

## Outdoor catering services for personal use or consumption of employees is excluded from definition of input service – SC

22 November 2021



## Summary

The Supreme Court (SC) has dismissed the Special Leave Petition (SLP) filed by the petitioner and affirmed that the outdoor catering services used primarily for personal use or consumption of any employee is excluded from the definition of input service. The SC further held that it cannot be said that the High Court (HC) has committed any error in denying the input tax credit and holding that such service is excluded from the definition of input service.

## Facts of the case

- The petitioner<sup>1</sup> is engaged in manufacturing of multi-utility vehicle/passenger cars and parts thereof and had availed CENVAT credit<sup>2</sup> of duty paid on input service/inputs and capital goods used in or in relation to the manufacture of their final products.
- The petitioner had availed and utilised input service tax credit (ITC)<sup>3</sup> relating to outdoor catering service.
- Considering that the outdoor catering services have been excluded from the definition of input service<sup>4</sup>, a Show Cause Notice (SCN) was issued proposing to demand and recover the ITC availed on outdoor catering services. The adjudicating authority confirmed the demand with interest and penalty<sup>5</sup>.
- Thereafter, the appellant preferred appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), which was also dismissed.

## Karnataka HC observations and ruling<sup>6</sup>

- **Order of CESTAT upheld:** The HC held that the Tribunal was justified in dismissing the appeal preferred by the appellant and

opined that outdoor catering services prior to 1 April 2011 have been held to be covered by the definition of input service. However, after the amendment came into force in the light of specific exclusion clause, outdoor catering service is not at all covered under the definition of input service.

- **Interpretation of statutory provision:** The HC held that this Court has to look squarely at the words of the statute and interpret them. There is no ambiguity in the statute and therefore, as it is a taxing statute, this Court cannot add or substitute words in the statutory provisions while interpreting the statutory provision. A Taxing Statute has to be strictly construed and in Taxing Statute one has to look merely at what is clearly said.

## SC observations and ruling<sup>7</sup>:

- **Express exclusion under the definition of input service:** The SC observed that the outdoor catering services used primarily for personal use or consumption of any employee have been expressly excluded from the definition of input service.

<sup>1</sup> Toyota Kirloskar Motor Private Limited

<sup>2</sup> under the provisions of the CENVAT Credit Rules (CCR), 2004

<sup>3</sup> during the period from April 2013 to September 2013

<sup>4</sup> in terms of Rule 2(1)(ii)(c) of CCR, 2004 w.e.f. 1 April 2011

<sup>5</sup> u/s 11AC r/w Rule 15(1) of the Cenvat Credit Rules, 2004

<sup>6</sup> CEA NO.36/2018 C/W CEA NO.7/2019 dated 21 April 2021

<sup>7</sup> Petition(s) for Special Leave to Appeal (C) No(s). 17903-17904/2021 dated 18 Nov 2021

- **Order of HC upheld:** Therefore, the SC stated that it cannot be said that the High Court has committed any error in denying the input tax credit and holding that such a service is excluded from input service.

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**Our comments:**

The SC has upheld the ruling of the Karnataka HC and, thereby, affirmed that the outdoor catering services used primarily for personal use or consumption of any employee is excluded from the definition of input service. Though the issue has been settled by the SC decision, it is pertinent to note that as provision of such facilities to the employees is obligatory for the businesses under statutory laws it involves huge amount of expenditure and such kind of restrictions shall add on to the costs rather than ensuring free flow of credits.

Since similar restrictions exist even under the GST regime, the government may consider amending the provisions appropriately to ease the availability of ITC in respect of these services.

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