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

Appeal No.: E/41120/2018

(Arising out of Order-in-Appeal No. 21/2018 dated 07.02.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals), Coimbatore Circuit Office at Salem)

M/s. GE T&D India Ltd., : Appellant
(Formerly M/s. Alstom (T&D) India Ltd.),
FSSC Building,
19/1, GST Road, Pallavaram,
Chennai – 600 043

Versus

The Commissioner of G.S.T. & Central Excise, : Respondent
Salem Commissionerate

Appearance:-
Ms. Mary Ross, Advocate
for the Appellant,
Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **05.11.2018**

Final Order No. 42935 / 2018

The appellants are holders of Central Excise Registration and are engaged in the manufacture of Relays, Control Panels, ODS switches and parts thereof falling under Chapter Heading 85 of the Central Excise Tariff Act, 1985.

1.2 During verification of records, it was noticed that the appellant had availed CENVAT Credit of service tax towards the following services :

(i) Supply of Security Personnel deputed along with the goods to various customer sites; and

(ii) Supply of Manpower for Gardening and Housekeeping.

The appellants utilized the same for payment of Central Excise Duty on finished goods for the period April, 2015 to December, 2015.

1.3 A Show Cause Notice dated 15.04.2016 was issued proposing to demand an amount of Rs. 11,17,982/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, along with applicable interest and penalty on the ground that the above said services had no nexus with the manufacture of excisable goods. After due process of law, the lower adjudicating authority vide Order-in-Original No. LTUC/760/2016-DC dated 23.12.2016 confirmed the demand, interest and also imposed penalty of Rs. 1,11,798/- under Rule 15(1) of the CENVAT Credit Rules read with Section 11AC(1) of the Central Excise Act. Thereafter, on appeal before the

Commissioner of G.S.T. & Central Excise (Appeals) Coimbatore Circuit Office at Salem, the Commissioner (Appeals) rejected the appeal filed by the assessee and upheld the Order passed by the lower adjudicating authority. Aggrieved by the same, the appellant is in appeal before this forum.

2. Today when the matter came up for hearing, Ld. Advocate Ms. Mary Ross appeared on behalf of the assessee and Ld. AC (AR) Shri. L. Nandakumar appeared on behalf of the Revenue.

3. During the course of hearing, Ld. Advocate submitted that the issue relating to supply of Manpower for Housekeeping and Landscaping were held to be eligible input services by the jurisdictional High Court in the case of ***Wipro Ltd. vs. Commissioner of C. Ex., Pondicherry reported in 2018 (10) G.S.T.L. 172 (Mad.).***

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

5. I have heard the rival contentions, perused the documents placed on record and have also gone through the judgement of the Hon'ble Madras High Court *(supra)* relied on by the Ld. Advocate.

6.1 On a perusal of the order/decision in the case of *Wipro Ltd. (supra)*, I find that the Hon'ble jurisdictional High Court after considering the rival contentions has ruled as under :

> ***"5.4*** *As indicated above, this Court in similar circumstances held that Cenvat credit would be available to an Assessee with respect to house keeping and land scaping services.*
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> ***5.5*** *This Court, followed the view of the Division Bench of the Karnataka High Court in Commissioner of Central Excise, Bangalore-II v. 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 :*
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>> *"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 :-*
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>>> *"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."*
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> *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."*
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> *(emphasis is ours)*
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> ***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.*
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> ***7.*** *Having regard to the aforesaid, to our minds, the ratio of the judgments rendered in Commissioner of Central Excise and Service Tax v. Rane TRW Steering Systems Limited, 2015 (39) S.T.R. 13 (Mad.) and in Commissioner of Central Excise, Bangalore-II v. 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.*
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> ***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."*

6.2 The reasoning of the Hon'ble High Court squarely applies to the Supply of Manpower for Gardening as well and therefore, the issue with regard to the Supply of Manpower for Gardening and Housekeeping is allowed in favour of the appellant.

7. With regard to the second issue, I find force in the contentions of the Ld. Advocate with regard to the Supply of Security Personnel deputed along with goods to the customer's sites; that the same was very much essential since the value of the equipment/goods was very high and the supply depended on timely delivery. When the Manpower is used for Gardening and Housekeeping, Security Personnel/Watchmen engaged in overall security of their business premises could be held to be eligible, the same logic should equally apply to the same personnel being engaged for the services related to the appellant's business and in assisting safe delivery. In view of the foregoing I am of the view that the impugned Order is unsustainable for which reason the same is set aside.

9. The appeal is therefore allowed with consequential benefits, if any, as per law.

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

(P Dinesha)
Member (Judicial)

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