

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 10303 of 2019

(Arising out of OIA-VAD-EXCUS-002-APP-364-2018-19 dated 14/09/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Nocil Limited

.....Appellant

Plot No. 12/A/1, Dahej Ind. Estate, Ambheta Road, Near Ambheta Village, Dahej, Tal-Vagra, Bharuch, Gujarat

VERSUS

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

...Respondent

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

WITH

Excise Appeal No. 10964 of 2019

(Arising out of OIA-VAD-EXCUS-002-APP-364-2018-19 dated 14/09/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Nocil Limited

.....Appellant

Plot No. 12/A/1, Dahej Ind. Estate, Ambheta Road, Near Ambheta Village, Dahej, Tal-Vagra, Bharuch, Gujarat

VERSUS

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

...Respondent

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

APPEARANCE:

Shri Raja V Salian, Advocate appeared for the Appellant

Shri Vijay G Iyengar, Superintendent(AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11167 - 11168 /2022

DATE OF HEARING:22.09.2022
DATE OF DECISION: 22.09.2022

RAMESH NAIR

The issue involved is that whether the appellant is entitled for Cenvat Credit in respect of Gardening service used to maintain garden within the factory premises.

2. Shri. Raja V. Salian, Learned Counsel appearing on behalf of the appellant submits that the Green belt is maintained as per the requirement of Pollution Control Board. Therefore, the maintenance of garden is indirectly related to overall manufacturing activity of the appellant. He placed reliance on the judgment of this Tribunal in the case of Hubergroup India Pvt Ltd final order No. A/10303-10304/2022 dated 05.04.2022. He also placed reliance on the following judgments in support of his submission.

- Nirma Ltd Vs. Comm. Of . C.ex & ST, Vadodara I- 2013 (32) STR 622 (Tri. Ahmd)
- Comm. Of C. Ex- Surat -II Vs. GSFC Ltd - 2013 (291) ELT 375 (Tri. Ahmd)
- Murugappa Thermal Ceremics Pvt Ltd - 2014 (33) STR 181 (Tri. Ahmd)
- Millipore India Pvt Ltd - 2012 (26) STR 514 (kar.)
- Rane TRW Steering Systems Ltd - 2015 (39) STR 13 (Mad)
- Lupin Ltd - 2012 (285) ELT 221
- Gateway Terminals (I) Pvt Ltd - 2015 (39) STR 1027 (Tri. Mum)
- Mukund Ltd - 2016 (42) STR 88 (Tri. Mum)
- International Combustion (I) Ltd - 2016 (44) STR 110 (Tri. Mum)
- Thyssenkupp Electrical Steel (I) P. Ltd - 2017 (3) GSTL 176 (Tri. Mum)
- Cargill India Pvt Ltd - 2015 (38) STR 587 (Tri. Bang)
- Toyota Kirloskar Motor Pvt Ltd - 2016 (46) STR 69 - (Tri. Bang)
- Sterlite Industries India Ltd - 2016 (41) STR 867 (Tri. - Chennai)
- Integra Software Services Pvt Ltd - 2017 (48) STR 137 (Tri. Chennai)

3. Shri. Vijay G Iyengar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. I find that the limited issue to be considered by me is that whether the appellant is entitled for Cenvat Credit in respect of Gardening Service. I find that as per the record submitted by the appellant, the appellants are under statutory requirement to maintain the garden as per the pollution control board in order to run their production activities, therefore, the maintenance of garden is indirectly used in relation to overall manufacturing activity of the appellant. The gardening service in facts of the present case is clearly covered under the definition of input services provided under rule 2(I) of the Cenvat Credit Rules, 2004. The identical

issue is covered by the decision of this Tribunal in the case of Huber Group India Pvt Ltd vide final order No. A/10303-10304/2022 dated 05.04.2022 wherein the Tribunal has passed the following order:

"4. I have carefully considered the submission made by both the sides.

5. I find that the lower authorities had not denied the cenvat credit on gardening service per se but on the ground that the appellant have not established that the garden is maintained for the purpose of Pollution Control. This reason of the lower authorities is absolutely incorrect on the face of the facts of the case as submitted by the Learned Counsel. It is evident from the consent order of the Pollution Control Committee for renewing the pollution control license that the appellant is required to green up the surrounding of the factory inside and outside. For this reason only the appellant are maintaining the garden, therefore, the entire basis of the department to deny the cenvat credit does not stand. In various judgements this Tribunal has considered the admissibility of the cenvat credit in respect of garden service. Some of the judgements are reproduced below:

* In case of Lupin Ltd. the Tribunal held as follows:-

"6.1 After hearing the arguments made by both the sides, I am of view that the appeals themselves can be disposed of at this stage. Therefore, after granting stay against the recovery of dues, I take up the appeals for consideration and disposal.

6.2 The Hon'ble High Court of Bombay in the case of CCE v. Ultratech Cement Ltd. - TIOL-2010-745-HC-MUM = 2010 (20) S.T.R. 577 (Bom.) = 2010 (260) E.L.T. 369 (Bom.) considered the issue at length and held that the definition of input service under Rule 2(I) of the Cenvat Credit Rules, is very wide and covers not only services which are directly or indirectly used in or in relation to the manufacturing of final product but also after manufacturing of the final products. The definition covers not only services which are used in or in relation to the manufacture of the final product but also services used in the business of manufacture of the final product. Following the ratio of this Judgment, the input services on which Cenvat Credit has been availed by the appellant in the instant case qualifies as input service. In respect of many of these services, there are a large number of decisions passed by this Tribunal allowing such credit. In respect of photographic services, the learned, Advocate submits that the services were used for taking photograph of the machines to be submitted to the insurance company for obtaining insurance and, therefore it is related to the business of the manufacture. Similarly, in respect of dry cleaning services, the same was used for dry cleaning the uniform of their staff and therefore, forms part of business of manufacturing. With regard to construction, the same is undertaken for construction of premises for the manufacturing activity and it is directly connected with the business of manufacturing and similarly in respect of brokerage, the same is connected with commission paid to the brokers for selling products of the company which amounts to sales promotion. All other services detailed above qualify under input services definition and accordingly, I hold that the appellant is rightly entitled for Cenvat credit of the tax paid on these services.

7. In view of the above, I allow the appeals filed by M/s. Lupin Ltd. and dismiss the appeals filed by the Revenue."

* In case of CCE vs Millipore India, the Tribunal held as follows:-

"6. Therefore, it is clear that those factors have to be taken into consideration while fixing the costs of the final products. If services tax is paid in respect of any of those services which forms part of the costs of the final products certainly the assessee would be entitled to the cenvat credit of the tax so paid.

7. That apart, the definition of input services is too broad. It is an inclusive definition. What is contained in the definition is only illustrative in nature. Activities relating to business and any services rendered in connection there- with, would form part of the input services. The medical benefit extended to the employees, insurance policy to cover the risk of accidents to the vehicle as well as the person, certainly would be a part of the salary paid to the employees. Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The Environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. The appeal is dismissed."

6. As per my above discussion and finding which are supported with the above case laws, the appellants is entitled for the cenvat credit in respect of maintenance of gardening service. Accordingly, the impugned order is set aside. Appeal is allowed."

4.1 In the above case, on the identical issue this tribunal has considered the issue in hand and allowed the Cenvat Credit in respect of gardening service. Following the said decision of this tribunal, I am of the view that the appellant is entitled for the Cenvat Credit on gardening service.

5. Accordingly, the impugned orders are set aside. Appeals are allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)