FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70863/2016-SM[BR] dated 28/03/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/55292/2013	TRIVENI ENGINEERING AND INDUSTRIES LTD UNIT-DEOBAND SAHARANPUR U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-I EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-I,
Mayur Vihar,
Delhi-110091

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R.   16 Office Copy   17 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Single Member Bench

Appeal No. E/55292/2013 (SM) with

[Arising out of Order-in-Appeal No.273/CE/MRT-I/2012 dated 14.09.2012 passed by Commissioner Central Excise (Appeals), Meerut-I]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Triveni Engineering & Industries Ltd. Appellant

Vs.

CCE & ST, Meerut -II Respondent

Appearance:
Present for the Appellant: Shri R. Krishnan, Advocate
Present for the Respondent: Shri Pawan Kumar Singh (Supdt.) (AR)

Coram: **Hon'ble Shri Anil Choudhary, Judicial Member**

Date of Hearing/Decision: 28/03/2016

Final **ORDER NO.** 50868/2016

Per: Anil Choudhary

The appellant are manufacturer of sugar and molasses, is in appeal against disallowance of Cenvat credit on security service, expenses incurred for safe keeping the sugar Cane purchased (input), situated outside the factory of production (Cane Collection Centre).

2. The brief facts are that during the course of audit it was noticed that during April 2010 the appellant had taken input credit of service tax on security service provided at Cane Collection Centers, which was situated outside the factory premises and as such it appeared that these could not be considered as input services, accordingly show cause notice' dated 16/1/2012 was issued invoking extended period of limitation, proposing to disallow service tax – Cenvat credit amounting to Rs.2,80,459/- along with interest and further penalty was proposed under Rule 15 of Cenvat Credit Rules, 2004 read with section 11 AC of the Central Excise Act 1944. The appellant appeared and contested the show cause notice stating that the security service is related to the business activity of the appellant is further contended that the definition of input service encompasses any service used by a manufacturer of final products, directly or indirectly, in or in relation to manufacture of final product and clearance of goods up to place of the removal of the final product. He further states, the 2nd part of the definition, which is inclusive part, includes any service utilized for procurement of inputs. Reliance was placed on the ruling of Honourable Supreme Court in the case of Regional Director V/s High Land Coffee Works reported in 1991 (3) SCC 617 wherein it was held that once an activity is related to business, it has to be considered as an input service and the credit of the same could not be denied. The SCN was adjudicated vide order-in-

original dated 29/3/2012 confirming the proposed demand with interest and equal amount of penalty was imposed under Rule 15 of Cenvat Credit Rules, 2004 read with section 11 AC of the Central Excise Act 1944. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) with the impugned order allowing the appeal in part, held as follows:

> "In view of the above, I find that the "Security Service" is utilized by the appellant at cane collection centre away from the factory and it has no direct or indirect nexus with the manufacturing activity nor integrally related to the business activity of the appellants, thus not eligible for the cenvat credit under the definition of the input service. On the face of these facts, I am of the view that the cenvat credit in respect of the service tax paid on "Security Service" at cane collection centre are not covered under the definition of the "input service" under rule 2(l) of the Cenvat Credit Rules, 2004. Therefore, they were not entitled for such cenvat credit and I hold the same accordingly.
>
> As regards to the imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944, I find that the issue is related to the interpretation of the statutes relating to the availment of cenvat credit on input service. In the impugned order, nothing is on the record to establish malafide on the part of the appellant. Therefore the imposition of the penalty is not justifiable therefore liable to set aside."

3. Being aggrieved the appellant assessee is in appeal before this Tribunal. The ld. Counsel relies on the Final Order No. 55397/2013 dated 08/01/2013 passed in Appeal No. E/3604/2012-(SM) wherein co-ordinate

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bench of this Tribunal have held that security services received at the Cane Collection Centre, located outside the factory of production in eligible input, that the said service cannot be said to be not in relation to business. The ld. Counsel also relied on the contentions made by them before the Courts below. Accordingly the learned Counsel prays for allowing the appeal.

3. The learned A.R. for Revenue relies on the impugned order. He further places reliance on the D.B. decision the judgement of this Tribunal in the case of Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs. CCE Belapur reported in 2013 (288) E.L.T. 316 (Tri.-Mumbai) wherein under the facts that services were used in installation of storage tanks outside the factory for storage of input – ammonia at the JNPT, which was required in manufacturing of final product at the factory, this Tribunal held that the services used in installation of storage tanks outside the factory is not allowable, as inclusive definition of input service also includes input services used in relation to storage up to the place of removal. Storage up to place of removal will include the storage of final products and not for storage of inputs, because whenever legislature wanted to give the benefit, in respect of, inputs it has done so by specifically mentioning as procurement of inputs, and inward transportation of the inputs.

4. Having considered the rival contentions, I find that the security services utilizing at the Cane Collection Centre, located outside the factory of production squarely falls in the inclusive part of the definition of input service, which specifically provides for services used in relation to

procurement of inputs under Rule 2 (l) of Cenvat credit Rules, 2004. I find that the ruling ~~is~~ relied upon by the Revenue is distinguishable and not applicable in the facts of the present case. In the case of the Deepak Fertilizers & Petrochemicals Corpn. Ltd. (supra) the input service was utilized in installation of the storage tank outside the factory. Whereas in the present case input services have been utilizing for procurement of inputs, that is sugar Cane, required for manufacture of excisable goods, being sugar and molasses. Accordingly the appeal is allowed. The impugned order is set aside, so far as it confirms the disallowance of Cenvat credit on security service. The appellant will be entitled to consequential benefit, in accordance with law.

(Dictated in the open court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

सत्यापित प्रति / Certified True Copy
24.10.16
सहायक पंजीकार / Asstt. Registrar