CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO - 1

Excise Appeal No. 12033 of 2018-SM

(Arising out of OIA no.-VAD-EXCUS-002-APP-080-2018-19 dated 31/05/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I

Gujarat Guardian Limited Appellant

Village-Kondh, Taluka-Valia,
Bharuch,
Gujarat

-VERSUS-

C.C. E. & S.T. Vadodara-ii Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat
390023

Present For the Appellant : Shri S.J. Vyas, Advocate

Present For the Respondent : Shri L. Patra, Asst. Commr. (AR)

CORAM:
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/11823/ 2019

Date of Hearing: 13/09/2019
Date of Decision: 13/09/2019

RAJU

This appeal has been filed by Gujarat Guardian against denial of Cenvat Credit.

2. Ld. Counsel pointed out that credit has been sought to be denied on :

I. Manpower supply services received by them for the staff used in the cafe located in the factory.
II. The credit is also sought to be denied on manpower supply received by them for use in the guest house.
III. The third item on which credit is denied on manpower supply for road cleaning and plant washing.

2.1 Ld. Counsel pointed out that under the Section 46 of the Factories Act, they are required to mandatorily maintain the canteen in factory premises. For this purpose, they are using the manpower supply to get the staff for running the canteen. He argued that without this, the factory cannot be run legally as it is a mandatory requirement of factories act. As regard manpower supply services received by them in respect of Guest house, he admitted that the issue is covered against them in their own case reported in 2016 (46) STR 737. He further pointed out that credit is being denied in manpower supply received by them for cleaning of road and plant and equipment in the factory premises. He relied on the decision in the case of M/s. Zuari Cement Ltd. vs. Commr. of GST & Central Excise Chennai North 2018 (10) TMI 691- CESTAT Chennai.

3. Ld. AR relies on the impugned order. He argued that as regard the manpower supply in respect of guest house, the issue is covered by the decision in the appellants own case against them. He argued that services of outdoor catering are specifically excluded from the services of the input services. He argued that though the manpower supplied by the manpower supply agency, but the same is taken in use for café. It should be classified as outdoor catering services.

4. I have considered rival submissions. I find that as far as credit in respect of staff services received in respect of Guest Houses is concerned, the same is covered by the decision in the appellants own case and therefore, the said credit is denied and the appeal on that count is dismissed.

4.1 As regard the manpower supply services received in respect of staff of the café (canteen), it is not disputed that the café is a mandatory requirement under the Factories Act and, therefore, without running a canteen, they cannot run the factory legally. The argument of the Ld. AR that by virtue of use of the staff in the canteen should be treated as outdoor catering service and hence excluded from the definition of the input services is misplaced. The service is classified by service provider and just because it is used in canteen, it does not become outdoor catering service. Consequently, the appeal is allowed.

4.2 As regard the Cenvat Credit on the manpower supply services used for cleaning of roads and factory machines, etc. is concerned, the same is covered by the decision of Tribunal in the case of M/s. Zuari Cement Ltd. (supra). Relying on the aforesaid decision, the appeal on this count is allowed.

5. Accordingly, the appeal is partly allowed on above terms.

(Dictated and pronounced in the open court)

(Raju)
Member (Technical)

Diksha