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

E/42098/2016

[Arising out of Order-in-Appeal No.65/2016, dated 18.08.2016 passed by the Commissioner (Appeals) LTU, Chennai]

M/s. SAINT GOBAIN GLASS INDIA LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX (LTU), CHENNAI RESPONDENT

Appearance:

For the Appellant Shri S. Muthuvenkataraman, Adv.
For the Respondent Shri R. Subramanian, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **28-04-2017**

FINAL ORDER NO. 10680/2017

Per Archana Wadhwa:

After hearing both sides, I find that the short issue involved in the present appeal is as to whether the Landscaping Services and Fumigation Services availed by the assesee are required to be considered as cenvatable, so as to enable the appellant to avail the credit of service tax paid on the same.

2. From the impugned order, I find that Commissioner (Appeals) has observed that though the assessee has placed reliance on various decisions of the High Court and appellate forums, he is of the firm opinion that the words of the statutes are to be preferred and that do not allow such service to be considered as cenvatable services.

3. I find that the issue has been the subject-matter of various precedent decisions. The Hon'ble High Court of Karnataka in the case of *Commissioner of Central Excise, Bangalore-II Vs Millipore India Pvt. Ltd.* reported in *2012 (26) S.T.R. 514 (Kar.)* has observed that landscaping of the factory would fall within the concept of modernization, renovation, repair etc., of the premises. The environmental law expects the employer to keep the factory without contravening any of the laws and concept of corporate social responsibility is also relevant. By observing so, the Hon'ble High Court has held that such services are cenvatable. To the same effect is the decision of the Hon'ble High Court of Madras in the case of *Commissioner of Central Excise & Service Tax, LTU, Chennai Vs Rane TRW Steering Systems Ltd.,* reported in *2015 (39) S.T.R. 13 (Mad.)*. The said decision has been followed by Tribunal in catena of judgments. One such reference can be made to Tribunal decision in the case of *DCM Shriram Consolidated Ltd. Vs Commissioner of Central Excise, Jaipur-I* reported in *2014 (36) S.T.R. 1120 (Tri.-Del.)*. In terms of the said decision, the landscaping of the factory is an essential condition required to be undertaken by manufacturers in terms of the Pollution Control Board's directions also and as such has to be treated as cenvatable activity.

4. As regards fumigation, it stands explained by the learned advocate that fumigation is undertaken for cleaning up of the machines installed in the factory and for disinfecting them from various pests or infectant. In the absence of such fumigation, the output of the factory could be effected, leading to the breakdown of the machinery etc. As such, the fumigation is part and parcel of the

Customs, Excise & Service Tax Appellate Tribunal running of the factory and is required to be undertaken by every manufacturer. As such, it can be safely concluded that the same is an activity related to the manufacture of the final product, in which case, the same has to be treated as cenvatable activity.

5. In view of the foregoing, I hold that the appellant is entitled to avail credit of service tax paid on both the services. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

8/5/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
09-05-2017

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

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