

(2010) 10 BOM CK 0097
In the Bombay High Court
Case No : Central Excise Appeal No. 7 of 2010

The Commissioner Central Excise

APPELLANT

Vs

Ultratech Cement Ltd. and The Customs, Excise and Service
Tax Appellate Tribunal, West Zonal Bench

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57B, 57C, 57D, 57E
Central Excises and Salt Act, 1944 — Section 11(A), 11(B), 3
CENVAT (Credit) Rules, 2004 — Rule 14, 15, 2, 2(1), 3
Finance Act, 1994 — Section 75

Citation : (2010) 112 BOMLR 4552 : (2011) 237 CTR 16 : (2010) 181 ECR 201 :
(2010) 260 ELT 369 : (2010) 20 STR 577 : (2010) 29 STT 224 : (2010) 36 VST
505

Hon'ble Judges : J.P. Devadhar, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S.K. Mishra, Assistant Solicitor General, for the Appellant; V.
Shridharan, for the Respondent

Judgement

J.P. Devadhar, J.—The substantial question of law raised by the Revenue in this appeal reads thus:

Whether the Hon'ble CESTAT was correct in holding that the respondent is entitled to avail the CENVAT Credit on outdoor "catering services" provided in the factory for employees of the factory as a input service credit despite the fact that outdoor catering service does not fall under the ambit of the definition of "Input service" specified under Rule 2(1) of Cenvat Credit Rules, 2004, as the catering/canteen services are neither used in or in relation to the manufacture or clearance of final product nor can it be said, to be an activity relating to business.

2. The appeal is admitted on the above substantial question of law and by consent, the appeal is taken up for final hearing.

3. The facts relevant for the present appeal are that the Respondent-assessee is

engaged in the manufacture of cement which is excisable under Chapter 25 of the Central Excise Tariff Act, 1985.

4. On scrutiny of the CENVAT register, it was noticed by the Excise Authorities that, during the period 2004-08, the assessee had availed credit of service tax paid on outdoor catering services under the provisions of Cenvat Credit Rules, 2004 (In short, "the 2004 Rules") & utilized the same in paying excise duty, that is, central value added tax on clearance of cement manufactured by the assessee.

5. The Assistant Commissioner, Central Excise, Chandrapur was of the opinion that outdoor catering services was not a "Input service" under Rule 2(1) of the 2004 Rules and therefore, the assessee was not entitled to take credit of service tax paid on outdoor catering services. On issuance of show-cause notices, the assessee contended that, under the Factories Act, 1948, it was mandatory for the assessee to provide canteen facilities to the employees working in the plant and the administrative Offices of the assessee/Company. It was contended that, in order to comply with the aforesaid statutory requirement, the assessee had engaged the services of M/s. Shrikrishna Catering Services. Since the cost of food including service tax paid thereon by the Caterer was reimbursed by the assessee, it was contended that the assessee was entitled to take credit of the said service tax and utilize the same in paying the excise duty i.e. Central Value Added Tax (CENVAT) on the cement manufactured by the assessee.

6. Rejecting the contention of the assessee, the Assessing Officer held that the service tax paid by the outdoor caterer would not qualify as "Input Service" under Rule 2(1) of the 2004 Rules. Accordingly, the Assessing Officer confirmed dis-allowance of the CENVAT credit as well as the credit of education cess/ Secondary and Higher Secondary Education Cess taken by the assessee on outdoor catering services and demanded the same with interest and penalty under Rules 14 and 15 of the 2004 Rules r/w. Section 11(A)(B) of the Central Excise Act, 1944 and Section 75 of the Finance Act, 1994.

7. Being aggrieved by the orders passed by the Assessing Officer, the assessee filed appeals before the Commissioner of Central Excise (A) who, by a common order dt. 24.2.2009, allowed the said appeals by following the larger Bench decision of CESTAT in the case of (2008) 15 STJ 485 . The larger Bench in the case of GTC Industries Ltd. (supra) had held that the cost of food borne by the factory would form part of the cost of production and hence, credit of duty paid thereon was allowable.

8. Being aggrieved by the afore-said order passed by the Commissioner of Central Excise (A), the Revenue filed appeals before the CESTAT. By the impugned order dt.8.9.2009 the CESTAT upheld the order of the Commissioner of Central Excise (A) by following the larger Bench decision of the Tribunal in the case of GTC Industries Ltd. (supra). Challenging the said order of the Tribunal, the Revenue has filed the present appeal. We are informed that the appeal filed by the Revenue against the larger Bench decision of the Tribunal in the case of

GTC Industries Ltd. (supra) is pending before the Principal Bench of this Court at Mumbai.

9. Mr. S.K. Mishra, learned Assistant Solicitor General appearing on behalf of the Revenue submitted, firstly, that the Tribunal was wrong in placing reliance on the larger Bench decision of the Tribunal in the case of GTC Industries Ltd. (supra) because, in that case, duty on the final product was payable on the assessable value; whereas in the present case, duty on the final product is payable on tonnage basis. Therefore, the larger Bench decision of the Tribunal in GTC Industries Ltd. (supra) being distinguishable on facts, the Tribunal ought not to have applied the ratio of the said decision to the facts of the present case. Secondly, the credit under Rule 2(1) of the 2004 Rules is available only if the taxable service tax is used in or in relation to the manufacture of the final products. The outdoor catering service is not a service used in or in relation to the manufacture of cement and therefore, the assessee could not avail credit of service tax paid on outdoor catering services. Thirdly, recent decision of the Apex Court in the case of Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III, squarely applies to the facts of the present case and in the light of the above decision of the Apex Court, the question raised in the appeal be answered in favour of the revenue.

10. On the other hand, Mr. Shridharan, learned Counsel appearing on behalf of the assessee submitted that the decision of the Tribunal is in consonance with the Scheme of the Value Added Tax and if the contention of the Revenue is accepted, it would defeat the very object of the CENVAT Scheme. Relying on the Finance Minister's speech while introducing Union Budget 2004-05, the Draft Cenvat Credit Rules, 2004 and the Press note dt. 12.8.2004, Counsel for the assessee submitted that the CENVAT Scheme introduced under the 2004 Rules envisages integration of tax on goods and services used in relation to the manufacturing business and therefore, credit of service tax paid on any taxable service that forms part of the assessable value of the final product has to be allowed under the 2004 Rules. He submitted that the expression "Input Service" as per Rule 2(1) of the 2004 Rules cannot be restricted to the services used in or in relation to the manufacture of the final products, but is liable to be extended to all services that are used in relation to the business of the manufacturer. In the present case, the assessee, carrying on the business of manufacturing cement, is mandatorily required under the Factories Act, 1948, to supply food to the employees. He submitted that, to comply with the above statutory provisions, outdoor catering services were engaged. Such an activity mandatorily required to be complied with would be an activity relating to the business of the assessee covered under the definition "Input service" under Rule 2(1) of the 2004 Rules.

11. Counsel for the assessee further submitted that the inclusive part of the definition of "Input service" under Rule 2(1) of the 2004 Rules makes it clear that credit of service tax paid on services which are used in relation to the business

such as accounting, auditing,...etc. would be allowable even if the said services are not per se used in or in relation to manufacture of the final product. He submitted that the very object of the Cenvat Scheme is to allow credit of taxes paid on inputs used in or in relation to the manufacture of the final product and service tax paid on services used in relation to the manufacture of final products as well as the services used in relation to the business of the manufacture. Counsel for the assessee further submitted that the expression "such as" in Rule 2(1) of the 2004 Rules is merely illustrative and not exhaustive. Therefore, credit of service tax paid on any service used by the assessee in relation to the business of manufacturing cement has to be allowed. In support of the above contention, Counsel for the assessee referred to the meaning of the word "such as" in Concise Oxford Dictionary and Chambers Dictionary. He also relied upon the decisions of the Apex Court in the case of Good Year India Ltd. Vs. Collector of Customs, and Royal Hatcheries (P) Ltd. v. State of Andhra Pradesh reported in 1994 SUPP (1) 429.

12. Counsel for the assessee further submitted that the business activity is an integrated/continuous activity and is not confined/ restricted to mere manufacturing activity. Therefore, business activity covers all activities that are related to carrying on the business. Therefore, the term "in relation to business" in Rule 2(1) of the 2004 Rules cannot be given a restricted meaning so as to cover only those activities which churn out the final product from the raw materials. In support of the above contention, he relied upon the decisions of the Apex Court in the case of State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, , Mazagaon Dock Ltd. Vs. The Commissioner of Income Tax and Excess Profits Tax, .

13. Counsel for the assessee further submitted that the expression "activity relating to business" in Rule 2(1) of the 2004 Rules clearly denotes that the legislature intended to give wider meaning and not narrower meaning. In this connection, he relied upon the decision of the Apex Court in the case of Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, .

14. Relying on the decision of the Apex Court in the case of The Commissioner of Income Tax, Bombay Vs. Chandulal Keshavlal and Co., Petlad, and Eastern Investments Ltd. Vs. Commissioner of Income Tax, West Bengal, , Counsel for the assessee submitted that the expenses incurred as a result of commercial expediency are covered by the term "activities relating to business". Relying on the decision of the House of Lords in the case of Customs and Excise Commissioner v. Redrow Group PLC reported in 1999 SIMON Tax Cas 161, Counsel for the assessee submitted that where the services used have direct and immediate link with the business of the assessee, then credit of service tax paid on those services would be allowable.

15. Counsel for the assessee further submitted that the Service Tax is a Value Added Tax which, in turn, is a destination based consumption tax i.e. a tax on commercial activities and it is not a charge on the business, but a charge on the

consumer. In support of this contention, he relied on the CBEC Circular No. 56, dt. 25.4.2003, the Circular No. 80, dt.17.9.2004, the decision of the Apex Court in the case of All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, and the Division Bench Judgment of this Court in the case of Coca Cola India Pvt. Ltd. v. CCE reported in 2009 (242) ELT 268 (Bom).

16. We have carefully considered the rival submissions. Before dealing with the rival submissions, it would be appropriate to set out brief history regarding the levy of excise duty on goods manufactured in India.

17. Central Excise & Salt Act, 1944 ("1944 Act" for short) was enacted with a view to impose excise duty on goods manufactured in India. As per the 1944 Act, manufactured goods on which excise duty has been paid, if used as inputs in the manufacture of the final products, then excise duty was again leviable on the manufacture of final products. This resulted in levying duty on duty. To avoid this cascading effect of duty, proforma credit scheme was introduced under the Central Excise Law. Under the proforma credit scheme, excise duty and countervailing duty paid on the inputs were allowed as proforma credit while paying excise duty on the final products, provided both the inputs as well as the final products were liable to duty under the same tariff item. Originally excise duty was payable at the rate prescribed under the Schedule to the 1944 Act. With the introduction of the Central Excise Tariff Act, 1985 ("1985 Act" for short), excise duty became payable at the rate prescribed under the schedule to the 1985 Act.

18. Since the benefit under the proforma credit scheme was limited to a very small area, the Government introduced the Modified Value Added Tax Scheme (MODVAT scheme) with effect from 01-3-1986. The basic object of the MODVAT scheme was to shift the burden of excise duty from the inputs to the final products so that the duty paid on inputs as well as the final products is ultimately passed on to the consumer. The MODVAT scheme was initially introduced by inserting Rule 57A to 57I in the Central Excise Rules, 1944 in respect of goods falling under specified chapters of the Central Excise Tariff Act, 1985. Later on the MODVAT scheme was extended to the remaining chapters of the Central Excise Tariff. Subsequently MODVAT Scheme was extended to cover capital goods by inserting Rule 57Q to 57U to the Central Excise Rules, 1944. As per the MODVAT Scheme, the manufacturers were entitled to take credit of duty paid on inputs used in the manufacture of the final products and utilize the said credit in paying the excise duty on the final products.

19. With the introduction of service tax in the year 1994-95, persons rendering specified services became liable to pay service tax on services rendered. "Service Tax, as held by the Apex Court in the case of All India Federation of Tax Practitioners (supra) is a value added tax, which in turn is a general tax, which applies to all commercial activities involving production of goods and provision of services. Thus, levy of excise duty was on manufacture of goods whereas, levy of service tax was on rendering specified services.

20. Since the excise duty as well as the service tax are ultimately borne by the consumer, the Government decided to integrate the tax on goods and services under the "Value Added Tax System" ("VAT System" for short). Under the VAT System, tax is levied on the value added to any goods manufactured or services rendered each time when there is change of hand. In implementation of the VAT System, Section 3 of the 1944 Act was amended thereby renaming the levy of excise duty as "Central Value Added Tax" ("CENVAT" for short) with effect from 12-5-2000. Thereafter, the Government introduced the CENVAT Credit Rules, 2001 under which Modvat on inputs/capital goods and service tax were sought to be amalgamated into one integrated scheme. These Rules were replaced by CENVAT Credit Rules, 2002. Simultaneously, Service Tax Credit Rules, 2002 were also framed by the Government under which credit of service tax paid on services used in the output services was allowed to be taken.

21. With a view to totally integrate the tax on goods and services the Government introduced CENVAT Credit Rules, 2004 ("2004 Rules" for short) by superseding the CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002. The object of 2004 Rules is to extend the credit of service tax and excise duty across goods and services.

22. As per Rule 3 of 2004 Rules a manufacturer or producer of final products is entitled to take credit of duty of excise, additional duty of excise, national calamity contingent duty, education cess, secondary education cess etc. paid on any input or capital goods received in the factory of manufacturer of final products on or after 10-9-2004 as well as credit of service tax paid on any input service received by the manufacturer of the final product or by the provider of output service on or after 10-9-2004. The said credit called "CENVAT Credit" can be utilized in paying excise duty (CENVAT) on the final products/service tax on any output service.

23. Rule 2(k) and Rule 2(1) of the 2004 Rules define the expression "input" and "input service" as follows:

2(k) "input" means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

2(l) "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 upto 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 relating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal:

24. In the present case, the dispute is, whether the assessee is entitled to take credit of service tax reimbursed by the assessee to the outdoor caterer (whose services were engaged for providing canteen facilities to the employees of the assessee) and utilize the said credit in discharging the excise duty/CENVAT payable on the cement manufactured by the assessee ?

25. In the present case, the CESTAT following the Larger Bench decision of the Tribunal in the case of GTC Industries Ltd., (Supra) held that the assessee is entitled to the credit of service tax paid on the outdoor catering services. According to the Revenue, the Tribunal was wrong in relying upon Larger Bench decision of the CESTAT in the case of GTC Industries Ltd. (Supra) because in that case the CENVAT on the final product was payable on the assessable value, whereas in the present case the CENVAT on cement is payable on tonnage basis. We see no merit in the above contention because, if in law the assessee is entitled to take credit of service tax paid on outdoor catering services then the said credit cannot be denied merely because the duty on cement is levied on tonnage basis. Therefore, the fact that the CENVAT on cement is payable on tonnage basis cannot be a ground to deny the credit of service tax if in law the assessee is entitled to the credit of service tax paid on outdoor catering service.

26. The question, therefore, to be considered is, whether the service of an outdoor caterer used by the assessee is an "input service" used in the manufacture of cement?

27. The definition of "input service" as per Rule 2(1) of 2004 Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services. The first category, covers services which are directly or indirectly used in or in relation to the manufacture of final products. The second category, covers the services which are used for clearance of the final products up to the place of removal. The third category, includes services namely;

- a) Services used in relation to setting up, modernization, renovation or repairs of a factory,

- b) Services used in an office relating to such factory,
- c) Services like advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,
- d) Activities relating to business such as, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Thus, the definition of "input service" not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition.

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 manufacture of final product, the service would not qualify to be a input service under Rule 2(1) of the 2004 Rules.

30. The Apex Court in the case of Maruti Suzuki Ltd. (supra) has considered the expression "used in or in relation to the manufacture of final product" in the definition of "input" under Rule 2(k) of 2004 Rules and held as follows:

14. ...Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input" and to avoid such

contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the 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. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety.

31. In our opinion, the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra) in the context of the definition of "input" in Rule 2(k) of 2004 Rules would equally apply while interpreting the expression "activities relating to business" in Rule 2(1) of 2004 Rules. No doubt that the inclusive part of the

definition of "input" is restricted to the inputs used in or in relation to the manufacture of final products, whereas the inclusive part of the definition of input service extends to services used prior to/during the course of/after the manufacture of the final products. The fact that the definition of "input service" is wider than the definition of "input" would make no difference in applying the ratio laid down in the case of Maruti Suzuki Ltd. (supra) while interpreting the scope of "input service". Accordingly, in the light of the judgment of the Apex Court in the case of Maruti Suzuki Ltd. (supra), we hold that the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under Rule 2(1) of 2004 Rules.

32. As rightly contended by Shri Shridharan, learned Counsel for the respondent-assessee, in the present case, the assessee carrying on the business of manufacturing cement by employing more than 250 workers is mandatorily required under the provisions of the Factories Act, 1948 to provide canteen facilities to the workers. Failure to do so entails penal consequences under the Factories Act, 1948. To comply with the above statutory provision, the assessee had engaged the services of an outdoor caterer. Thus, in the facts of the present case, use of the services of an outdoor caterer has nexus or integral connection with the business of manufacturing the final product namely, cement. Hence, in our opinion, the Tribunal was justified in following the Larger Bench decision of the Tribunal in the case of GTC Industries Ltd. (supra) and holding that the assessee is entitled to the credit of service tax paid on outdoor catering service.

33. It is argued on behalf of the Revenue that not only the ratio but the decision of the Apex Court in the case of Maruti Suzuki Ltd. (supra) must be applied ipso facto to hold that the credit of service tax paid on outdoor catering services is allowable only if the said services are used in relation to the manufacture of final products. That argument cannot be accepted because unlike the definition of input, which is restricted to the inputs used directly or indirectly in or in relation to the manufacture of final products, the definition of "input service" not only means services used directly or indirectly in or in relation to manufacture of final products, but also includes services used in relation to the business of manufacturing the final products. Therefore, while interpreting the words used in the definition of "input service", the ratio laid down by the Apex Court in the context of the definition of "input" alone would apply and not the judgment in its entirety. In other words, by applying the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra), it cannot be said that the definition of "input service" is restricted to the services used in relation to the manufacture of final products, because the definition of "input service" is wider than the definition of "input".

34. Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other

services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.

35. The argument of the Revenue, that the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of "input service" as well as the inclusive part of the definition of "input service" purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing...etc. Thus the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression "such as" in the definition of "input service" do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is nothing in the definition of "input service" to suggest that the Legislature intended to define that expression restrictively. Therefore, in the absence of any intention of the Legislature to restrict the definition of "input service" to any particular class or category of services used in the business, it would be reasonable to construe that the expression "such as" in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacturing the final product are covered under the definition of "input service" and in the present case, the outdoor catering services being integrally connected with the business of the manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal.

36. The argument of the Revenue that the expression "such as" in Rule 2(1) of 2004 Rules is restricted to the categories specified therein, runs counter to the C.B.E.C. Circular No. 97, dated 23rd August, 2007. In that Circular the C.B.E.C. (vide para 8.3) has held that the credit of service tax paid in respect of mobile phone service is admissible provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods. Mobile phone service is neither used in the manufacture of final product nor it is specifically included in the definition of input service. Even then, the C.B.E.C. has construed the definition of input service widely so as to cover not only the services specifically enumerated in the definition of "input service" but also cover all services which are used in relation to the business of manufacturing the final products. Therefore, the argument of the revenue which runs counter to stand taken by the C.B.E.C. cannot be accepted.

37. In the case of Coca Cola India Pvt. Ltd. (Supra) a Division Bench of this Court has considered scope of the expression "input service" as defined in Rule 2(1) of

2004 Rules. In that case, the question for consideration was, whether a manufacturer of non alcoholic beverage bases (concentrates) is eligible to avail credit of service tax paid on advertisement, sales promotion, market research etc. The argument of the revenue in that case was that the advertisements are not relatable to the concentrate manufactured by Coco Cola India Pvt. Ltd. (supra) and hence, the credit in respect thereof cannot be allowed. Considering the Finance Minister's Budget Speech for 2004-05, press note issued by the Ministry of finance along with the Draft 2004 Rules and various decisions of the Apex Court, this Court held that the expression "activities in relation to business" in the inclusive part of the definition of "input service" further widens the scope of input service so as to cover all services used in the business of manufacturing the final products and that the said definition is not restricted to the services enumerated in the definition of input service itself. The Court rejected the contention of the revenue that a service to qualify as an input service must be used in or in relation to the manufacture of the final products and held that any service used in relation to the business of manufacturing the final product would be an eligible input service.

38. We concur with the above decision of this Court in the case of Coco Cola India Pvt. Ltd. (supra). However, in that case, this Court has also held that the cost of any input service that forms part of value of final products would be eligible for CENVAT credit. That observation of the Division Bench is made in the context of a service which is held to be integrally connected with the business of manufacturing the final product. Therefore, the observation of the Division Bench in the case of Coca Cola India Pvt. Ltd. (supra) has to be construed to mean that where the input service used is integrally connected with the business of manufacturing the final product and the cost of that input service forms part of the cost of the final product, then credit of service tax paid on such input service would be allowable.

39. The Larger Bench of CESTAT in the case of GTC Industries Ltd. (supra) has also observed that the credit of service tax would be allowable to a manufacturer even in cases where the cost of the food is borne by the worker (see last para). That part of the observation made by the Larger Bench cannot be upheld, because, once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer. Shri Shridharan, learned Counsel for the assessee fairly conceded to the above position in law and in fact filed an affidavit affirmed by a responsible officer of the assessee wherein it is stated that the proportionate credit to the extent embedded in the cost of food recovered from the employee/worker has been reversed.

40. For all the aforesaid reasons, the question of law framed by the revenue is answered in the affirmative, i.e. in favour of the assessee and against the revenue. However, the CENVAT credit reversed by the assessee, belatedly, having not been verified by the Excise Authorities, the Excise Authorities are directed to

verify the same and pass an appropriate order in that behalf.

41. The appeal is disposed of in the above terms with no order as to costs.