit cannot be denied by relying on specific coverage of outward transportation upto the place of removal in the inclusive clause.

Definition of 'input service' has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine only upto the factory or upto the depot of manufacturers. Transportation of goods to customer's premises is an activity relating to business. It is an integral part of the business of a manufacturer to transport and deliver goods manufactured. If services like advertising, market and research which are undertaken to attract a customer to buy goods of a manufacturer are eligible to credit, services which ensure physical availability of goods to the customer, i.e. services for transportation should also be eligible to credit.

Case Law referred:

Share Medical Care Vs Union of India 2007-TIOL-26-SC-CUS **- referred**

Commissioner of Central Excise Vs Indian Petro Chemicals 2002-TIOL-662-SC-CX - **referred**

Unichem Laboratories Ltd. Vs Commissioner of Central Excise 2002-TIOL-237-SC-CX - **referred**

Doypack Systems (P) Ltd. Vs Union of India 2002-TIOL-389-SC-MISC **- referred**

Commissioner of Central Excise Vs. GTC Industries Ltd. 2008-TIOL-1634-CESTAT-MUM-LB **- referred**

All India Federation of Tax Practitioners Vs Union of India 2007-TIOL-149-SC-ST - **referred**

Gujarat Ambuja Cements Ltd. Vs Commissioner of Central Excise, Ludhiana 2007-TIOL-539-CESTAT-DEL **- overruled**

E.V. Mathai & Co. Vs. Commissioner of Central Excise ***2003-TIOL-270-CESTAT-BANG*** - **referred**

Bhagyanagar Services Vs, Commissioner of Central Excise, Hyderabad ***2006-TIOL-1253-CESTAT-BANG*** - **referred**

India Japan Lighting Pvt. Ltd. Vs Commissioner of Central Excise 2007-TIOL-1755-CESTAT-MAD **- referred**

Ambuja Cements Ltd Vs Union Of India And Others **-** 2009-TIOL-110-HC-P&H-ST **- noted**

MISC. ORDER NOS 276 to 282/2009

Per : Jyothi Balasundaram:

We have heard both sides on the issue referred to the larger Bench viz., _whether the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an _Input Service' in terms of Rule 2(1) (ii) of CENVAT Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services? or whether _Input service' should be limited only to outward transportation upto the place of removal in terms of the inclusive definition as held in the *Gujarat Ambuja* *[2007-TIOL-539-CESTAT_DEL]* case cited supra?_

2. Rule 2(1) of the CENVAT Credit Rules, 2004 reads as under:-

> (i) _input service_ means any service,-
>
> (ii) Used by a provider of taxable service for providing on output service; or
>
> (iii) Used by the manufacturer, whether directly or indirectly, in or in relation 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 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;

3. The above definition can be conveniently divided into the following five categories, insofar as the manufacturers are concerned:

> (a) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products,
>
> (b) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal,
>
> (c) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory,

(d) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(e) Services used in relation to activities relating to business and outward transportation upto the place of removal.

4. Each of the above limbs of the above definition is an independent benefit/concession. If an assessee can satisfy any one of the above, then credit on input service would be admissible even if the assessee does not satisfy the other limbs. To illustrate, input services used in relation to setting up of modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as being not an activity relating to business.

5. The decision of the apex court in *Kerala State Co-operative Marketing Federation Ltd. and Ors. Vs. Commissioner of Income-tax 1998 (5) SCC 48* holds that the correct way of reading different heads of exemption enumerated in the section would be to treat each as a separate distinct and different head of exemption and if a particular category of an income of a Co-operative Society is exempt from tax, under any one head of exemption, it would be free from tax, notwithstanding that the conditions of another head of exemption are not satisfied.

6. The relevant paragraph is reproduced as below:-

7. We may notice that the provisions is introduced with a view to encouraging and promoting growth of co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax what has to be seen is whether income fell with any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption.

7. The same proposition has been laid down by the apex court in *Share Medical Care Vs Union of India [2007 (209) E.L.T. 321 (S.C)]* = 2007-TIOL-26-SC-CUS. The relevant paragraphs are reproduced herein below:-

_15. From the above decisions, it is clear that even if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage.

16. In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier,

exemption was sought under category 2 of exemption notification, no under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. On the contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. Therefore, non-consideration on the party of the Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper. The prayer ought to have been considered and decided on merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in the way of the applicant in claiming exemption under category 3 if the conditions laid down thereunder have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside._

8. In the case of *HCL Ltd. Vs Collector of Customs [1998 (77) ECR 126 (T)],* the issue related to claim for exemption in terms of S.No.53 of the table, to Notification No.96/91-Cus. dated 25.07.1991 which covered _automatic testing or marking or printing or typing machine or any combination thereof and Notification No.59/88-Cus. dated 01.03.1988 covering _optical time domain reflectometer'. Concessional rate of duty under the first notification was 20%, while in the second notification it was 55%. The assessees imported an _optical time domain reflectometer' and claimed the benefit of the first notification. The Tribunal held that the product was squarely covered by the second notification and rejected the assessee's contention, holding as under:-

> _9. We have carefully considered the matter. We find that there is no dispute and it is an admitted position that the goods imported were _optical time domain reflectometer'. _Optical time domain reflectometer' are specifically described in Notification No.59/88-Cus., dated 01.03.1988 which provided exemption to the goods specified in the Table annexed to that Notification No.59/99-Cus. which was falling under Chapters 84, 85 or 90 of the Customs Tariff. The exemption was to the extent of the duty as was in excess of the amount calculated at the rate of 55% ad valorem. Subsequently, another Notification No.96/91-Cus., dated 25.07.1991 was issued which exempted the goods falling within the Chapters 82, 84, 85 and 90 of the customs tariff which was used in the electronic industry.

The exemption available was to the extent of duty which was in excess of the amount calculated at 20% ad valorem. At serial No.53 of the Table the following goods were covered:

> _Automatic testing or making or printing or taping machine or any combination thereof._
>
> We find that the goods imported were _Optical Time Domain Reflectometer' which was specifically covered by the already existing

> Notification No.59/88-Cus. The description at Serial No.53 of the Table under Notification No.96/91-Cus was general in nature and it could not be said that the goods were equally covered by both the notifications. When there is specific entry, it is settled position in law that the goods would be classified under that specific entry as against the general entry.
>
> 10. The learned Advocate had submitted that the Assistant Collector, Customs had not disputed that the item in question was covered by Serial No.53 of Notification No.96/91-Cus. We find that the Assistant Collector, Customs had only referred that entry under Customs Notification No.96/91-Cus. which was generic in nature and covered broad category of goods of particular nature. We find that he had held that the goods were not covered by Serial No.53 of Notification No.96/91-Cus.

9. On appeal by the assessee, the apex court reversed the Tribunal's decision as seen from *2001 (130) ELT 405 (S.C),* holding that where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that the latter notification is general in its terms and the other notification is more specific to the goods.

10. The principle that a specific provision will override a general one does not apply to exemptions, as held in *Commissioner of Central Excise Vs Indian Petro Chemicals [1997 (92) E.L.T. 13 (S.C.) =* **2002-TIOL-662-SC-CX** *, IFGL Refractories Ltd. Vs Joint Director General of Foreign Trade [2001 (132) E.L.T. 545 (Cal.)] and Unichem Laboratories Ltd. Vs Commissioner of Central Excise [2002 (145) E.L.T. 502 (S.C.)]=* **2002-TIOL-237-SC-CX** .

11. According to the Revenue, since outward transportation is specifically mentioned in the inclusive clause of the definition, credit for outward transportation cannot be allowed with reference to any other limb or category of the definition of input service which is general in nature. However, this view is incorrect in the light of the above decisions.

12. The expression _activities relating to business_ admittedly covers transportation upto the customers place and, therefore, credit cannot be denied by relying on specific coverage of outward transportation upto the place of removal in the inclusive clause.

13. The expression _business_ is a term of vide import as held by the apex court in *Mazgaon Dock Ltd. Vs. Commissioner of Income-tax and Excess Profits Tax [AIR 1958 SC 861].* Further the definition of _Input Services' uses the expression _activities relating to business_. The word _relating' further widens the scope of the expression _activities relating to business. In the case of *Doypack Systems (P) Ltd. Vs Union of India [1988 (36) E.L.T. SC*]= **2002-TIOL-389-SC-MISC**, while interpreting the expression _in relation to_ the Apex Court held as under:-

> _48. The expression _in relation to_ (so also _pertaining to_), is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see *Wakf Board Vs Abdul Aziz (A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10 following and approving Nitai Charan Bagchi Vs Suresh Chandra Paul (66 C.W.N.767), Shyam Lal Vs M. Shyamlal (A.I.R.1933 All. 649) and 76 Corpus Juris Secundum 621. Assuming that the* investment in shares and in lands do not form part of the undertakings but are different subject matter, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection, reference may be made to 76 *Corpus Juris Secundum* at pages 620 and 621 where it is stated that the terms _relate_ is also defined as meaning to bring into association or connection with. It has been clearly mentioned that _relating to_ has been held to be equivalent to or synonymous with as to _concerning with_ and _pertaining to_. The expression _pertaining to_ is an expression of expansion and not of contractions.
>
> There is no qualification to the word _activities_ _ there is not restriction that the _activities relating to business_ should be relating to only the _main_ activities or _essential_ activities and, therefore, all other activity relating to business falls within the definition of input service_.

14. The expression _such as_ is purely illustrative. The expression means _for example_ or _of a kind that_ _ (Concise Oxford Dictionary). It has been defined in the Chambers Dictionary as _for example_. The usage of the words _such as_ after the expression _activities relating to business_ in the inclusive part of the definition, therefore, further supports our view that the definition of the term _input service_ would not be restricted to services specified thereafter.

15. We also note that transportation of goods to customer's premises is an activity relating to business. It is an integral part of the business of a manufacturer to transport and deliver goods manufactured. If services like advertising, market and research which are undertaken to attract a customer to buy goods of a manufacturer are eligible to credit, services which ensure physical availability of goods to the customer, i.e. services for transportation should also be eligible to credit.

16. According to the Revenue, the inclusive clause in specifically limiting the credit for outward transportation upto the place of removal, has a bearing on the interpretation of the means clause and therefore, the expression _service relating to clearance from the place of removal_ cannot cover outward transportation. This stand is not tenable in the light of the apex court decision in *Regional Director Vs High Land Coffee Works [1991 (3) SCC 617]* holding that the word _include_ is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not restriction. Similar view has been taken by the larger Bench of the Tribunal in *Commissioner of Central Excise Vs. GTC Industries Ltd. [2008 (12)*

S.T.R. 468] = 2008-TIOL-1634-CESTAT-MUM-LB, relying on the apex court's decision in *Reserve Bank of India Vs Peerless General Finance & Investment Co. Ltd. [Air 1987 SC 1023].* In the above case, the Apex Court was interpreting the definition of the term _prize chit_ in the *Reserve Bank of India Vs Peerless General Finance and Investment Co. Ltd.* case reported in *AIR 1987 SC 1023,* the apex court was interpreting the definition of the term _prize chit_ which was defined only exclusively, for the purpose of examining whether the endowment scheme piloted by the company fall within the definition of _prize, chit_ which was banned under section 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The Supreme Court held that the word _includes_ was intended not to extend the meaning of _prize chit_ but to cover the transaction or arrangements of nature of prize chits but under different names. This decision, however, is not applicable for the purpose of interpreting the definition of _input services_ which contains both the expressions _means_ and _includes_.

17. In this view of the matter, the use of the expression _outward transportation' in the inclusive clause of the definition is by way of abundant caution so as to avoid any dispute being raised on the _means clause_ (which refers to clearance from the place of removal), that transportation upto the place of removal is not available as credit. Transportation within a factory would be covered by the inclusive clause. However, where depot is a place of removal, freight from depot to customer's premises would be covered by the means clause by the expression _service used directly or indirectly or in relation to clearance of final products from place of removal_. Similarly, where the factory is the place of removal freight from factory to customer's premises would be covered by the term _service used directly or indirectly, in relation to clearance from place of removal._

18. For admissibility to credit for outward transportation there is no requirement that the cost of freight should enter into the transaction value of the manufactured goods. According to the department, since the cost of outward transportation does not form part of the transaction value of the manufactured goods as defined in Section 4 of the Central Excise Act, 1944, any service tax paid for the outward transportation of goods from place of removal cannot be allowed as credit to the manufacturer, although, the question of denial of credit does not arise if the cost of freight is included in the transaction value. However this stand is not tenable. In other words, credit is not to be automatically disallowed in those cases where the freight cost does not form part of the transaction value. In the case of *All India Federation of Tax Practitioners Vs Union of India [2007 (7) S.T.R. 625 (S.C.)]* = 2007-TIOL-149-SC-ST , the court held as under:-

> _6. At this stage, we may refer to the concept of _Value added Tax_ (VAT), which is a general tax that applies, in principle, to all *commercial activities* involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.
>
> 7. In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is *destination based consumption tax* in the sense that it is on commercial activities and is not a charge on the business

> but on the consumer and it would, logically, be leviable *only on services provided* within the country. Service tax is a value added tax.
>
> 8. As stated above, service tax is VAT. Just as excise duty is a tax on value addition on goods, service tax is on value addition by rendition of services._

19. The issue in dispute in the present case is not one of valuation of excisable goods in terms of Section 4 of the Central Excise Act, 1944 or under the Central Excise Valuation Rules but admissibility of CENVAT credit of service tax on GTA service. The two issues, namely, _valuation' and _CENVAT credit' are independent of each other and have no relevance to each other as clarified by the Board's Circular No.137/3/2006-CX dated 02.02.2006. As per the Board Circular No.97/8/2009 dated 23.08.2007, there may be situations where a manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and property in the goods remained with the seller of the goods till the delivery thereof in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of, or damage to, the goods during transit to the destination; and, (iii) the freight charges were an integral part of the price of goods and in such cases, the credit of service tax paid on the transportation upto such place of sale would be admissible if it can be established by the claimant of such credit that the sale and transfer of property in goods (in terms of the definition under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

20. The guidelines issued by the Organisation for Economic Co-operation and Development (OECD) also throw some light on the above. The relevant portion from the guidelines is reproduced herein below:-

INTERNATIONAL VAT/GST GUIDELINES

PREFACE

_____

> _4. _. In addition, it should be borne in mind that value added tax systems are designed to tax final consumption and as such, in most cases it is only consumers who should actually bear the tax burden. Indeed, the tax is levied, ultimately, on these purchases is, in principle, fully deductible. This feature gives the tax its main characteristic of neutrality in the value chain and towards international trade._

CHAPTER I

BASIC PRINCIPLES

I.A. INTRODUCTION

1. There are many differences in the way value added taxes are implemented around the world and across OECD countries. Nevertheless, there are some common core features that can be described as follows:

- **Value added taxes on consumption, paid, ultimately, by final consumers.**

- The tax is levied on a broad base (as opposed to e.g. excise duties that cover specific products);

- In principle, business should not bear the burden of the tax itself since there are mechanisms in place that allow for a refund of the tax levied on intermediate transactions between firms.

- The system is based on tax collection in a staged process, with successive taxpayers entitled to deduct input tax on purchases and account for output tax on sales. Each business in the supply chain takes part in the process of controlling and collecting the tax, remitting the proportion of tax corresponding to its margin i.e., on the difference between the VAT paid out to suppliers and the VAT charged to customers. In general, OECD countries with value added taxes impose the tax at all stages and normally allow immediate deduction of taxes on purchases by all but the final consumer.

2. These features give value added taxes their main economic characteristic, that of neutrality. The full right to deduction of input tax through the supply chain, with the exception of the final consumer, ensures the neutrality of the tax, whatever the nature of the product, the structure of the distribution chain and the technical means used for its delivery (stores, physical delivery, internet)

Emphasis supplied

21. The Supreme Court has held in the *All India Federation of Tax Practitioners* case supra that service tax and excise duty are consumption taxes to be borne by the consumer and, therefore, if credit is denied on transportation service, the levy of service tax on transportation will become a tax on business rather than being a consumption tax. The submission of the Revenue that CENVAT credit cannot be allowed for services if the value thereof does not form part of value subjected to excise duty is clearly against the fundamental concept laid down by the Supreme Court in the *All India Federation of Tax Practitioners* case and the OECD guidelines.

22. There is an additional reason for holding that CENVAT credit is admissible on services even if the value thereof is not part of the value subjected to duty. This is because the interpretation of the expression _input services_ cannot fluctuate with

the change in the definition of _value_ in Section 4 of the Central Excise Act and cannot vary depending on whether the goods are levied to duty under Section 4A of the Central Excise Act or tariff value under Section 3 (2) of the Central Excise Act or the product attract specific rate of duty. In the case of *Gujarat Ambuja Cements Ltd. Vs Commissioner of Central Excise, Ludhiana [2007 (6) S.T.R. 249]* = **2007-TIOL-539-CESTAT-DEL** relied upon by the Revenue, the Tribunal had relied on the decision of the apex court in *Reserve Bank of India Vs Peerless Co. [1987) 1 SCC 424]* to hold that the inclusive clause casts its shadow on the main definition also. The Tribunal also relied upon the decision in *E.V. Mathai & Co. Vs. Commissioner of Central Excise [2006 (3) S.T.R. 116 (Tri.-Bang.)]* = ***2003-TIOL-270-CESTAT-BANG*** *and Bhagyanagar Services Vs, Commissioner of Central Excise, Hyderabad [2006 (4) S.T.R. 22 (Tri.-Bang.)]* = ***2006-TIOL-1253-CESTAT-BANG*** to hold that transportation is different from clearance. However, we agree with the assessees, that in the *RBI* case supra, the apex court was not interpreting a _*means and includes*_ definition and, therefore the above decision will not apply to the interpretation of the definition of _input services_ in the CENVAT Credit Rules, 2004. The decisions in *E.V. Mathai and Bhagya Nagar Services* supra dealt with the interpretation of the definition of _clearing and forwarding services_ contained in the relevant clause of the Finance Act, 1994 and it was held that service by a forwarding agent will not cover the service of transportation of goods. This interpretation of the definition of the _Clearing & Forwarding Service_ is not relevant for the interpretation of the definition of _input services_ under the CENVAT Credit Rules, 2004. In *India Japan Lighting Pvt. Ltd. Vs Commissioner of Central Excise [2007 (8) S.T.R. 124 (Tri.-Chennai)* = **2007-TIOL-1755-CESTAT-MAD** relied upon by learned JCDR, the Tribunal was dealing with issue of interpretation of the _means_ clause and not the _Includes_ clause. It also did not consider the expression _activity relating to business_, and, therefore, this decision is not relevant for the purpose of determining the issue before us.

23. We also note that the *Gujarat Ambuja Cements* decision of the Tribunal has been overruled by the Hon'ble Punjab & Haryana High Court in its decision reported in 2009 (14) S.T.R. 3 (P&H) = **2009-TIOL-110-HC-P&H-ST** holding as under:-

> _ 11. The only question then is whether the appellant fulfills the requirement of circular. The first requirement is that the ownership of the goods and the property therein is to remain with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step. The aforesaid condition has to be considered to be fulfilled because the supply of cement by the appellant to its customer is _FOR destination'. The appellant also bears the freight in respect thereof up to the door step of the customer. The freight charges incurred by it for such sale and supply at the door step of the customer are subjected to service tax which is also duly paid by the appellant. Moreover, the definition of expression _input service' is available in Rule 2(1) of the CC Rules, which reads thus:-
>
> _2(1) _input service_ means any service, -

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

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of 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 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;_

12. The _input service' has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes, inter alia, services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal. It has also remain un-controverted that for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, even the second condition that the seller has to bear the risk of loss or damage to the goods during transit to the destination stand fulfilled.

13. The third condition that the freight charges were integral part of the excisable goods also stand fulfilled as the delivery of the goods is _FOR destination' price. This aspect has been specifically pointed out in para 2.2 of the reply dated 12.4.2006 given to the show cause notice. Therefore, we are of the view that the first question is liable to be answered in favour of the assessee and against the revenue.

The High Court has approved the CBEC circular dated 23.08.2007.

24. In the light of the discussion, we hold that the definition of _input services_ has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine only upto the factory or upto the depot of manufacturers.

25. In the result, we answer the reference by holding that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(1)(ii) of the CENVAT Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services.

26. The file is now returned to the referring Bench for further orders.

(Pronounced in open court on 18/05/2009)