



NITYA'S INSIGHT

Cenvat Alert | Credit on outdoor catering service availed by the assessee post April 2011

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Dear Reader,

This is to update you on the recent rulings of the Tribunal on the availability of Cenvat credit on outdoor catering service post April 2011.

Before proceeding, it is pertinent to note that the definition of input service was amended w.e.f. April 1, 2011 and certain services were specifically excluded from the definition of input service when used primarily for personal use or consumption of any employee. One of the exclusions was services used in relation to 'outdoor catering'.

Despite the aforesaid exclusion, the Tribunals have rendered several judgments in the recent past wherein Cenvat credit has been allowed on outdoor catering service on the ground that it is essential for the business of the assessee.

In the case of **Bajaj Motors**, the Delhi Tribunal held that Cenvat credit on outdoor catering service is admissible since this service is not used for the personal use or consumption of the employee. The Tribunal relied upon the decision of Mumbai Tribunal in the case of **Hindustan Coca Cola Beverages (P) Ltd.** dated November 21, 2014 wherein the Tribunal allowed Cenvat credit on outdoor catering service.

It is important to note that the judgment of Mumbai Tribunal in the case of **Hindustan Coca Cola (supra)** was followed by Mumbai Tribunal in another case of **Hindustan Coca Cola Beverages (P) Ltd.** dated September 7, 2015.

In the case of **Gateway Terminals (I) Pvt. Ltd.**, the Tribunal again allowed Cenvat credit on outdoor catering service for the period post April, 2011 on the ground that it was essential to run the business of the assessee.

On the other hand, there are few adverse judgments wherein the Cenvat credit on outdoor catering service has been disallowed post April 2011. For the same assessee viz, **Bajaj Motors**, the Delhi Tribunal vide its order dated February 11, 2015 disallowed Cenvat credit on outdoor catering service on the ground that these services are used for personal consumption of employees. Similarly, in the case of **AET Laboratories Pvt. Ltd.** and **Mangalam Cement Ltd.**, the Tribunal has disallowed Cenvat credit on outdoor catering.

From the above, it can be seen that there have been contrary decisions on the Cenvat credit on outdoor catering service post April 2011 though running of a factory canteen is a statutory requirement for many assesses and has an indirect nexus with the manufacture of final product and provision of output service. The question to which the Tribunals are yet to concur is whether such an activity is for personal consumption of employees or not.

It is a matter of time that the issue will be referred to a Larger Bench of Tribunal to settle the legal point. Considering the restriction of time limit of 1 year for taking credit, the assesses may consider taking credit on outdoor catering service till the issue is judicially settled and not utilizing the same to avoid any interest liability.

Trust you will find this update useful. For any clarification, please feel free to revert.

Regards,

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