

**AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS & SERVICE TAX)
NEW DELHI**

PRESENT

Mr. Justice P. V. Reddi (Chairperson)
Mr. A.Sinha (Member) Mrs. Chitra Saha,
(Member) (Member)

Thursday, the 11th day of September, 2008

Ruling No. AAR/05/ST/2008
In
Application No.AAR/15/ST/2007

Applicant	M/s VMT Spinning Company Limited, Village Kalyanpur, P.O. Baddi, Distt. Solan, Himachal Pradesh.
Commissioner concerned	Commissioner of Central Excise, Chandigarh.
Present for the Applicant	Mr.Balbir Singh, Advocate Mr.Sidhartha Sen, Advocate
Present for the Commissioner concerned	Mr.Harish K.Thakur, Jt.CDR for CCE, Chandigarh

R U L I N G
(By Mrs. Chitra Saha)

The applicant which is engaged in the manufacture of different types of yarn proposes to construct within its factory premises, additional sheds for manufacturing and storing of yarn, as also residential quarters for its workers and staff, as a part of its programme to augment the production capacity. While the application originally mentioned that the residential quarters were to be

constructed both within and outside the factory premises, subsequently it has been stated that the construction of the quarters would be confined to the factory premises. Advance ruling has been sought under section 96C of the Finance Act, 1994 on the following issues :-

- (a) Whether the construction services used for construction of workers' quarters within the factory premises, fall within the ambit of input services as defined in rule 2(1) of Cenvat Credit Rules, 2004 and consequently whether Applicant can avail of the credit of such construction services in terms of rule 3 of the mentioned rules?
- (b) Whether the applicant can claim full rate of drawback on export of yarn manufactured by the applicant along with cenvat credit on construction services used for construction of manufacturing/storage/workers residential quarters within the factory premises?

2. Rule 3(1) of the Cenvat Credit Rules, 2004 permits a manufacturer to take credit of the service tax paid on an 'input service' and to utilize the same for payment of duty on the final product. Rule 2(1)(ii) defines 'input service' to mean any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture and clearance of final products. The applicant states that the manufacture of yarn is a continuous operation which is carried out each day in three shifts, each shift being of eight hours' duration. In order to ensure availability of workers round the clock, the applicant proposes to house the

workers in a colony within the factory itself. Continuous availability of workers residing in a colony within the factory, ensures efficient production of yarn. The construction service required for building a residential colony for the workers, is therefore, indirectly connected with the manufacture and clearance of yarn and such construction service has to be regarded as an input service. The second part of the definition of input service in rule 2(1)(ii) mentions services relating to business activities such as accounting, auditing, financing, coaching and training etc. which are very indirectly connected to the manufacture of a final product, to be included in the ambit of input services which are eligible for cenvat credit. The coverage of such diverse services within the ambit of input service by insertion of the inclusive definition implies that this term has to be given a very broad coverage. The phrase 'in relation to' used in the definition has a very broad connotation and cannot be given a narrow meaning, as held in :- *Doypack System Pvt.Ltd.vs.UOI, 1988 (36) ELT 201 (SC) and Collector of Central Excise vs. Rajasthan State Chemical Works, 1991(55) E.L.T. 444 (SC)*.

Input service should therefore encompass the construction services utilized for building the residential colony and Cenvat credit of the service tax paid on such service should be available.

3. In the second issue for advance ruling, the applicant seeks confirmation of its interpretation that it is entitled to claim the higher rate of drawback allowed in notification no.68/2007-Cus (NT) dated 16/7/07 for its yarn exports, even when Cenvat credit of the service tax paid on the services used for construction of factory sheds, store rooms and residential colony for workers, has been availed of.

According to the applicant, the only condition required to be fulfilled for availing of the higher drawback rate as set out in clause (12) (i) of the above notification is that no Cenvat credit should have been availed of of the Central Excise duty on inputs used in the manufacture of yarn exports. This condition is met in the applicant's case. Inputs i.e., physical goods are distinct from input service. Condition 12 (i) nowhere mentions non-availment of Cenvat credit of tax on an input service, as a pre-condition for availing of the higher rate of drawback. Such an interpretation, it is claimed, is entirely logical as service tax paid on services used indirectly in the manufacture of exported goods, are not factored in while calculating all industry drawback rates. The applicant has referred to the letter D.O.No.609/10/2007-DVK dtd.01.03.07 of Joint Secretary Drawback in this regard. Construction of sheds, store rooms and residential house is a service rendered prior to commencement of manufacture of the yarn exported and by their very nature, cost of such services cannot be apportioned to any particular consignment of exports. Service tax paid on such services used indirectly in the manufacture of exports is not reimbursed by way of drawback. In this context the applicant has referred to rule 6(5) of Cenvat Credit Rules which specifies a number of services, including services relating to commercial or industrial construction (section 65(105)(zzq) Finance Act, 1994), in respect of which entire service tax would be eligible for Cenvat credit in case of manufacture of both dutiable and exempted final product, unless such service is used exclusively in relation to manufacture of an exempted product. The applicant refers to CBEC letter F.No.137/203/2007-CX4 dt.1.10.07 to state that construction of buildings is

akin to creation of capital assets whose use cannot be co-related to manufacture of any particular batch of goods. Since the residential buildings are akin to capital goods and since clause 12 (i) of the drawback notification 68/07 does not prohibit availment of credit of duty on capital goods in a situation where the higher rate of drawback is admissible, the benefit of this rate should be available for the applicant's exports.

4. The Commissioner of Central Excise, Chandigarh refutes all the claims of the applicant. He states that rule 2(1)(ii) of Cenvat rules in the inclusive part of the definition of input service allows only those services which are used in relation to setting up, modernization, renovation or repair of a factory or its office premises. It does not include services used in relation to construction of residences of workers and staff, as such a service has no bearing on manufacturing and cannot be even remotely said to be used in or in relation to manufacturing, storage or clearance of the final product. Making available residential houses to workers, can at best, be construed as a welfare service for employees, that has no linkage with the manufacture of yarn. Cenvat credit is therefore not available for service tax paid on the construction service. The higher rate of drawback in Customs Notification no.68/07 cannot be claimed if credit of service tax paid on construction services has been availed of, as tax on input services used in exported goods, is factored in while calculating this drawback rate. The letter of Joint Secretary Drawback nowhere mentions that service tax on services, not directly relatable to the export goods, is not taken into account, while fixing the higher rate of drawback. Buildings are not considered

as capital goods in Cenvat rules. The relevance of rule 6(5) of Cenvat rules in the present case has not been brought out in the application. The Departmental Representative reiterated the comments of the Commissioner.

5. The first issue for decision is whether the services used by the manufacturer for the construction of residential quarters for workers and staff within the factory premises, can be considered to be “input service” under the Cenvat Credit Rules, 2004. Rule 2(1)(ii) defines an input service to be any service

“(i).....

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to 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 up to the place of removal”.

6. The above definition is in two parts: the first part gives the basic definition of ‘input service’ while the second is an inclusive one that specifically mentions certain services to be included within the ambit of “input service”. The basic definition limits the scope of input services to those whose use has a nexus

directly or indirectly, in or in relation to, manufacture and clearance of final products. In Doypack systems, the phrase “in relation to” has been held to be equivalent to or synonymous with “pertaining to” and “concerned with”. The use of the service for construction of workers’ residences cannot be said to pertain to or be concerned, directly or indirectly with manufacture and clearance.

7. The second leg of the definition is an inclusive one. The inclusive definition is a well recognized device to enlarge the meaning of the word defined. It expands the meaning in the basic definition. “The word “includes” is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include” CIT v. Taj Mahal Hotel, 1971 (82) ITR 44(SC)”.

8. In the definition given in rule 2(1)(ii), the inclusive part of the definition expands the scope of ‘input service’ as given in the basic definition by bringing within its ambit, services which would not normally get covered by the main definition: construction and other allied services used for setting up of a factory, for example, have been specifically included, though the use of these services in the setting up of the factory precedes manufacture and the activity is concluded prior to commencement of the manufacturing process. Again, auditing of accounts relating to a final product has been considered to be an ‘input service’ though this service is used after the completion of manufacture of final product and could not

have been used directly or indirectly in the manufacturing process. Both the above services however, have a nexus with and are related to the final product: the setting up a factory provides the space and machinery for the manufacture; auditing ensures proper accounting of the inputs and disposal of the final products. A perusal of the other services in the inclusive part of the definition indicates that use of each of these services is linked to manufacture, storage, transport or sale of the final product. The services of market research, sales promotion and advertising, for example, may not be used in the actual process of manufacture which is necessary for their inclusion in the basic definition of input service, yet they find mention in the inclusive definition as their use does promote sale of the final product. Similar is the case with regard to services used in storage and transportation, accounting, auditing, financing etc. It is relevant to note here that when the extended definition specifically included services used for setting up certain buildings, such buildings were restricted to buildings used to house factories and its offices. A manufacturer may construct other types of buildings for its employees such as residential quarters, hospitals, recreation centres, schools etc. From the nature of the buildings specifically included in the extended definition and the kinds of services included in it, it has to be inferred that construction of only such buildings would be covered as input service which are linked to manufacture, storage, sale, transportation etc. of the final product. Provision of buildings for housing, schooling, recreation etc. of workers improves their quality of life and is a welfare measure but they have no nexus with the manufacture, storage or sale of the final product. It is an accepted principle of

interpretation that “.....one would not, unless forced, even when the definition is in the form “includes”, carry the extension beyond borderline or doubtful cases” (1954 (1) QB at pages 81-82 and 1953 (1) QB 318). Even when an extended definition is used, it is necessary to draw a line to exclude categories obviously not intended to be included. A “service” not mentioned in the extended definition has to partake of the characteristics common to the other services specifically mentioned, in order to become an “input service” as per the extended definition. As mentioned above, the common thread running through all the services specifically included in the extended definition is that each of these is linked to the manufacture, storage or sale of the final product. Services used for constructing buildings for housing workers and staff, do not have a nexus with the manufacture, sale or storage of the final product and therefore such services cannot be considered to be “input service” even as per the extended definition. The first question posed for advance ruling is therefore answered in the negative.

9. In the second issue for advance ruling, the applicant claims that its export of yarn would be eligible for drawback of all the customs and central excise duties and service tax paid on the inputs and input services, by way of the higher rate of drawback provided in Notification No. 68/2007-Cus (NT) dated 16.07.2007, though Cenvat credit is availed of service tax paid on construction services used for constructing manufacturing sheds and store rooms and residential quarters.

10. The applicant has based its claim on the following premises:

(1) Condition no.12(i) of customs notification no.68/07 reads

as follows:

“The exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs used in the manufacture of the export product”.

Since non-availment of Cenvat credit only in respect of inputs is mentioned in condition 12(i) and there is no mention of input service, it is claimed that drawback rate admissible when Cenvat is not availed of, will be applicable for yarn exports even when Cenvat credit of service tax has been taken, irrespective of the clarification given in clause (5) of notification 68/07.

(2) Alternatively, if the buildings constructed are considered to be capital goods, in that situation also, the higher rate of drawback is admissible as condition 12(i) does not prohibit availment of cenvat credit in respect of capital goods for availing the rate in column 4 of the Schedule to Cus.-Notification No.68/07.

(3) Services used for construction of factory sheds, store rooms and residential buildings are used indirectly in manufacture of the export goods. As tax on such services is not taken into account in determining all industry drawback rates, the higher rate of drawback which gives back to the exporters the customs and central excise duties and service tax, should

be applicable to the yarn exports. Reliance has also been placed on the judgment of the Supreme Court in the case of Chemicals and Fibres of India Ltd. (1991(54)ELT3).

11. With regard to services used for construction of residential buildings for workers, we have held above that such services cannot be considered to be 'input service' under the Cenvat rules. As no cenvat credit in respect of the service would be available, the second issue for advance ruling is considered only in respect of services used for construction of factory sheds and storage rooms. The Customs Act 1962 empowers the Central Government, by notification in the official gazette, to direct in respect of goods manufactured and exported out of India, that drawback should be allowed of the duties of customs chargeable under the Act on any imported materials used in the manufacture of such goods in accordance with rules framed under sub section (2) of the said section. There is similar provision in section 37 of the Central Excise Act 1944 enabling grant of drawback of the Central Excise duties paid in relation to such manufacture. Section 93A of the Finance Act, 1994 empowers the Central Govt. to grant rebate of service tax paid on taxable services which are used as input services in the manufacture of exports. Section 94 authorizes the Central Govt. to make rules for this purpose. In particular, (hh) of sub section (2) of section 94 states that such rules may provide inter alia for "rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under section 93A". The Central Govt. framed the composite rules called the Customs, Central Excise and Service Tax

Drawback Rules 1995 (hereafter called the Drawback Rules). It would be useful to extract some of the relevant provisions of these rules at this juncture.-

RULE 2 defines 'drawback' as follows: "drawback in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods;"

"RULE 3. **Drawback.** – (1) Subject to the provisions of –

- (a) the Customs Act, 1962 (52 of 1962) and the rules made thereunder,
- (b) the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder,
- (b)(b) the Finance Act, 1994 (32 of 1994), and the rules made thereunder;
and
- (c) these rules,

a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government :

{**Provided** that where any goods are produced or manufactured from imported materials or excisable materials or *by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as* credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder, or of the Central Excise Act, 1944 (1 of 1944) and the

* emphasis supplied

rules made thereunder, or of the Finance Act, 1994 (32 of 1994) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained}

Provided further that.....

(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to, -

- (a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;
- (b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
- (c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;
- (d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents :

..
..
..

- (e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- (ea) the average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.
- (f) any other information which the Central Government may consider relevant or useful for the purpose”.

12. Rates of drawback applicable for different exports are notified every year by the Govt. under rule 3(1) of the Drawback Rules after obtaining data from the industry on each of the items appearing in rule 3(2) regarding input and input services’ consumption in exports, and the duty/tax incidence thereon. All Industry Drawback Rates for 2007-08 were notified vide Notification No.68/2007-Cus(NT) dated 16.07.2007. Drawback as defined in rule 2, reimburses the duty or tax chargeable on any imported materials or excisable materials or taxable services used in the manufacture of exports. However, the first proviso to rule 3(1), inter alia, specifies that if credit of any tax/duty has been taken, drawback has to be correspondingly reduced. In accordance with the provisions in rules 2 and 3, Notification no. 68/07-Cus(NT) dated 16/07/2007 provides two categories of drawback rates: a higher rate given in Column 4 of the Schedule annexed to the Notification which is applicable “when cenvat facility is not availed” and a lower rate given in Column 6 applicable “when cenvat facility has been availed”. Condition 5 of the Notification clarifies that drawback rate available when

“cenvat facility has not been availed”, reimburses Customs and Central Excise Duties and Service Tax whereas the other rate applicable “when cenvat facility is availed” gives back only the Custom duty. It is further stated that the difference between the two rates in Columns 4 and 6 represents the Central Excise and Service Tax component of drawback. The applicant in the instant case has stated that credit of service tax paid on the services used in construction of factory sheds and store rooms is admissible under the Cenvat Credit Rules and will be availed of in respect of the yarn manufactured for export. Since credit of service tax is admittedly availed of in the instant case, it is abundantly clear from the first proviso to rule 3(1) of Drawback Rules that the full rate of drawback in column 4 re-imbursing the customs, central excise duties and service tax will not be admissible. Any other conclusion on the issue of whether or not the higher drawback rate in the notification 68/2007-Cus will apply, on the basis of Condition 12 or any other condition in the Notification, has to be rejected as the first proviso to Rule 3(1) of the Drawback Rules will prevail over any provisions/conditions in the notification, which has been issued under the said Rules. The First proviso has to be given its due effect and should be read as a rider to the preceding sub-rule under which the notification as to the amount/rate of drawback could be allowed.

13. The other contention put forward by the applicant that the tax paid on services used for constructing factory sheds and store rooms, has not been factored in while calculating drawback rates, also has to be rejected. No evidence to substantiate the above has been produced. On the contrary, rule 3(2) (ea) of

Drawback Rules directs that while determining the drawback rates, the Central Govt. has to take into account “the average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the exports goods”. Since “input service” for the purpose of Drawback Rules has been given the same definition as under Cenvat Credit Rules and since the applicant itself states that construction services is recognized as an “input service” under Cenvat Credit Rules, it has to be presumed that service tax paid on such input services has been taken into account while determining the All Industry Drawback Rates. Nothing contrary to the above has been stated in the Joint Secretary Drawback’s letter dated 1/3/2007 which merely calls for data on input and input service consumption and duty/tax incidence thereon, for the purpose of determining drawback rates for 2007-08. We need not probe further into this aspect having regard to the view we have taken in para 11 supra.

14. In a recent communication received on 1/9/2008, the applicant’s counsel has brought to the notice of the Authority that in Condition no.13 (i) appearing in the latest Drawback Notification No.103/2008-Cus (NT) dt.29.8.08 the expression ‘input service’ has been specifically added. This addition, according to the learned counsel, by implication, leads to the inference that but for this inclusion, input service was not within the ambit of Condition no.12 of the earlier notification no.68/07-Cus (NT). It is not necessary to consider whether such inclusion of input service is clarificatory or otherwise, having regard to the view we have taken that the omission of “input service” in Condition no.12 (i)

does not make any difference on account of the operation of proviso to Rule 3 of Drawback Rules. It is therefore unnecessary to deal with this aspect further.

15. The judgment in the case of Chemicals & Fibres of India Ltd. cited by the applicant's counsel does not appear to be relevant for the present application.

16. The applicant has laboured hard to put forward an argument that buildings fall in the category of "capital goods" and that availment of Cenvat credit on capital goods is no bar to availment of the higher rate of drawback. Such a claim has to be rejected outright. Capital goods are defined under the Cenvat Credit Rules and this definition does not cover buildings or sheds.

17. In the above background, both the questions posed for advance ruling are answered in the negative.

Sd/-
(Chitra Saha)
Member

Per P.V. Reddi, J (Chairperson):

While I am in broad agreement with the views expressed by the learned Member, I would like to supplement her reasoning in regard to the first issue. Hence, this separate opinion.

2. The first and foremost, we will have to consider whether the services to be availed of for construction of workers' quarters in the factory premises would fall within the first and main part of the definition in Rule 2(1)(ii)*. It defines input

* of Cenvat Credit Rules

service to be “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, upto the place of removal.” By using the two phrases - “directly or indirectly” and “in relation to”, the sweep and ambit of the definition is undoubtedly widened. It is not merely the services that are directly utilized in the actual manufacturing process but also those which are indirectly used in connection with the manufacturing operations that fall within the scope of the definition. Even then, these expressions cannot be extended too far – so far as to extend them to the construction of staff quarters, hospitals, recreation centers and so on. Taking a reasonable view, it cannot be said that the service of construction of workers’ quarters is something indirectly used in relation to the manufacture of finished products. What is contemplated by the definition is a proximate connection though not a direct connection with the manufacturing operations and clearance of final product. The definition though wide, is not meant to cover services that remotely or in a round about way contribute to the manufacture of finished goods. Any and every connection, however remote and indirect it may be, is not what is contemplated by the definition. A line has to be drawn somewhere to avoid undue extension of the terms “directly or indirectly” or “in relation to”, by adopting a common sense approach. What really matters is the difference in degree.

3. In this context we may refer to a recent decision of the Supreme Court in the case of Collector of Central Excise v. Solaris Chemtech limited¹ which helps

¹ 2007 (214) ELT 481

us in understanding the ambit and amplitude of the expression “used in relation to the manufacture of final products”. In that case, their Lordships were considering the question whether Low Sulphar Heavy Stock (LSHS) used by the assessee as fuel for generating electricity which in turn was captively consumed for the production of caustic soda and cement can be considered to be ‘input’ within the meaning of Explanation to Rule 57A of MODVAT Rules. There also the expression ‘in relation to the manufacture of final products’ fell for consideration. While observing that words ‘in relation to the manufacture’ have been used to widen and expand the scope and meaning of the expression ‘inputs’ so as to attract goods which do not enter into finished goods, the Court summarized the legal position as follows:

“Where raw-material is used in the manufacture of final product it is an input used in the manufacture of final product. However, the doubt may arise only in regard to use of some articles not in the mainstream of manufacturing process but something which is used for rendering final product marketable or something used otherwise in assisting the process of manufacture. This doubt is set at rest by use of the words “used in relation to manufacture”. In the present case, the LSHS is used to generate electricity which is captively consumed. Without continuous supply of such electricity generated in the plant it is not possible to manufacture cement, caustic soda etc. Without such supply the process of electrolysis was not possible. Therefore, keeping in mind the expression “used in relation to the manufacture” in Rule 57A we are of the view that the assesses were entitled to MODVAT credit on LSHS.”

The said decision also illustrates what cannot be brought within the scope of the expansive meaning of the expression “used in relation to the manufacture”. It was clarified in the concluding para:

“We may point out that in some of the cases electricity generated is consumed by the residential colony of the factory’s workers’ families, schools, etc, to that extent MODVAT credit will not be admissible.”

The view which we have expressed above accords with the ratio of this decision.

4. The next point is, if the service relating to construction of staff quarters cannot be brought within the ambit of the main definition, would the inclusive part of the definition come to the aid of the applicant?

4.1. To find an answer to this question, an analysis of the inclusive clause of the definition and understanding its nuances is required. The term ‘includes’ is generally employed in a definition clause to extend the natural meaning or ordinary connotation of a word or phrase defined. However, there is no inflexible rule that the word ‘include’ should always be read as a word of extension irrespective of the context in which it occurs [vide *SRJ Tiles Manufacturers v. State of Gujarat*]¹. In that case, it was observed by the Supreme Court that though ‘include’ is generally used in interpretation clauses as a word of enlargement, in some cases, the context might suggest a contrary intention. In that case, the word ‘include’ was read as a word of limitation but not extension. It was read as equivalent to “mean and include”. The Supreme Court was interpreting Entry 22 of the Schedule to the Minimum Wages Act which speaks of “Employment in Potteries Industry” followed by an Explanation

¹ AIR 1977 SC, pg. 90 at 93

that for the purpose of Entry, Potteries Industry “includes the manufacture of following articles of pottery, namely,” Nine different items starting with Crockery were enumerated. A three Judge Bench of the Supreme Court took the view that the word ‘include’ has been used in the sense of ‘means’ having regard to its context and it is exhaustive of the meaning which must be given to the expression “Pottery Industry”. Therefore, no other type of pottery industry such as Mangalore pattern roofing tiles can be brought within the scope of that Entry by virtue of the inclusive definition.

5. The function of the inclusive definition has been explained thus, in *RBI v. Peerless GFI Co. Ltd.*²

“Legislatures resort to inclusive definitions 1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the Statute wishes to attribute to it, 2) to include meanings about which there might be some dispute, or 3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context, in the process of enlarging, the definition may even become exhaustive”.

6. The governing principle of interpretation has been succinctly articulated as follows:

“Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual.”

² AIR 1987 SC, Pg.1023

7. Now, let us examine the anatomy of the definition of 'input service' contained in Rule 2(1)(ii). It is an inclusive definition, no doubt. But, the definition does not straightaway open up with an inclusive clause. In other words, the inclusive clause does not stand alone but it remains in the company of the substantive part of the definition, which has been referred to earlier. As already noticed, the first part of clause (ii) is widely worded and gives an expansive meaning to the expression 'input service'. This is followed by an inclusive clause wherein certain specific services are enumerated. If we see the broad pattern of such enumeration, we find firstly that the services which do not otherwise fall within the sweep of the main part of the definition are set out. Secondly, some services which could fall within the ambit of the main definition but in respect of which doubts may arise are also included in the second and inclusive part of the definition. For instance, services relating to storage upto the place of removal, procurement of inputs, inward transportation of inputs and outward transportation upto the place of removal may very well be brought within the main definition itself which is very wide. Yet, the Rule-making authority wanted to remove the cloud of doubt that might linger. Hence, they were specifically included. As already observed, the first category of services specified in the inclusive clause are those which do not apparently fall within the scope of the first and main part of the definition. For instance, services relating to sales promotion and market research services, accounting and auditing, recruitment and training fall within this category because it is difficult to bring them within the purview of the first part of the definition, howsoever widely it is construed. Construction and allied

services used in connection with setting up, modernization and renovation of a factory or an office attached to a factory stand in the mid-way category. That is the scheme of inclusive clause. Unless the services in question (relating to construction of workman's quarters) could be reasonably brought within the scope of the main definition, I do not think, that much assistance can be drawn by the applicant from the inclusive clause of the definition. If at all, there is enough indication in the inclusive clause itself that the construction service in question is not meant to be covered by the definition, the reason being that only certain types of construction services which have closer connection with the manufacturing activity or final product are included. The construction of workers' quarter is not one of them, as the learned Member has said. It gives an indicia that the construction services relating to workers' quarters would not fit into the species or pattern of services brought within the sweep of Rule 2(1)(ii) and therefore the applicant cannot contend that the main part of the definition takes colour from the inclusive part. Ultimately, it comes to this. The case of the petitioner should stand or fall on the application of the opening and the main part of the definition. The inclusive clause far from supporting the applicant's stand goes against it.

8. There is another way of looking at the inclusive part of the definition. An inclusive clause following a wide and extensive definition may not have any bearing on the connotation and scope of substantive definition. It may not further enlarge the ambit of main definition. The purpose of inclusive clause could be to bring in certain additional things or situations which do not or which are not likely to fall within the main definition. In such a case, the inclusive part of the

definition may not have any impact on the main definition preceding it. It will not be able to project its tentacles into the main definition clause. The inclusive clause in the instant case is also of that category.

9. As regards the second question, as pointed out by the learned Member, the first proviso to Rule 3 of Drawback Rules comes in the way of the applicant claiming full drawback by reason of availing of Cenvat facility on input services relating to the construction of manufacturing and storage infrastructure. The same conclusion could be reached by applying Condition No. 5 of the notification. Condition No.12 (i) of Customs notification which owes its origin to Rule 3 is a procedural provision and it does not have the effect of controlling Rule 3 together with its proviso. The inadvertent omission of 'input service' in Condition No.12 does not therefore come to the aid of the applicant.

Sd/-
(P.V.Reddi)
Chairman

Per A. Sinha (Member) :

I have read the ruling of learned Member, Mrs. Chitra Saha and also the additional reasons given by the Hon'ble Chairman and I agree with both.

Sd/-
(A.Sinha)
Member

Pronounced in the open Court of the Authority on this 11th day of September, 2008.

Sd/-
(A.Sinha)
Member

Sd/-
(P.V.Reddi)
Chairman

Sd/-
(Chitra Saha)
Member

Registered /A D

F. No.AAR/15/ST/2007

Dated: 11th September, 2008

(A) This copy is certified to be a true copy of the Ruling and is sent to :-

1. M/s VMT Spinning Company Limited, Village Kalyanpur, P.O. Baddi, Distt. Solan, Himachal Pradesh.
2. Commissioner of Central Excise, C.R.Building, Plot No.19, Sector 17-C, Chandigarh-160 017.
3. Member (Service Tax), Central Board of Excise & Customs, North Block, New Delhi.
4. Mr.Harish K.Thakur, Joint Chief Departmental Representative, Customs,Excise & Service Tax Appellate Tribunal, West Block-2, R.K.Puram, New Delhi-66.
5. Personal folders of Chairman/Members
6. Guard File

(R.K.Meena)
Joint Commissioner

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(R.K.Meena)
Joint Commissioner

In view of the provisions contained in rule 25 of the Authority for Advance Rulings (Procedure) Regulations, 2005, permission of the Authority is accorded for publication of the Advance Ruling. Copy of the Advance Ruling is forwarded to:

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(R.K.Meena)
Joint Commissioner