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

Appeal No.E/41991/2016

[Arising out of Order-in-Appeal No.60/2016 dt. 29.07.2016 passed by the Commissioner (Appeals-I), Central Excise & Service Tax, LTU, Chennai]

Brakes India Private Ltd. — Appellant

Versus

Commissioner of Central Excise & ST, LTU
Chennai — Respondent

Appearance:

Shri M. Kannan, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision : 30.06.2017

FINAL ORDER No. 41109/2017

Dispute in this appeal relates to eligibility or otherwise of input service credit availed by appellant in relation to gardening services during the period April 2013 to March 2014. It appeared to the department that the said service was not connected with their manufacturing activity. Hence proceedings were initiated against the appellant proposing recovery of allegedly wrongly availed credit of Rs.1,55,039/- along with interest thereon and imposition of penalty under various provisions of law. These proposals were confirmed by the original authority and in appeal, upheld by the Commissioner (Appeals) in the impugned order dt. 29.07.2016.

2. Today, when the matter came up for hearing, Ld. Advocate Shri M. Kannan submits that gardening services were availed due to the requirement of the Karnataka State Pollution Board. He takes me to the order dt. 25.02.2004 of the Karnataka State Pollution Control Board on page 48 of the appeal, according to which, the appellant should discharge sewage and trade effluent from the premises into on land for irrigation (gardening) after due treatment. For this reason, the gardening services had to be availed by them under the statutory requirement and hence same should be considered as 'input services' for the purpose of Rule 2 (l) of CCR 2004. He also placed reliance on the ratio of the Tribunal decision in *Lifelong Meditech Ltd. Vs CCE & ST Gurgaon-II* - 2016 (44) STR 626 (Tri.-Chan.) and *CCE Delhi Vs Suzuki Motorcycle India Pvt. Ltd.* – 2017 (47) STR 85 (Tri.-Chan.) which have held that where the assessee is compulsorily required to maintain a garden in their factory for pollution control norms, and therefore Horticulture services thereat are directly relating to manufacturing activity of the appellant, hence they are entitled to avail cenvat credit thereof.

3. On the other hand, Ld. A.R supports the impugned order.

4. From the facts of the case, I find that maintenance of garden is a statutory requirement enjoined on the appellant by

the State Pollution Control Board. This being so, and also following Tribunal's decisions cited by appellant, I hold that denial of input service credit in this case is not correct. Impugned order cannot therefore sustain and will have to be set aside, which I hereby do. Appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

03.07.2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

gs

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

प्रमाणित प्रति / Certified True Copy
3/7
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai