CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Excise Appeal No.70119 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-729-20-21 dated 05/10/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Asian Paints Ltd., ...Appellant

(A-1 & B-2, UPSIDC Industrial Area, Kasna, Noida)

VERSUS

Commissioner of Central Excise &

CGST, Noida ....Respondent

(4th Floor, C-56/42, Renu Tower,
Sector-62, Noida-201301)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the

CORAM: HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70874/2025

DATE OF HEARING : 14 October, 2025
DATE OF DECISION : 14 October, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-002-APP-729-20-21 dated 05/10/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

> *"6. In the light of above narrated facts and circumstances, I uphold the impugned order bearing no.05/ADC/GBN/2019-20 dated 15.07.2019 and reject the appeal filled by the appellant bearing no.581/CE/Noida/APPL/GBN/2019-20 dated 25.09.2019."*

1.2 By the Order-in-Original dated 15.07.2019 following has been held:-

"Order

1. I confirm the demand of CENVAT credit amounting to Rs.51,91,277/- (Rupees Fifty One Lac Ninety One Thousand & Two Hundred Seventy Seven only) for the period February 2016 to June 2017 on the grounds mentioned hereinabove and order to recover the same from the party under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(1)(a) of the Central Excise Act, 1944.

2. I order for recovery of interest at appropriate rate as applicable on the amount of demand of CENVAT credit confirmed as above under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

3. 1 impose penalty of Rs.2,59,564/- (Rupees Two Lac Fifty Nine Thousand & Five Hundred Sixty Four only) upon the party under Rule 15 (1) of the CENVAT Credit Rules, 2004 read with Section 11AC(1)(a) of the Central Excise Act, 1944.

The adjudged dues shall be paid forthwith.

This order is issued under the provisions of the Central Excise Act, 1944 and Rules made there under read with Section 174(2) (e) of the CGST Act, 2017."

2.1 Appellant was registered as a Large Taxpayer Unit (LTU), having membership no.LTU/MUM/0118 and one of its units is registered under Central Excise Registration No. AAACA3622KXM005 at A-1, UPSIDC Industrial Area, Kaana, Greater Noida (U.P.) for the manufacture of excisable-goods viz. Paints & Varnishes falling under Ch. 29 and 32 of the Central Excise Tariff Act, 1985. The party was availing the benefit of CENVAT credit of various services under the provisions of the CENVAT Credit Rules, 2004 and utilized the same to pay Central Excise duty on their manufactured products Earlier.

2.2 On the basis of audit objection, a Show Cause Notice was issued by the Commissioner (LTU), Mumbai regarding wrong availment of CENVAT credit on 32 services. Later on, Commissioner of Central Excise & Service Tax, LTU, Mumbai, vide his Order-in-Original No.40-76/Commr(BKS)/LTU-M/CX/2013 dt. 27.09.2013 decided the eligibility of CENVAT credit of 32 input services and denied the credit on the following 08 input services:-

I. Air Travel Agent Service,

II. Rail Travel Agent Service,

III. Real Estate Agent Service

IV. Club or Association Service,

V. Construction of Complex Service,

VI. Dredging Service,

VII. Outdoor Catering Service,

VIII. Authorized Service Station Service,

2.3 For subsequent period show cause notices were issued by LTU, Mumbai, for wrong availment of CENVAT Credit on these services. Appellant continued to avail the CENVAT credit in respect of the above services. It was observed that during the year 2016-17 appellant had availed Cenvat credit in respect of these services as follows:-

Month wise CENVAT Credit taken on different Services						
Month	Air Travel Agent Service	Club or Association Service	Outdoor Catere r Servic e	Rail Travel Agent Service	Real Estate Agent Service	Total
Feb-16	841	0	0	0	0	841
Mar-16	2353	0	1594731	0	0	1597084
Apr-16	0	0	0	462	0	462
May16	311648	18930	0	76	5592	336246
Jun-16	155	39915	1687	203	193	42153
Jul-16	1426	35964	0	1940	0	39330
Aug-16	6452	16221	0	91	0	22764
Sep-16	2376	1647	0	6574	0	10597
Oct-16	11526	22868	0	212	0	34606
Nov-16	5103	121	0	0	0	5224
Dec-16	2067	16	0	325	0	2408
Jan-17	41229	49585	0	0	0	90814
Feb-17	73756	17216	0	0	0	90972
Mar-17	12548	5382 0	0	44	603	18577
Apr-17	9038	42194	0	0	0	55069
May17	51343	722	2397547	0	0	2449612
Jun-17	29894	30853	332009	1762'	0	394518
Total	561755	281634	4325974	15526	6388	5191277

2.4 Statement of demand dated 23.03.2018 was issued to the appellant, asking them to show cause as to why:-

"(i) Inadmissible CENVAT credit of Service Tax amounting to Rs.51,91,2771-

(Rupees Fifty One Lac Ninety One Thousand & Two Hundred Seventy Seven only) wrongly availed by them should not be demanded and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(1)(a) of the Central Excise Act, 1944;

(ii) Interest should not be recovered from them on the amount of inadmissible CENVAT credit demanded as above under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944;

(iii) Penalty should not be imposed upon them for the amount of credit wrongly availed & utilized by them under Rule 15(1) of the CENVAT Credit Rules, 2004."

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 15.07.2019 referred in para 1.2 above.

2.6 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.7 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Atul Gupta learned Counsel appearing for the appellant and Smt Chitra Srivastava learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- They do not dispute the denial of Cenvat credit in respect of Outdoor Catering Services. In fact they have already deposited the credit sought to be denied along with interest.
- In respect of other services the demand is being challenged and it is placed on record that Commissioner (Appeals) Mumbai vide Order-in-Appeal No.NA/GST & CX/A-III/MUM/286/18-19 dated 07.12.2018 have held as follows:-

"ORDER

9. In light of the above discussions:-

a. I allow the Cenvat Credit in respect of the following services which have undergone consumption in manufacture of dutiable final product up to the place of removal.

Category of Service	*Cenvat Credit*	*Remarks*
Air Travel Agent Service	*1726012*	*Allowed*
Rail Travel Agent Service	*51230*	*Allowed*
Club or Association Service	*1454018*	*Allowed*

b. I disallow the Cenvat Credit in respect of the following service as they show that they were gathered merely on paper without undergoing consumption in manufacture of dutiable final product up to the place of removal.

Category of Service	*Cenvat Credit*	*Remark*
Real Estate Agent Service	*64581*	*Disallowed*

c. Interest is payable by the Appellants from due date under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 in respect of Cenvat Credit disallowed.

d. I reduce the quantum of penalty imposed on the Appellants under Rule 15(1) of the Cenvat Credit Rules, 2004 to Rs.5000/-

The impugned Order No. 34/LTU/MUM/CX/GLT-7/APL/2016-17 dated. 30.12.2016 passed by Assistant Commissioner, Ceritral Excise & Service Tax, Large Tax Payer Unit, Mumbai, is modified to the above extent."

- Thus Cenvat credit in respect of Air Travel Agent Service, Rail Travel Agent Service, Club or Association Service has been denied, should be admissible.
- Real Estate Agent Service has been used by them as indicated in the impugned order for the purpose of hearing hiring the depot/branches/shorehouse for storage, distribution and sale of their products. These are used directly in or in relation for the sale of the goods, hence the same are covered by the definition of input services and the credit should be allowed.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records as follows in respect of each of the services:-

“5.2 Now, I proceed to determine the admissibility of CENVAT credit on various services in question, one by one, as under

on invoice Air Travel Agent Service and Rail Travel Agent Service: The adjudicating authority, perusal of copies of BOMI/DR/1500328823 dated 07.01.2016 and HOMI/DR/1500384693 dated 08.03.2016, found that only passenger's name is mentioned in the invoices Further, he perused the Invoice dated 27.07.2016; Four Code: M/INC/ASIAN PAINTS/GOA/26042016 issued by M/S SOTC, and observed that the same has been issued for Goa Tour. Perusal of copies of invoices issued by M/s World press Tours, revealed that the same were used towards cost of railway travelling. ON the basis of the above observation, it could not be deduced from these invoices as to for what purpose such travels were made or how such travels were linked to manufacturing activity or whether the same pertain to the appellant's employee or any third-party Invoice pertaining to tour to Goa indicated that this was group outing possibly for entertaining dealers to Goa. Entertaining of dealers by way of tour to Goa by the company cannot he construed to be service as the same has no connection with the manufacturing activity. Also, dealers come into the picture only after the clearance of the excisable goods. Not only this, the deletion of the term "activities relating to business such as" w.e.f. 01.04.2011 has clearly restricted the services specific to the extent mentioned in the inclusive clause of the definition of input service as provided in Rule (2)(1) of the CENVAT Credit Rules, 2004. In view of the above, I am in agreement with adjudicating authority that the appellant have failed to establish clear nexus between the Air Travel Rail Travel agent services utilized and the manufacturing activity with cogent documentary evidence, hence CENVAT *credit on Air Travel/Rail Travel Agent services cannot be allowed and is liable to be recovered from them along with interest due thereon.*

(ii) Club or Association Services: The appellant has contended that they are the members of various associations and have availed subscription of various associations also. The membership in these associations enhances the knowledge and technology to improve the quality of the final products. For associations situated in India, the membership fee is paid along with Service Tax. There are few associations which are situated outside India and service tax is paid under Club or Association Service' by the appellant under reverse charge mechanism. Also, there are associations which hold various meetings and conferences to increase the skill and knowledge of the workers/staff. Being a member of association is a need of hour in business today. No company can work in isolation. Association plays important role in setting guiding principles and business practices for the industry. Further, member can also raise their grievances at ministerial and other legal forums through association. This expenditure has been incurred in connection with the business of manufacture activity of paints and not for personal use or consumption of employee Thus, the membership fees paid is an activity exclusively related to business and credit on same would be thus rightly admissible. In support of their claim, they submitted sample copies of invoice no S1-P/Jul-16/04/04 dated 15.07.2016 issued by M/S FICCI for Annual subscription fee for corporate membership for 2016-17 and invoice MO/2016-17/568 dated 12.08.2016 issued by M/s Bombay Chamber Commerce & Industry for Annual subscription for the period Apr-2016 to March 2017, before the adjudicating authority. On perusal of the above sample copies of invoices, it was found that they do not demonstrate exact nature of services involved. Rather they pertain to annual subscription fee which may mean

for regular magazines/write ups issued by the said organizations. The appellant failed to convincingly establish that such club membership service is essential or in directly or indirectly related to manufacturing activity and that in event of failure to do so, it would have an adverse effect on their manufacturing activity. On the basis of the above, it is thus clear that such services cannot be construed to be used in or in relation to the manufacture of final products. Accordingly, I hold that CENVAT credit on Club or Association services is not admissible to them and liable to be recovered from them along with interest due thereon.

(iii) Real Estate Agent services: It was contended by the appellant that they sell their final products through channel of various dealers/distributors. After the manufacture, company clears the linal products to their depots/branches on payment of excise duty. The final products are sold to the customers from the depots/branches. Thus, the depot/branch is the place of removal for the final products manufactured by the company. These final products cleared from the factory of the Company are stored in the warehouse/depot/storehouse before being sold from the depots/branches. Similarly, the company is storing its raw materials and packing materials in various godowns/depots. The company received the services of the Real Estate Agents in relation to storage of their final products, raw materials packing materials in various godowns/depots. Further, it was also contended that the services of Real Estate Agents service were received for providing accommodation to their employees who were responsible for planning and purchase of our raw materials & packing materials. canvassing sales, marketing promotions and various other business-related activities.

To substantiate their claim, the appellant submitted sample copies of Invoice no 24 dated 31.03.2016 issued by M/s Citypropman Real Agent Consultant and Invoice no.

17/201 dated 03.02.2017 issued by M/s Viva property. I find that the appellant have not substantiated in their claim/submission as to how in absence of receipt of Real Estate Services, the manufacture of dutiable final products upto the place of removal will adversely result in not achieving the desired dutiable final product. Thus, I find that the Real Estate Agent Service received is not critical to the manufacture of dutiable Baal product. 1. therefore, considerably note that I have convinced myself to form a considered opinion that the Instant issue is not sufficiently covered by case laws relied upon by the appellant. Hence credit of this service is not allowable and to be recovered from them along with interest.

(iv) Outdoor Catering Services: The appellant have contended that they have engaged outdoor caterers for supply of food and beverages in their canteens situated in different factories. These outdoor caterers are registered with the service tax department under taxable head of "Outdoor Catering service as defined under the Finance Act, 1994, In terms of Section 46 of the l'actories Act 1948, it is mandatory on part of the Company to provide canteen facility to the employees within the factory premises. Failure to comply with the provisions of Section 46 attracts prosecution and penalty under Section 92 of the Factories Act, 1948. Hence, the company has incurred canteen expenses directly or indirectly for manufacturing of paints and business carried out by them.

I find that, the appellant claimed it to be statutory requirement, it is observed that statutory requirement is not made an eligible criterion for availing cenvat credit under the definition of input service". Had it been contention of the legislature to include statutory obligation as an eligible factor, the inclusive definition would have taken care of such requirement. But as a matter of fact, the amended definition which came into effect from 01.04.2011, though carried additions and deletion of *services, does not include statutory/mandatory requirement as an eligible factor. Further, to substantiate the contention, the appellant submitted sample copies of invoice no. 042 dated 31.05.2016, 081 dated 11.08.2016, 103 dated 31.08.2016 & 207 dated 31.01.2017 issued by Mix Shivam Caterers. In this regard, 1 find that the definition of the input service as provided in Rule 2(1) of the C'ENVAT Credit Rules, 2004 was amended w.e.f. 01.04.2011 vide Notification No. 3/2011-CE (NT) dated 01.03.2011 whereby the term "activities relating to business" was deleted from the definition of input service and an exclusion clause was also added which excluded various services from input service. On perusal of clause (c) of the exclusion clause, it is seen that catering service is mentioned therein with specific mention "when such services are used primarily for personal use or consumption of any employee". In the instant case, the appellant have also submitted that they provided catering facility to their workers and employees. Accordingly. I find that subsequent to the above amendment by inserting 'exclusion clause in the definition of input service', credit availed on services utilized for personal use or consumption of the employee is not admissible & liable to be recovered from along with interest due thereon.*

5.3 In light of above discussion. I find that, it is not possible to deduce even from sample invoices, that description mentioned therein conform to the conditions stipulated in definition of input service. Mere contending the same without sufficient demonstration would not make the them eligible for CENVAT credit on the various services in question.

5.4 I observe that the appellant have relied upon various case laws in their support and find that the appellant have failed to substantiate their contention as to how facts of their gets identically fit into the facts of those relied upon cases especially in the light of the description mentioned *on the sample invoices provided by them. In this regard, I find support from the decision of Hon'ble Supreme Court in the case of CCP, Calcutta Vs. Al Noori Tobacco Products (2004) (170) ELT. 135 (S.C.) wherein it has been observed as under:*

11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact sination of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context These observations must be read in the context in which they appear to have been stated Judgments of Courts are not to be construed us statutes"

13. Circumstantial flexibility one additional or different fact may make a world of difference between conclusions in two cases Disposal of cuses hy blindly placing reliance on a decision is not proper

14. The following wards of Lord Denning in the matter of applying precedents have become locus classicus: "Foch case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. one should avoid the temptation to decide cases tas said by Cordozo) hy matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive"

In view of the above, I hold that CENVAT credit on Air Travel Agent service, Rail Travel Agent service, Club or Association service, Real Estate Agent service & Outdoor Catering service is not admissible to them and inadmissible CENVAT Credit amounting Rs. 51,91,277/- is liable to be recovered under CENVAT Credit Rules, 2004 read with Section 11(A) of Central Excise Act, 1944 along with interest due thereon under Rule of the CENVAT Credit Rules, 2004 read with Section 11AA of the Act."

4.3 In respect of the same services Commissioner (Appeals), Nashik while allowing the credit have held as follows:-

> *"8. In view of above legal provisions and clarification, I would now discuss the nature of input services used for manufacture of dutiable final products by the Appellants*
>
> *Air Travel Agent Service: The Appellants have submitted that they have availed this service for travel arrangements for their employees/staff travel to different locations for various business requirements. It is the fact that their employees/staff are required to travel even overseas for business related activities. The Appellants have availed credit of service tax charged on the air ticket and the commission charged by the air travel agent. As regard, Travel Agent Services, the Appellants have contended that the said services were used for travelling of its employees/staff for various business and support activities. On perusal of the plethora of case laws submitted in their contention especially in case of John Deere India Pvt Ltd Vs Commissioner of Central Excise, Pune-lIl [2016-TIOL-235 CESTAT MUM] & Reliance Industries Vs Commissioner of Central Excise & Service Tax, LTU. Mumbai (2016 (45)STR383(Tri Mum)), I form the opinion that the Cenvat Credit on Air Travel Agent Service is available to them. I hold that credit of this service is allowable in allowing Cenvat Credit of Air Travel Agents Service, I also rely on the decision of Hon'ble Tribunal Mumbai Bench in the case of CEMCO Electrical Pvt. Ltd. vs CCE Pune [2010(18)S.T.R. 177 (Tri.-Mumbai) and the decision in the case of Force Motors Limited Vs CCE [2009(13) S.T.R. 692) and the decision of Hon'ble Tribunal, Bangalore in the case of Arm Embedded Technologies Pvt. Ltd (2016 (45) S.T.R. 133 (Tri.- Bang)).*
>
> *Rail Travel Agent Service: In respect of Rail travel Agent Service, the Appellants' argument is similar to that in the case of Air Travel Service, they have availed this service for travel arrangements for their employees/staff travel to*

different locations for various business requirements. Since Air Travel Agent Service is akin to Rail Travel Agent, except for the mode of travel, my view, when the Cenvat Credit on Air Travel Agent Service is allowable, I hold that Credit of this service is also allowable.

Club or Association Service: The Appellants submit that being members of various associations, they have availed subscription of various associations. For the association the membership fee is paid along with Service Tax. The Appellants contend that the membership in this association enhances their knowledge and technology to improve the quality of the final products. I find that w.e.f. 01.04.2011, the exclusive definition as per clause (C) has restricted the credit admissibility in respect of the membership of a club or association. However, on perusal of Hon'ble Tribunal, Mumbai in case of Ceat Ltd Vs Commissioner of Central Excise, Mumbai (2018-TIOL-1079-CESTAT-MUM) which is relied upon by the Appellants in their submission, I find that the Hon'ble Tribunal has analysed the decision in case of Finolex Cables Ltd Vs Commissioner Central Excise Pune - [2015-TIOL-2632-MUM and noted in the operative part of the order as follows "considering the distinction drawn between trade bodies and social club, It would appear that the exclusion in the definition of input services is retracted to the latter. Accordingly the appellants is entitled to the Cenvat Credit... The Hon'ble CESTAT thus in case of Ceat Ltd above, drew a conclusion that the distinction between trade bodies and social clubs is that exclusion in the definition of input services is restricted to social club. The Hon'ble Tribunal conclusively held that exclusion in the definition of Input Service is restricted to membership to social club and not trade bodies. In case of the Appellants, the nature of Club or Association service received in case of the Appellants is elaborated as below:

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From the nature of the service as stated above, I am of the view that the Appellants have association with trade bodies and not social bodies. The services received by them for membership with these associations undoubtedly enhances their knowledge and technology which is critical in improving the quality of the manufactured dutiable final products. The 'exclusion' in the definition of "input services' is thus not applicable to the trade bodies, I also like to note that in absence of any contrary decision to the latest decision of Hon'ble CESTAT Mumbai in matter of Ceat Ltd Vs Commissioner of Central Excise, Mumbai, referred above, which has sliced up the Club or Association Service to aspect of social club and trade bodies, I by following the precedent of the above decision and apply it in the instant case, hold that as the Appellants have the association with trade bodies and not social club. The above Club or Association Services are allowed as input service and the Cenvat Credits in above service is allowable.

Real Estate Agent Service: This service was received for providing accommodation to their employees who were responsible for planning and purchase of their raw materials & packing materials, canvassing sales, marketing promotions and various other business related activities. They contend that services received were purely in relation to their manufacturing activity. The expenditure incurred by them in the aforesaid service forms a part of the cost of the final product. Notwithstanding the fact that the Appellants rely on plethora of decisions on the issue, I proceed to determine whether their exist the nexus between the input service and to the manufacture of dutiable final products and clearance of the same up to the place of removal, in the test whether sufficient nexus exists, it has to be established whether absence of such input/input service, adversely impacts the manufacture of dutiable final productup to the place of removal. I find the

Appellants have not substantiated in their submission as to how in absence of receipt of Real Estate Agent Service, the manufacture of the dutiable final product upto the place of removal will adversely result in not achieving the desired dutiable final product. Thus, I find the Real Estate Agent Service received is not critical to manufacture of the dutiable final product. I therefore comprehensibly note that I have convinced myself to form a considered opinion that the instant issue is not sufficiently covered by case laws relied uponby the Appellants in their case. Hence the Credit of this service is not allowable."

4.4 We find that the credit in respect of Air Travel Agent Service, Rail Travel Agent Service, Club or Association Service which has been used directly or indirectly in relation to the activities relating to manufacture and sale of the goods would be admissible. Commissioner (Appeals), Nashik has specifically held in favour of admissibility of the credit by relying upon various decisions of this Tribunal. Hence, we do not find any merits for denying Cenvat credit in respect of the said services.

4.5 As for credit in respect of Real Estate Agent Service, we find that impugned order records that these services were used by the appellant in relation to storage of their final products, raw materials, packing materials in various godowns, depots and for providing accommodations to their employees or any third party who were responsible for planning and purchase of our raw materials & packing materials, canvassing sales, marketing promotions and various other business-related activities. Commissioner (Appeals) for denying the credit have held that these services are not fall under the category of manufacture of duty paying final products, we do not find any merits in the observations made by the Commissioner (Appeals) for the reason that the input services have been defined by Rule 2 (l) of the Act in following manner:-

(i) services provided ……………………………………………

(ii) any service used by a provider of output service for providing an output service; or

(iii) any service used by a 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 ……………………………..."

4.6 From the above definition it is clear that the text laid down by the said definition is that the said services should have been used by manufacture either directly or indirectly in relation to manufacture of various final products and clearance of final products. The text laid down have been interpreted by various Courts and Tribunal in numbers of decisions holding that even a loose nexus between input services and their use in manufacture/clearance of products is enough to hold in favour of admissibility of credit. Hon'ble Gujarat High Court in the case of Parth Poly Wooven Pvt. Ltd. [2012 (25) STR 4 (Guj)] have held as follows:-

*"**18.** Bearing in mind the above judicial pronouncements, if we revert back to the definition of the term 'input service', as already noticed, it is coined in the phraseology of "means and includes". Portion of the definition which goes with the expression means, is 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 from the place of removal. This definition itself is wide in its expression and includes large number of services used by the manufacturer. Such service may have been used either directly or even indirectly. To qualify for input service, such service should have been used for the manufacture of the final products or in relation to manufacture of final product or even in clearance of the final product from the place of removal. The expression 'in relation to manufacture' is wider than 'for the purpose of manufacture'. The words 'and clearance of the final products from the place of removal' are also significant. Means part of the definition has not limited the services*

only upto the place of removal, but covers services used by the manufacturer for the clearance of the final products even from the place of removal. It can thus be seen that main body of the definition of term 'input service' is wide and expansive and covers variety of services utilized by the manufacturer. By no stretch of imagination can it be stated that outward transportation service would not be a service used by the manufacturer for clearance of final products from the place of removal.

4.7 Hon'ble Supreme Court in the case of CCE, Belgaum Vs M/s Vasavadatta Cements Ltd. 2018 (11) GSTL 3 (SC) have held as follows:-

*"**5.** Coming back to the first part of the definition as to what input service means, the Full Bench of the CESTAT held that all input services which are used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products from the place of removal are concerned, they are treated as input services and Cenvat credit in respect of expenditure incurred in relation to such services would be admissible. The expression with which the CESTAT was concerned, and which was the subject matter of discussion, was as to what would be the meaning of "from the place of removal". Obviously, any input service given for clearance of the final products "from the place of removal" and tax paid thereon the Cenvat credit has to be given. The question is from the place of removal up to what place. The assessees had claimed the tax paid on the transportation of final products from the place of removal (i.e. the place of manufacture) to either the place to their respective depots or transport upto the place of the customers, if from the place of removal the goods were directly delivered at customers place. It is made clear that only first set of transportation from the place of removal was claimed. To put it otherwise, in those cases where the*

tax paid on transportation on the goods from the place of removal upto the place of depot only that was claimed and if there was any such tax again paid from the place of depot to the place of customers, the Cenvat credit thereof was not claimed and there is no dispute about it.

6. *The aforesaid approach of the Full Bench of the CESTAT, as affirmed by the High Court, appears to be perfectly correct and we do not find any error therein. For the sake of convenience, we would like to reproduce the following discussion contained in the judgment of the High Court.*

> *"30. The definition of 'input service' contains both the word 'means' and 'includes', but not 'means and includes'. The portion of the definition to which the word means applies has to be construed restrictively as it is exhaustive. However, the portion of the definition to which the word includes applies has to be construed liberally as it is extensive. The exhaustive portion of the definition of 'input service' deals with service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. It also includes clearance of final products from the place of removal. Therefore, services received or rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of input service. What are the services that normally a manufacturer would render to a customer from the place of removal? They may be packing, loading, unloading, transportation, delivery, etc. Though the word transportation is not specifically used in the said section in the context in which the phrase 'clearance of final products from the place of removal' is used, it includes the transportation charges. Because, after the final products has*

reached the place of removal, to clear the final products nothing more needs to be done, except transporting the said final products to the ultimate destination i.e. the customer's/buyer of the said product, apart from attending to certain ancillary services as mentioned above which ensures proper delivery of the finished product upto the customer. Therefore, all such services rendered by the manufacturer are included in the definition of 'input service'. However, as the legislature has chosen to use the word 'means' in this portion of the definition, it has to be construed strictly and in a restrictive manner. After defining the 'input service' used by the manufacturer in a restrictive manner, in the later portion of the definition, the legislature has used the word 'includes'. Therefore, the later portion of the definition has to be construed liberally. Specifically what are the services which fall within the definition of 'input service' has been clearly set out in that portion of the definition. Thereafter, the words 'activities relating to business' - an omni-bus phrase is used to expand the meaning of the word 'input service'. However, after using the omni-bus phrase, examples are given. It also includes transportation. The words used are (a) inward transportation of inputs or capital goods (b) outward transportation upto the place of removal. While dealing with inward transportation, they have specifically used the words 'inputs' or 'capital goods'. But, while dealing with outward transportation those two words are conspicuously missing. The reason being, after inward transportation of inputs or capital goods into the factory premises, if a final product emerges, that final product has to be transported from the factory premises till the godown before it is removed for being delivered to the customer. Therefore, 'input

> *service' includes not only the inward transportation of inputs or capital goods but also includes outward transportation of the final product upto the place of removal. Therefore, in the later portion of the definition, an outer limit is prescribed for outward transportation, i.e., up to the place of removal.*

7. *As mentioned above, the expression used in the aforesaid Rule is "from the place of removal". It has to be from the place of removal upto a certain point. Therefore, tax paid on the transportation of the final product from the place of removal upto the first point, whether it is depot or the customer, has to be allowed.*

8. *Our view gets support from the amendment which has been carried out by the rule making authority w.e.f. 1-4-2008 vide Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008 whereby the aforesaid expression "from the place of removal" is substituted by "upto the place of removal". Thus from 1-4-2008, with the aforesaid amendment, the Cenvat credit is available only upto the place of removal whereas as per the amended Rule from the place of removal which has to be upto either the place of depot or the place of customer, as the case may be. This aspect has also been noted by the High Court in the impugned judgment in the following manner :*

> *"However, the interpretation placed by us on the words 'clearance of final products from the place of removal' and the subsequent amendment by Notification 10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word 'from' in the said phrase in place of 'upto' makes it clear that transportation charges were included in the phrase 'clearance from the place of removal' upto the date of the said substitution and it cannot be included within the phrase 'activities relating to business'."*

4.8 In view of the above decisions, I do not find any merits in denial of the Cenvat credit in respect of the *Real Estate Agent Service*

4.9 Appellant do not challenge the denial of credit wrongly availed in respect of Outdoor Catering Services as the same fall within the exclusion category after 01.04.2011. Cenvat credit on Outdoor Catering services have been barred as the same has been inclined in the exclusion clause. Hon'ble Supreme Court in the case of M/s Toyota Kirloskar Motor Pvt. Ltd. 2021 (55) GSTL 129 (SC) have held as follows:-

> *"**2.**The statutory provision - Rule 2(1) defining "Input Service" post 1-4-2011 is very clear and the out-door catering services when such services are used primarily for personal use or consumption of any employee is held to be excluded from the definition of "Input Service".*
>
> ***3.**In that view of the matter, 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."*

4.9 Larger Bench of this Tribunal in the case of M/s Wipro Ltd. 2018 (363) ELT 1111 (Tri.-LB) have held as follows:-

> *"**7.** After considering the submissions of both the parties and perusal of the material on record, including various decisions relied upon by both sides, we find that it is necessary to note the definition of 'input service' before 1-4-2011 and after 1-4-2011 when the said amendment was made.*
>
> *Post 1-4-2011 the definition of 'input service' stood thus :*
>
> *Rule 2(l) "Input Service' means any service,*
>
> *(i) used by a provider of output service for providing an output service; or*
>
> *(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 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 up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; but excludes. -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred as specified services insofar as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) Services 'provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not a capital goods; or

(BA) Service of general insurance business, servicing, repair and maintenance insofar as they relate to a motor vehicle which is not a capital goods, except when used by

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness

centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

Prior to 1-4-2011, the definition of 'input service' stood thus :

Rule 2(1) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service, or

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

7.1 *Further, we find that there is no dispute about the fact that all these disputes relates to post 2011. The period involved in the present appeals is admittedly after 2011 and the amendment to the provisions of Rule 2(l) defining the 'input service' came into effect from 1-4-2011 only. The definition of 'input service' post amendment contains exclusion clause. The exclusion clause was effective from 1-4-2011 and clause (C) of the said exclusion specifically exclude the services provided in relation to "outdoor catering service". Admittedly, such services prior to 1-4-2011 have been held to be covered by the definition of 'input service'. In fact, the need for exclusion would arise* *only when the services are otherwise covered by the definition. The Legislature in its wisdom has excluded certain services from the availment of Cenvat credit w.e.f. 1-4-2011, when such services are otherwise covered by the main definition clause of the 'input service'. To interpret, the said input clause, in such manner so as to hold that such services have direct or indirect nexus with the assessee's business and thus would be covered by the definition, would amount to defeat the legislative intent.*

7.2 *It is well settled that the legislative intent cannot be defeated by adopting interpretation which is clearly against such intent. Further, we find that from the Budget Speech of the Finance Minister dated 28-2-2011 wherein the Hon[7]ble Minister has categorically stated that due to complexities there has been many legal issues on the availability of credit on a number of inputs or input services which are being rationalized by laying down clear definition so that the scope of inputs and input services that are eligible and those that are not, is clear. Further, we also find from the clarification issued by the Joint Secretary (TRU) explaining the intention of the Legislature for the changes brought by way of amendment in the definition of 'input service'. Further, we also note that primarily the service should be first covered under the definition of 'input service' and once the service is not covered due to exclusion clause irrespective of the fact whether the cost of service has been taken as expenditure in the books of accounts does not render the services as an admissible for Cenvat credit. We also find that the food is always mainly for personal consumption only. The canteen provided in the company is mainly for the personal consumption of the employee and it cannot be interpreted in any other way. Therefore, once such services are excluded, whether the employer or employee bears the cost partially or fully, has no bearing on the amendment. Therefore, keeping in view [the] above* *discussions and the various decisions cited by both the parties, we are of the considered view that the "outdoor catering service" is not eligible for input service credit post amendment dated 1-4-2011 vide Notification No. 3/2011, dated 1-3-2011."*

4.10 Thus, in the light of above discussions, we summarize our findings as follows:-

- Demand in respect of Outdoor Catering Services (Rs.43,25,974/-) along with interest is upheld. Penalty in respect of this amount is also upheld. Amount paid by the appellant against this demand are appropriated.
- Penalty imposed upon the appellant proportionate to the amount of demand upheld imposed under Rule 15 (1) of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 is upheld.
- Demand in respect of Air Travel Agent Service, Rail Travel Agent Service, Club or Association Service and Real Estate Agent Service is set aside.

5.1 Appeal is partially allowed as indicated in para 4.10 above..

(Operative part of the order pronounced in open court)

(P. DINESHA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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