(2011) 04 GUJ CK 0013

In the Gujarat High Court

Case No : Tax Appeal No. 419 of 2010 with T.A, No''s. 321-325, 450-452, 457-458, 460, 513, 595-597, 527, 781, 783, 1326, 1704 and 1708 of 2010

Commissioner of C. Ex. and Customs APPELLANT

Vs

Parth Poly Wooven Pvt. Ltd. RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3, 4, 4(3)
CENVAT (Credit) Rules, 2004 — Rule 2, 2(1), 3
Finance Act, 1994 — Section 65, 65(105), 65(50), 66, 67
Industrial Disputes Act, 1947 — Section 2

Citation : (2012) 25 STR 4 : (2012) 35 STT 394 : (2012) 47 VST 305

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Y.N. Ravani, Darshan Parikh, Varun Patel and Gaurang Bhatt, for the Appellant; J.C. Patel with Paresh Dave, Dhaval Shah, Devan Parikh, B.L. Narasimhan, A.P. Nanawati, Hardhik Modh and Paresh V. Sheth, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Though there are minor difference in facts, in all these Tax Appeals, legal issue arising is common. These appeals therefore have been heard together and are being disposed of by this common order. For the purpose of this order, we may notice the facts as emerging in Tax Appeal No. 419/2010.

2. Revenue is in appeal against the judgment of the Customs, Excise & Service Tax Appellate Tribunal (Tribunal for short) dated 28-7-2009. By the impugned order, the Tribunal allowed the respondent-assessee''s appeal and directed granting Cenvat credit on the service tax paid on the outward transportation of the goods from the factory gate to the customers'' premises. The Tribunal in its short order, relied on the Larger Bench decision in the case of (2009) 18 STJ 369 .

3. Though the question framed by the appellant is somewhat different, we re-frame the question for the purpose of deciding all appeals as follows :-

Whether in the facts of the case, the Tribunal was justified in holding that the assessee was entitled to avail Cenvat credit on the service tax paid on GTA service on outward transportation of the goods beyond the place of removal in view of definition contained in Rule 2(1) of the Cenvat Credit Rules, 2004 defining term ''input service''?

4. The respondent-assessee, in case on hand, is engaged in manufacture of printed film. During the course of audit of the records by the Excise Department, an objection was raised that the respondent had taken Cenvat credit of Rs. 1,46,417/- towards service tax paid on Goods Transport Agency (GTA for short) on outward transportation of the goods. Believing that the same cannot be termed as input service and that, therefore, Cenvat credit was not admissible, issue was taken up with the assessee. The assessee initially paid up the amount in question with interest. However, later on filed a refund claim on the ground that such tax paid on GTA outward transportation was eligible for Cenvat Credit in terms of Central Board Circular No. 97/8/2007, dated 23-8-2007.

5. The Adjudicating Authority by order dated 17-10-2008 rejected such refund claim on the ground that the case of the Assessee did not fall within the Board''s circular dated 23-8-2007 and that the assessee failed to prove the place of removal beyond factory gate.

5.1 The Assessee carried the issue in appeal. Commissioner of Appeals by order dated 24-2-2009 upheld the order of the Adjudicating Authority and rejected the appeal of the respondent assessee. In the appellate order, the Commissioner observed that when the assessee is claiming that the sale was on FOR basis, the assessee has to establish the place where the sale and transfer of the property had taken place. The assessee had not produced any documentary evidence before the authorities in terms of the Board''s circular from which it can be established that the place of removal was beyond the factory gate and sale was on FOR basis. He further observed that the documents produced do not prove that the ownership of the goods remained with the assessee till the delivery at the door-step of the purchaser.

5.2 Not satisfied with the order, the assessee carried the issue further in appeal before the Tribunal. The Tribunal, as already noted, by the impugned order allowed the appeal, reversed the orders of the Revenue Authorities. Thereupon the Department has filed the Tax Appeal before us.

6. Though, as already noted, there are minor differences in facts in all the appeals, central issue is common.

7. Broadly stated, case of the assessee is that service tax paid on GTA for outward transportation of the goods even beyond the place of removal is eligible for Cenvat Credit in view of the definition contained in Rule 2(1) of the Cenvat

Credit Rules defining the term "input service". On the other hand, stand of the department is that for outward transportation of the goods beyond the place of removal, no credit can be claimed on the service tax paid. It is further the case of the Revenue that in any case, without establishing that the sale was on FOR basis, that the goods were delivered by the assessee at his cost at the doorstep of the purchaser, the assessee cannot take the benefit of Board''s circular dated 23-8-2007.

8. On the basis of the above facts, counsel appearing for either sides have made detailed submissions before us. Appearing for the Department, learned counsel Shri Darshan Parikh contended that in view of the definition of ''input service'' under Rule 2(1) of the Cenvat Credit Rules, no credit can be availed for service tax paid on outward transportation beyond the place of removal. He drew our attention to the statutory provisions applicable and relied on the following decisions;

(i) In the case of Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III, wherein the Apex Court was examining the assessee''s claim of credit on the eligible inputs utilized in generation of electricity, part of which was cleared on the contractual rates in favour of joint ventures, vendors, etc. which was sold at a price. The Apex Court held that the assessee is entitled to credit on the eligible inputs in utilization of generation of electricity to the extent to which they were using the same within the factory for captive consumption, but not to the extent of excess electricity cleared and sold at a price. The Apex Court in this context observed that the expression "used in or in relation to manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product.

(ii) In the case of Escorts JCB Limited Vs. Commissioner of Central Excise, Delhi-II, , wherein the Central Excise Officers found that the amount of transit insurance charges was not added to the value of the goods sold by the assessee and sought to add the same. The issue went upto the Apex Court. The Apex Court, finding that the possession of the sold goods was handed over to the buyer at the factory gate and the transaction was full and complete and nothing remains to be done after the goods leave the factory premises, held as under:

10. From the above passage it is clear that ownership in the property may not have any relevance in so far insurance of goods sold during transit is concerned. It would therefore not be lawful to draw an inference of retention of ownership in the property sold by the seller merely by reason of the fact that the seller had insured such goods during transit to buyer. It is not necessary that insurance of the goods and the ownership of the property insured must always go together. It may be depending upon various facts and circumstances of a particular transaction and terms and conditions of sale. A reference has also been made to Colnvauz''s Law of Insurance, Sixth Edition by Robert Merkin to indicate that there may be insurance to cover the interest of others that is to say not

necessarily the person insuring the interest must be the owner of the property.

(iii) In the case of Prabhat Zarda Factory Limited Vs. Commissioner of Central Excise, , the Apex Court followed the earlier judgment in the case of Escorts JCB Ltd. (supra).

(iv) In the case of Commissioner of Central Excise, Noida Vs. Accurate Meters Ltd., , the Apex Court was examining the question whether the freight and insurance charges constitute the value of goods for the purpose of computation of excise duty. In that case, the assessee was engaged in manufacturing electric meters and supplied the same to the State Electricity Boards in terms of advertisement under which the value of electric meters was to be fixed at the factory gate and freight and insurance charges were to be charged on an average basis and not on actuals. In this background, the Apex Court held that:

In that view of the matter and for the reasons stated hereinabove, we have no doubt in our mind that the authority in appeal as also the Tribunal were correct in their view that the amount claimed by way of transportation charges and insurance cannot be considered for determining the value of the electric meters supplied.

9. On the other hand, appearing for the assessees, learned counsel Shri Devan Parikh submitted that the definition of the term ''input service'' is sufficiently wide and Legislature has used the expression ''means and includes''. Since the outward service of transportation is covered in the main body of the definition "means", later portion of the definition which is inclusive in nature cannot be utilized to exclude such service from the term "input service". He contended that in the later portion of the definition providing for transportation upto the place of removal has a bearing when the goods are being transported from the factory gate to some other place, such as warehouse or depot from where the same would be ultimately removed.

9.1 Counsel relied on a decision of the Punjab & Haryana High Court in the case of Ambuja Cements Ltd. Vs. Union of India (UOI) and Others, . This, however, was a case where the High Court considered the effect of the Board''s Circular dated 23-8-2007 and held that the Board''s circulars are binding on the Revenue. It was in this background, the High Court observed in para 11 that the only question is whether the appellant fulfils the requirements of circular. It can thus be seen that this decision does not lay down any ratio having applicability to the case on hand.

9.2 Counsel relied on a decision of the Apex Court in the case of Contship Container Lines Ltd. Vs. D.K. Lall and Others, to highlight as to when it can be stated that title of the goods passed on from the seller to the buyer.

10. Learned counsel Shri Patel appearing with Shri Dhaval Shah for the assessee contended that the case of the assessee falls with the main body of the definition of input service. He submitted that the term input service is defined to include

large number of services and no restrictive meaning to the definition can be given. Counsel relied on the following decisions :

(i) In the case of All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, , wherein the Apex Court was examining the Constitutional validity of levy of service tax by Finance Act of 1994. The Apex Court described the nature of such service tax in the following manner :

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. Therefore, for our understanding, broadly "services" fall into two categories, namely, property based services and performance based services. Property based services cover service providers such as architects, interior designers, real estate agents, construction services, mandapwalas etc. Performance based services are services provided by service providers like stock-brokers, practising chartered accountants, practising cost accountants, security agencies, tour operators, event managers, travel agents etc.

(ii) In the case of Coca Cola India Pvt. Ltd. Vs. The Commissioner of Central Excise, , the Bombay High Court was examining whether services of advertising and marketing procured by the appellant Coca Cola India Limited in respect of advertisement for aerated waters are covered by the definition of ''input service'' in Rule 2(1) of the Cenvat Credit Rules, 2004. The High Court noticed that the definition is worded in the expression "means and includes". The Bench also put stress on the words "in relation to" manufacture of final products and clearance of final products used in the definition and observed that:

26. The definition of input service employs the phrase activity relating to business. The words relating to further widens the scope of the expression activities relating to business. This is in view of following observations of Supreme Court in Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, , interpreting the expression in relation to:

48. The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes 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 State Wakf Board v. Abdul Azeez AIR 1968 Mad. 79, 81 paragraphs 8 and 10, following and approving Nitai Charan Bagchi v. Suresh Chandra Paul (1962) 66 Cal WN 767, (Sahu) Shyam Lal Vs. M. Shayamlal, and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, 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 term "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 contraction.

The expression relating to thus widens the scope of the definition.

27. Similarly, the use of the word activities in the phrase activities relating to business further signifies the wide import of the phrase "activities relating to business. The Rule making authority has not employed any qualifying words before the word activities like main activities or essential activities etc. Therefore, it must follow that all and any activity relating to business falls within the definition of input service provided there is a relation between the manufacturer of concentrate and the activity. Therefore, the phrase ''activities relating to business'' are words of wide import.

(iii) In the case of The Commissioner Central Excise Vs. Ultratech Cement Ltd. and The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, the Bombay High Court was considering the question whether outdoor catering service provided by the employer can be covered under the definition of input service. In that context, it was held and observed as under :

28. In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of "input service". The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing. etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product.

29. The expression "activities in relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacturer of final product, the service would not qualify to be a input service under Rule 2(1) of the 2004 Rules.

(iv) House of Lords in C & E Comrs. v. Redrow Group, (1999) STC 161, in the context of giving credit to fees paid to the estate agent for the purpose of value added tax and whether such fees can be availed of as credit, held that estate agent services were clearly connected with the assessee''s turn out and its business and fee forms part of the cost component of the assessee''s supplies.

11. To appreciate the rival contentions, statutory provisions relevant for our purpose may be noted. Section 65 of the Finance Act, 1994 contains definitions. In particular Section 65(105) defines "taxable service" as any service provided or to be provided and includes besides others in Clause (zzp) "to any person by a goods transport agency, in relation to transport of goods by road in a goods carriage". Section 67 of the Finance Act, 1994 provides for valuation of taxable services for charging service tax. Section 68 of the Finance Act, 1994 is a charging section providing that every person providing taxable service to any person shall pay service tax at the rate specified in Section 66 in such manner and within such period as may be prescribed. Section 65(50b) defines "goods transport agency" as follows:

(50b) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

12. Section 3 of the Central Excise Act, 1944 provides for the levy of duties specified in the schedules to the Central Excise Tariff Act. Section 4 of the Central Excise Act, 1944 pertains to valuation of excisable goods for purposes of charging of duty on excise. Clause (c) of sub-section (3) of Section 4 defines the term "place of removal" as follows :

(c) "place of removal" means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory from where such goods are removed.

Rule 2 of Cenvat Credit Rules defines several terms used in the Rules including the term "input service" as under :

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 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;

Rule 2(t) of the Cenvat Credit Rules provides that words and expressions in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

Rule 3 of the Cenvat Credit Rules pertain to Cenvat credit available to a manufacturer or purchaser of final product on various items including "(ix) the service tax leviable u/s 66 of the Finance Act.".

13. We need to interpret the above statutory provisions to be able to decide the issues arising before us. Central provision of law which calls for interpretation is the term ''input service'' as defined in Cenvat Credit Rules, 2004. This provision in identical situation came up for consideration before Larger Bench of the Tribunal in the case of (2009) 18 STJ 369 . The Tribunal refused to give a restrictive meaning to the definition and observed that such term has to be interpreted in light of the requirement of the business and it cannot be read restrictively so as to confine only upto the factory or upto the depot of the manufacturers.

14. We are informed that the said decision was carried in appeal by the Revenue. The Karnataka High Court, however, has confirmed the view of the Tribunal. Copy of the judgment, however, is not yet available and therefore not placed before us.

15. If we peruse the definition of the term ''input service'' closely, we find that the same is expressed in the form of ''means and includes''. Legislature often uses expression, means, includes and sometimes means and includes; each having different connotation, different purpose and different meaning to be conveyed.

16. It is by now well settled that when a word is defined to mean such and such, the definition is, prima facie, restrictive, whereas where the word is defined to include something, the definition is prima facie expansive. On the other hand, when the Legislature uses the expression ''means and includes'', the definition is meant to be exhaustive. Such principles, however, are subject to exceptions.

16.1 In the case of The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, , the Apex Court observed that when expression "means" is used, generally the definition is exhaustive.

16.2 In the case of The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , it was observed that "it is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense" "Where we are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation".

16.3 In the case of Ramanlal Bhailal Patel and Others Vs. State of Gujarat, the Apex Court found that ''person'' is defined in an inclusive definition. It was observed that in such a case, the use of word ''includes'' indicates an intention to enlarge the meaning of the word used in the Statute.

16.4 In the case of Bharat Co-Operative Bank (Mumbai) Ltd. Vs. Co-Operative Bank Employees Union, , the Apex Court observed as follows :

On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other.

16.5 In the case of P. Kasilingam and others Vs. P.S.G. College of Technology and others, , wherein the Apex Court brought out the difference in the expression ''means and includes'' in the definition clause observing that:

It has been urged that in Rule 2(b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word ''means'' or the word ''includes''. Sometimes the words ''means and includes'' are used. The use of the word ''means'' indicates that "definition is a hard and fast definition, and no other meaning can be assigned to the expression than is put down in definition." (See : Gough v. Cough, (1891) 2 QB 665; Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , at p. 717. The word ''includes'' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words ''means and includes'', on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions." (See : Dilivorth v. Commissioner of Stamps, 1899 AC 99 at pp. 105-106 (Lord Watson); M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh, . The use of the words ''means and includes'' in Rule 2(b) would, therefore, suggest that the definition of "college" is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended.

16.6 In the case of M/s. Black Diamond Beverages and another Vs. Commercial Tax Officer, Central Section Assessment Wing, Calcutta and others, , wherein, interpreting the definition of ''sale price'' the Apex Court observed as under :

7. It is clear that the definition of ''sale price'' in Section 2(d) uses the words ''means'' and ''includes''. The first part of the definition defines the meaning of the word ''sale price'' and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which ''includes'' certain other things in the definition. This is a well-settled principle of construction. Craies on Statute Law (7th Edn. 1.214) says :

An interpretation clause which extends the meaning of a word does not take away its ordinary meaning........... Lord Selborne said in Robinson v. Barton Eccles Local Board, (1883) 8 App Case 798 (801): An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act.... to be applied to something to which it would not ordinarily be applicable.

Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning.

16.7 In the case of M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh, , the Apex Court accepted the contention of the State that the definition which consisted of two separate parts of means and also what it includes is meant to be exhaustive.

16.8 In the case of Jagir Singh and Others Vs. State of Bihar and Another etc. etc., , the Apex Court was interpreting the term ''owner'' as defined in different State Acts imposing tax on goods upon carriage by road. Term ''owner'' in Bihar Act which was referred by the Apex Court for the purpose of judgment provided that ''owner'' means the owner of a public service motor vehicle and includes the holder of a permit under the said Act in respect of a public service motor vehicle or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner. The Apex Court discarded the interpretation offered by the petitioners whereby the petitioners who were the owners of the vehicles were contending that they would not be liable to pay taxes. It was observed as under :

19. The definition of ''owner'' repels the interpretation submitted by the petitioners that the definition means not only the owner who is the permit holder but also a booking agency who may be in charge of the vehicle without being a permit holder. The entire accent in the definition of owner is on the holder of a permit in respect of the public service motor vehicle. It is the permit which entitles the holder to ply the vehicle. It is because the vehicle is being plied that the passengers and consignors of goods carried by that vehicle become liable to pay not only fare and freight to the owner but also tax thereon to the owner. The

words "or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner" indicate that the permit holder will include any person who is in charge of such vehicle of the permit holder or any person who is responsible for the management of the place of business of such owner. The owner cannot escape the liability by stating that any person is for the time being in charge of such vehicles, and, therefore, such person is the owner and not the permit holder.

20. The general rule of construction is not only to look at the words but to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances. Sometimes definition clauses create qualification by expressions like "unless the context otherwise require"; or "unless the contrary intention appears"; or "if not inconsistent with the context or subject-matter". "Parliament would legislate to little purpose", said Lord Macnaghten in Netherseal Co. v. Bourne. (1889) 14 AC 228. "if the objects of its care might supplement or undo the work of legislation by making a definition clauses of their own. People cannot escape from the obligation of a statute by putting a private interpretation on its language." The courts will always examine the real nature of the transaction by which it is sought to evade the tax,

(underlined supplied)

17. Bearing in mind the above judicial pronouncements, if we revert back to the definition of the term ''input service'', as already noticed, it is coined in the phraseology of "means and includes". Portion of the definition which goes with the expression means, is any service 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. This definition itself is wide in its expression and includes large number of services used by the manufacturer. Such service may have been used either directly or even indirectly. To qualify for input service, such service should have been used for the manufacture of the final products or in relation to manufacture of final product or even in clearance of the final product from the place of removal. The expression ''in relation to manufacture'' is wider than ''for the purpose of manufacture''. The words ''and clearance of the final products from the place of removal'' are also significant. Means part of the definition has not limited the services only upto the place of removal, but covers services used by the manufacturer for the clearance of the final products even from the place of removal. It can thus be seen that main body of the definition of term ''input service'' is wide and expansive and covers variety of services utilized by the manufacturer. By no stretch of imagination can it be stated that outward transportation service would not be a service used by the manufacturer for clearance of final products from the place of removal.

18. When we hold that outward transportation would be an input service as covered in the expression ''means'' part of the definition, it would be difficult to

exclude such service on the basis of any interpretation that may be offered of the later portion of the definition which is couched in the expression ''includes''. As already observed, it is held in several decisions that the expression ''includes'' cannot be used to oust any activity from the main body of the definition if it is otherwise covered by the expression ''means''. In other words, the expression ''includes'' followed by ''means'' in any definition is generally understood to be expanding the definition of the term to make it exhaustive, but in no manner can the expression ''includes'' be utilized to limit the scope of definition provided in the main body of the definition. To our mind this was also not the intention of the Legislature in the present case.

19. There, of course, are certain areas which still remain to be cleared. It was vehemently contended before us by the counsel for the Revenue that later portion of the definition which provides for the inclusion clause limits the outward transportation service up to the place of removal. That being so, according to them, the outward transport service utilized by the manufacturer beyond the place of removal would not qualify as an input service within the definition of Rule 2(1). We may only notice two things in this regard. Firstly, in our view, when we find that outward transport service is covered by the main body of the definition which provides for means part, as specifically including any service directly or indirectly in or in relation to manufacture of final product or clearance of final product from the place of removal, no interpretation of the later part of the definition would permit us to exclude such a service form the sweep of the definition. Secondly, we notice that the definition of the term ''input service'' came to be amended with effect from 1-4-08 and instead of words "clearance of final products from the place of removal", the words "clearance of final products upto the place of removal" came to be substituted. What would be the position if the case had arisen after 1-4-2008 is a situation we are not confronted with. We, therefore, refrain from making any observations in this regard. We, however, cannot help noticing the change in the statutory provisions which is at the heart of the entire controversy. In so far as the cases on hand are concerned, the statutory provisions cover the service used by the manufacturer in relation to the manufacture of the final products or even the clearance of final products from the place of removal.

20. We must, however, for our curiosity reconcile the expression "from the place of removal" occurring in the earlier part of the definition with words ''upto the place of removal" used in inclusive part of the definition. Counsel for the assessees submitted that when a manufacturer transports his finished products from the factory without clearance to any other place, such as godown, warehouse etc. from where it would be ultimately removed, such service is covered in the expression ''outward transportation up to the place of removal" since such place other than factory gate would be the place of removal. We do appreciate that this could be one of the areas of the application of the expression ''outward transportation upto the place of removal''. We are unable to see whether this could be the sole reason for using such expression by the

Legislature.

21. Be that as it may, we are of the opinion that the outward transport service used by the manufacturers for transportation of finished goods from the place of removal upto the premises of the purchaser is covered within the definition of "input service" provided in Rule 2(1) of the Cenvat Credit Rules, 2004.

22. We answer the question accordingly in favour of the assessee and against the revenue. With the above observations and directions, all tax appeals are dismissed.

