CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

~~~~~

REGIONAL BENCH – COURT NO. 1

Appeal No. E/60939/2019

[Arising out of OIA No. LUD-EXCUS-001-APP-2289-90-91 dated 05.04.2019 passed by the Commissioner (Appeals) of Central Goods and Service Tax, Shimla]

M/s Freudenberg Nok Pvt. Ltd. : **Appellant (s)**
Formerly Known As Sigma Freudenberg Nok Pvt Ltd
B- 70 Industrial Area Phase Vii Sas Nagar
MOHALI
PUNJAB
160055

Vs

CCE & ST- Chandigarh-i : **Respondent (s)**
Plot No. 19,CENTRAL REVENUE BUILDING,
SECTOR 17-C,
CHANDIGARH
160017

APPEARANCE:
Ms. Krati Somani, Advocate for the Appellant
Shri Basha Ram, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER No. 60919 / 2019

Date of Hearing/Decision: 31.10.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the cenvat credit on Guest House has been denied to the appellant for the period October 2009 to March 2015 on the ground that the guest house maintained by the appellant which has been taken on rent is not an input service in terms of Rule 2(l) of CCR, 2004.

2. The Ld. Counsel for the appellant submits that the said guest house has been used by the officials/executives of the company of visit to India and technical experts who used to visit their factory for
~~~~~

maintenance or providing technical assistance to the appellant company located in Mohali. In fact, this foreign experts used to land in India at New Delhi, Palam Airport which is near to Gurugram where the appellant has taken guest house on rent. So, the guest house has been used for technical assistance provided by the technicians and ultimately, the same is an input service (indirectly) availed by the appellant in terms of Rule 2(l) of CCR, 2004. She also relied on the decision of the Hon'ble Bombay High Court in the case of ***ACG Associated Capsules P. Ltd. vs. Commissioner of Central Excise, Thane-III 2019 (20) GSTL 346 (Bom.)***.

3. On the other hand, the Ld. AR relied on the decisions in the case of ***Commissioner of Central Excise, Nashik vs. Mahindra & Mahindra Ltd. 2015 (35) STR 298 (Tri.-Mumbai), Manatech Electronics Pvt. Ltd. vs. Commissioner of Central Excise, Punducherry 2017 (47) STR 239 (Tri.-Chennai), IFB Industries Ltd. vs. Commissioner of Central Excise, Customs & Service Tax, Bangalore-I 2017 (4) GSTL 366 (Tri.-Bang.), Hindustan Zinc Ltd. vs. Commissioner of Central Excise, Jaipur-II 2011 (23) STR 274 (Tri.-Del.).***

4. Heard the parties and considered the submissions.

5. I have gone through the decisions relied upon by the Ld. AR and in none of the decision, this Tribunal has discussed the uses of guest house by the assessee whether these guest houses have been used for official purposes or personal use of the employees or not?

In fact, the cenvat credit is to be allowed for the use of service in respect of manufacturing activity directly or indirectly when the said observation has missing, therefore, all these decisions of this Tribunal are not reliable. Further in the case of ***ACG Associated Capsules P. Ltd. (supra)*** the Hon'ble High Court in its order has made an observation that it is to be decided for what purpose guest house has been used. Therefore, in the light of the decision of the Hon'ble High Court of Bombay, I have to examine the use of guest house by the appellant. As contended by the Ld. Counsel by the appellant is that the guest house has been used by the foreign technicians who used to visit their factory for technical assistance which ultimately resulted in production of their final goods, in that circumstances, I hold that the stay of technicians is used for manufacturing activity and the same is eligible as input service in terms of Rule 2(l) of CCR, 2004. Therefore, relying on the decision of this Tribunal in the case of ***M/s Honda Motorcycle & Scooter India P. Ltd. vs. CCE, Delhi-III 2019 (4) TMI 927-CESTAT Chandigarh***, I allow the cenvat credit to the appellant.

6. In these terms, I set-aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.