

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI**

Appeal No. E/40085/2018

(Arising out of Order-in-Appeal No. 235/2017 (CTA-II) dated 30.09.2017 passed by the Commissioner of Central Tax : C.G.S.T. & Central Excise, Chennai)

M/s. Fenesta Buildings Systems : Appellant

Vs.

The Commissioner of G.S.T & Central Excise, : Respondent
(Chennai – Outer)

Appearance:-

Shri. S. Ramachandran, Consultant
for the Appellant

Shri. R. Subramaniyan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision: **28.06.2018**

Final Order No. 42111 / 2018

The appellant, M/s. Fenesta Buildings Systems (A Division of DCM Shriram Consolidated Ltd.), Plot No. 1, Area-III, CMDA Industrial Complex, Maraimalai Nagar – 603209 are engaged in the manufacture of UPVC Doors & Windows and parts falling under

chapter heading 39 of the Central Excise Tariff Act, 1985. They availed CENVAT Credit on inputs, capital goods and input services and utilized the same for payment of duty.

1.2 Based on audit observations, a Show Cause Notice in No. 11/2015-CE dated 09.09.2015 was issued on the appellant for recovering Rs. 71,074/- (being the CENVAT Credit wrongly availed) along with interest and for imposing penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944 on the allegations that the appellant had wrongly availed service tax credit on 'Gardening Services' during the period from 30.08.2011 to 28.10.2013 which, according to the Revenue was not used either directly or indirectly in the manufacture of the final products as stipulated in Rule 2(l)(ii) of the CENVAT Credit Rules, 2004. The appellant replied to the said Show Cause Notice stating that :

- (i) They were statutorily required to maintain gardening and green cover and plants in order to obtain consent from TNPCB which is essential for establishing and running of the factory and cited certain case laws in support of their case.

- (ii) The demand was 'time barred' as the SCN was issued after two years from the knowledge of the Department hence, and liable to be set aside along with interest and penalty proposals, etc.

1.3 The Assistant Commissioner-adjudicating authority, however, after due process of law, passed Order-in-Original No. 11/2017 - CE dt. 03.03.2017 whereby he confirmed the demand and interest as proposed in the Show Cause Notice. Aggrieved by the said order, the appellant preferred an appeal before the Commissioner of Central Excise (Appeals-II), Chennai and the Commissioner (Appeals) vide impugned order dt. 30.09.2017 allowed the appeal in part, against which the appellant is before this forum.

2. Heard Shri. S. Ramachandran, Ld. Consultant for the appellant and Shri. R. Subramaniyan, Ld. Department Representative for the Revenue.

3.1 The Ld. Consultant submitted that the appellant is statutorily required to maintain gardening , green cover and trees in order to obtain consent from TNPCB, which is essential for establishing and running of the factory and the expenses incurred towards the aforesaid maintaining of gardening, including service tax paid,

formed part of the value of final products and, therefore, the above input services were very much part of and used in or in relation to the manufacture of excisable goods.

3.2 The Ld. Consultant relied on the following judgments :

- *C.C.E. & S.T., LTU, Chennai Vs. Rane TRW Steering Systems Ltd. – 2015 (39) S.T.R. 13 (Mad.) – para 8*
- *Millipore India Ltd. Vs. C.C.E. Bangalore – II – 2009 (13) S.T.R. 626 (Tri. – Bang.) – para 5*
- *Union Of India Vs. HEG Ltd. – 2011 (24) S.T.R. 275 (Chattisgarh) – para 6*
- *Wipro Ltd. Vs. C.C.E. Puducherry – 2017-TIOL-897-HC-MAD-ST – para 5.4,7 & 8*
- *M/s. Sri Rama Vilas Services Ltd. Vs. CESTAT – 2017-TIOL-807-HC-MAD-CX – para 6,8 & 8.1*
- *Murugappa Morgan Thermal Ceramics Ltd. Vs. C.C.E. Ahmd.-III – 2014 (33) S.T.R. 181 (Tri. – Ahmd.) – para 6*
- *Mukund Ltd. Vs. C.C.E., Belapur – 2017-TIOL-4264-CESTAT-MUM – para 4*
- *M/s. Thyssenkrupp Elec. Steel India P Ltd. Vs. C.C.E. Nashik – 2017-TIOL-1126-CESTAT-Mum – para 6 & 7*
- *C.C.E. Delhi-III Vs. Suzuki Motorcycle India Pvt. Ltd. – 2017 (47) S.T.R. 85 (Tri. – Chand.) – para 4*

4. *Per contra*, Ld. DR supported the findings of the lower authorities.

5. I have considered the rival contentions and have gone through the pleadings and the judgments referred to during the course of arguments. I find that the jurisdictional High Court of Madras, in *M/s. Wipro Ltd. Vs. C.C.E. Goubert Avenue (Beach Road), Pondicherry [2017-TIOL-897-HC-MAD-ST]* relied on by the Ld. Consultant, has

considered an issue relating to Housekeeping, Landscaping and Gardening Services and the relevant portion is as under:

“5. To be noted, the appellant is in the business of manufacturing computers and automatic data processing machines, falling under Chapter Heading 8471 of schedule to the Central Excise Tariff Act, 1985.

5.1 The appellant inter alia had been taking credit of service tax, paid on manpower supplied for house keeping and gardening and for courier services.

5.2 As indicated above, though the Tribunal granted relief via the impugned judgment and order, vis-à-vis, cenvat credit taken on courier service, it declined relief with respect to house keeping and gardening services.

5.3 It is, in these circumstances that the matter has travelled to this Court.

5.4 As indicated above, this Court in similar circumstances held that cenvat credit would be available to an Assessee with respect to housekeeping and landscaping services.

5.5 This court, followed the view of the Division Bench of the Karnataka High Court in Commissioner of Central Excise, Bangalore II Vs. Millipore India Pvt. Ltd. , 2012 (26) S.T.R. 514 (Kar). The relevant observations of this Court in Rane TRW Steering Systems Limited case are extracted hereinafter:

7. In Commissioner of Central Excise, Bangalore-II v. Millipore India Pvt. Ltd. [2012 (26) S.T.R. 514 (Kar.)], the Division Bench of the Karnataka High Court had occasion to consider similar issue and in the facts of the said case, while considering the definition ‘input services’ as defined under Section 2(l) of the Cenvat Credit Rules, 2004, the Karnataka High Court held as under :-

“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 therewith, 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."

8. A cursory reading of the said judgment reveals that the facts in issue therein are similar to the facts in the present case. It is clear from the decision that where an employer spends money to maintain their factory premises in an eco-friendly manner, the tax paid on such services would form part of the cost of the final products and the same would fall within the ambit of "input services" and, therefore, the assessee is entitled to claim the benefit. This Court is in agreement with the ratio laid down in Millipore India Pvt. Ltd. case (supra), which is equally applicable to the case on hand and following the said decision, this appeal is liable to be dismissed. Accordingly, the substantial question of law is answered in favour of the assessee/respondent and against the appellant/Revenue. (emphasis is ours)

6. Mr. Srinivas, who appears for the Revenue, does not dispute the fact that the house keeping and land scaping services are availed of by the Assessee in its factory premises.

7. Having regard to the aforesaid, to our minds, the ratio of the judgments rendered in Commissioner of Central Excise and Service Tax Vs. Rane TRW Steering Systems Limited, 2015 (39) S.T.R. 13 (Mad.) = 2015-TIOL-1057-HC-MAD-CX and in Commissioner of Central Excise, Bangalore II Vs. Millipore India Pvt. Ltd., 2012 (26) S.T.R. 514 (Kar.), would apply to the facts of this case. Accordingly, both the questions of law, are answered in favour of the Assessee and against the Revenue.

8. The impugned judgment and order of the Tribunal is set aside. The appeals are consequently, allowed. However, there shall be no order as to costs."

6. I find that the issue involved in the above case on hand is, therefore, squarely covered by the ruling of the jurisdictional High Court and by the principle of *stare decisis*, I allow the above appeal with consequential reliefs, if any.

(Operative part of the order was
pronounced in open Court)

(P Dinesha)
Member (Judicial)

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