CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1854 of 2012

(Arising out of Order-in-Original No. Belapur/28/Tal/R-V/COMMR/KA/12-13 dated 31.08.2012 passed by Commissioner of Central Excise, Belapur)

M/s. Asahi India Glass Ltd. **Appellant**
Plot No. T-7, MIDC Industrial Area,
Taloja-410 208, Dist. Raigad.

Vs.

Commissioner Central Excise-Belapur **Respondent**
1st Floor, C. G. O. Complex, CBD, Belapur,
Navi Mumbai-400 614.

Appearance:

Shri. Prashant Patankar, Consultant, for the Appellant
Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 01.03.2023
Date of Decision:01.03.2023

FINAL ORDER NO. 85787/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against order in original No Belapur/28/Tal/R-V/COMMR/KA/12-13 dated 31st August 2012 of the Commissioner Central Excise Belapur. By the impugned order following has been held:

"ORDER

i. *I allow the credit of the Service Tax paid on Export related services viz., clearing service, CHA Service, Terminal Handling Charges for the transportation of export related goods upto the port i.e. place of removal.*
ii. *I disallow the credit of Rs.11,59,927/- (Rupees Eleven lakhs Fifty Nine thousand Nine Hundred Twenty Seven only), availed, on the service tax paid by them for services viz. (i) Bus & Car Hire Services and Rent-a-Cab service, (ii) Canteen Services (Outdoor Catering Services) & (iii) Garden maintenance Services, under the provisions of Rule 2(1), Rule 3 and Rule 14 of Cenvat Credit Rules, 2004 read with*

proviso clause to Section 11A (1) [Now Section 11A (4) as amended by the Finance Aet, 2011] of Central Excise Act, 1944 for the reasons stated above.

iii. *I order recovery of interest at appropriate rate on the amount of demand confirmed at para (ii) above, under the provisions of Section 11AB [Now Section 11AA of the Finance Act, 2011] of the Central Excise Act, 1944;*

iv. *I impose a penalty of Rs. Rs.11,59,927/- (Rupees Eleven lakhs Fifty Nine thousand Nine Hundred Twenty Seven only) under the provisions of Rule 15(2) of Cenvat Credit Rules, 2004, read with Section 11AC of Central Excise Act, 1944. However, if the assessee pays the duty determined along with interest as detailed in (ii) & (iii) above, within 30 days of receipt of the order, then the penalty liable to be -paid is reduced to 25% of the penalty imposed as per Section 11AC (1) (c), otherwise the penalty imposed under Section 11 AC (1) (a) read with Rule 15(2) of CENVAT Credit Rules, 2004, above will remain."*

2.1 Appellant is engaged in the manufacture of Floatglass (Tinted and not Tinted) falling under Chapter 70 of the First Schedule' to the Central Excise Tariff Act, 1985 and avail Cenvat credit on input services under the Cenvat Credit Rules, 2004. They had taken credit of service tax paid on Bus & Car hire service. Outward, Canteen Service, Garden Input Service (Export related). Export related clearance - maintenance Service. Clearing Charges Export. Terminal Handling Charges for the period October 2006 to November 2010. Revenue was view that these services cannot be treated as input, services in terms of Rule 2 (l) of Cenvat Credit Rules, 2004 as the same are not used directly or indirectly in or in relation to manufacture of final product and clearance of final products from the place of removal.

2.2 A show cause cum demand notice dated 08/06/2011 was issued to the appellant asking them to show cause as to why:-

i. Inadmissible Cenvat credit of Rs.52,93,872/- (Rupees Fifty Two lakhs Ninety Three thousand. Eight hundred Seventy two only), availed by them should not be recovered from them under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with proviso clause to Section 11A(1) [Now Section 11A(4)] of Central Excise Act, 1944 for the reasons stated above.

ii. Interest should not be charged and recovered from them under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AB-[Now Section 11AA] of the Central Excise Act, 1944.

iii. Penalty under the provisions of Rule 15 of Cenvat Credit Rules, 2004, read with Section 11AC of Central Excise Act. 1944 should not be imposed upon them for contravention of the provisions of Rule 3 read with Rule 2(1) of Cenvat Credit Rules, 2004.

2.3 The show cause notice has been adjudicated as per the impugned order referred in para 1 above. Aggrieved appellants have filed this appeal.

3.1 Have heard Shri Prashant Patankar Consultant for the appellant and Shri Sunil Kumar Katiyar Assistant Commissioner Authorized Representative for the revenue.

3.2 Arguing for the appellant learned Consultant submits:-

- Issue is denial of cenvat credit of Rs. 11,59,927 in respect of three 'input services', namely 'Bus & Car Hire Service', 'Canteen Service' and 'Garden Maintenance Service' for the period October 2006 to November 2010, confirmed by the Commissioner, Belapur while allowing the cenvat credit in respect of other services.
- Entire disputed is for period October 2006 to November 2010 i. e., prior to the amendment to the definition of 'input service' in Rule 2(l) of Cenvat Credit Rules.
- The term 'input service' is wide enough to include the subject services within its ambit. The definition employs the expression 'means and includes'. The use of word 'includes', expands the scope of the term 'input services' beyond the meaning imparted by the term 'means'. Thus, the services which may otherwise have not come within the ambit of the definition clause are included by the use of the term 'includes'. Accordingly, the term 'input service' includes services used in relation to 'activities relating to business'. The 'activities relating to business' further expands the scope of the term 'input service' as each word 'activities', 'relating to' and 'business' is of wide import. Reliance is placed on decisions of Hon'ble Bombay High Court in the case Ultratech Cement Ltd. [2010 (20) S.T.R. 577 (Bom) and Coca Cola India Pvt Ltd. [2009 (15) STR 657 (Bom)]
- Commissioner (Appeals) in his Order-in-Appeal NO CD/36/Belapur/2015 dated 02/01/2015 has allowed the cenvat credit in respect of the same three services for the period up to March 2011 in Appellant's own case and disallowed for the subsequent period between April 2011 to August 2011 The order of the Commissioner (Appeals) was accepted by the department. Tribunal vide order No A/91796-91798/ allowed the appeal filed by the assessee and

allowed cenvat credit even for the period from April 2011 to August 2011.

- Commissioner (Appeals), New- Delhi-III, also in assessee's own case relating to Haryana Unit allowed the cenvat credit on the same three services for the period up to March 2011.
- Reliance is also placed on the following decisions:
  - Nirma Ltd. [2010 (20) STR 346 (Tri Ahmd)]
  - Millipore India [2012 (26) STR 514 (Kar)]
  - Millipore India Ltd. [2009 (13) STR 616 (Tri Bang)]
  - Brakes India Ltd. [2010 (19) ELT 524 (Tri Bang)]
  - ISMT Ltd. [2010 (20) STR 68 (Tri. Mumbai)]
  - Kirloskar Oil Engines Ltd. 2010 (20) STR 30 (Tri. Mumbai)
- Extended period not invokable: The assessee submits that the issue involved being one of interpretation, the SCN is barred by limitation in as much as it invokes the extended period of limitation. Reliance placed on the decisions as follows:
  - Padmini Products [1989 (43) ELT 195 (SC)]
  - Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]
  - NRC Ltd. [2007 (209) ELT 22 (Tri. Mumbai)]
  - Universal cables Ltd. [2007 (7) STR 310 (Tri Del)
- Assessee agrees for the reversal of proportionate credit on the part of the value of services recovered from the employees. Hon'ble High Court in the case of Ultratech Cement Ltd. 2010(20)S.T.R.577 (Bom) while allowing the cenvat credit in respect of 'outdoor catering service' (Canteen service) held that the cost of any input service that forms part of value of final products would be eligible for CENVAT credit. We submit that the Appellant had recovered some amount of 'Bus & Car Hire Service' and the 'Canteen Service (outdoor catering service)' from its employees and the Appellant is inclined to reverse the proportionate cenvat credit as is related to the amount recovered from the employees. They are submitting the self certified statement of the amounts recovered from their employees and service tax credit to be reversed on the same:
- The cenvat credit on the three subject services may be allowed on the grounds of merit as well as limitation, with consequential relief.

3.3 Learned authorized representative reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 In respect of the disputed services impugned order records the findings as follows:

iii) Bus and Car Hire Service- Rent a Cab

In their reply, the assessee stated that this is a facility provided by the Company in bringing its employees from different locations to the factory and back to the said locations. The said services are necessary for timely attendance of the workers in the factory which operates on 24 hours basis and also the administrative staff during office hours. This enhances the efficiency of the workmen who are employed in the manufacture of excisable goods in their factory premises and also helps in smooth administration of the factory.

It is observed that Rent a Cab service/Tour Operator Service were used for the purpose of transporting employees to factories and administrative staff to office. I find that there is a clear nexus between the manufacturing activity and transport provided to employees when transport facilities are provided only to their factory and not to the office. Thus it is clear that the assessee is eligible for the credit only if the transportation so provided is related to the manufacturing activity i.e for the transportation of workers to the factory which is related with manufacturing activity. Further the assessee is eligible for the credit only if they do not collect transportation charges from their workers. I find that the Hon'ble Bombay High Court in the case of M/s. Ultratech Cement held that once tax born by the ultimate consumer of services, namely workers; the manufacturer cannot take credit of that part of tax. The relevant portion of the order para 39 is as under-

"39. The Larger Bench of CESTAT in the case of GTC Industries Ltd. (supra). has also observed that the credit of service tax would be allowable to a manufacturer even in cases where the cost of the food is borne by the worker (see last para). That part of the observation made by the Larger Bench cannot be upheld, because, once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer. Shri Shridharan, learned Counsel for the assessee fairly conceded to the above position in law and in fact filed an affidavit affirmed by a responsible officer of the assessee wherein it is stated that the proportionate credit to the extent embedded in the cost of food recovered from the employee/worker has been reversed."

Thus it is clear that the assessee is eligible for 'credit only if transportation provided is for their workers related to manufacturing activity upto their factory and they do not collect the charges from their workers for the said facility. This view is also supported by the Hon'ble Cestat in the case of Disa India Ltd. vs. Commissioner Bangalore & Titan Industries Ltd. vs. Commissioner Bangalore-I 2011(23) STR 600 (Tri. Bang).

The assessee vide their letter 29/08/2012 have informed that they have recovered the amount of Rs.10,24,150/- from their employees towards 'Bus & Car Hire (transportation) service for the relevant period. However, they could not adduce any documentary evidence for burden of service tax borne by them in the support of their claim in this regard. They have also not produced any evidence to show that the Bus service was not used to transport their staff to the office. Hence, I find that in the present case, the company employees had paid for the Bus Services and borne the burden of service tax paid on 'Bus and Car Hire Service,' and the assessee is not eligible for the Cenvat credit thereof.

In view of the above, I hold that cenvat credit is not admissible under Rule 3 read with Rules 2(1) of Cenvat Credit Rules, 2004 for the "Bus & Car Hire Service and Rent Cab Service" used by the assessee.

iv) Outdoor Catering Service/Canteen Service-

The assessee contended that, the Canteen service as mentioned in the impugned Notice, which fall under the category of Outdoor catering services rendered by contractors are used within their factory premises for providing canteen facilities to the their employees. The said canteen facility is necessary and mandatory under the Provisions of the Factories Act. They stated that the entire Service Tax on the said Outdoor catering service paid to the service provider is borne by the Company and not recovered from the employees. -

The assessee is carrying on the business of manufacturing by employing more than 250 workers. It is a mandatory requirement under the provisions of the Factories Act, 1948 to provide canteen facilities to the workers. To comply with the above Statutory provision, the assessee had engaged the services of an outdoor caterer. Thus, in the facts of the present case, use of the services of an outdoor caterer has nexus, or integral connection with the business of manufacturing the final product., The Hon'ble Tribunal in the case of GTC Industries Ltd. held that the assessee is entitled to the credit of service tax paid on outdoor catering service subject to the condition that the incidence has not been passed on to the employees.

I find that the definition of input service only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable subject to the condition that the charges are not recovered from the employees. The outdoor catering services has been held to be an activity relating to business of manufacture and sale of the finished goods by the Hon'ble Bombay High Court in the case of Commissioner of Central Excise. Nagpur 2010 (20) STR 577(Bom) and accordingly it is an "input service" as defined under Rule 2(1) of the CENVAT Credit Rules, 2004. I find that the Hon'ble Bombay High Court in the instance case also held that once the service tax is born by the ultimate consumer of services, namely workers; the manufacturer cannot take credit of that part of tax'. The relevant portion of the order para 39 is discussed in para 19(iii) above. Thus it is clear that the assessee is eligible for credit only if canteen services provided is for their workers related to manufacturing activity and that they do not collect the charges from their workers for the said facility.

The assessee in their reply dated 06/08/2011 have stated that the entire Service Tax on the said Outdoor catering service paid to the service provider is borne by the Company and not recovered from the employees. Then, the assessee vide their letter dated 29/08/2012 have informed that, they have recovered an amount of Rs.7,41,500/- from their employees towards the 'Canteen' (Outdoor Catering) service provided, during the relevant period. However, they could not advance any documentary evidence regarding the burden of service tax borne by them. I also find that they keep on changing their stand. Initially they claimed that they are not recovering any charges from the workers. Later they informed that they are collecting the charges from the workers without any documentary evidence in support of their claim. Hence, I find that in the present case, the company employees had paid for the catering services and borne the burden of service tax paid on 'Canteen service" and the assessee is not eligible for the Cenvat credit of service tax thereof.

In view of the above, I hold that cenvat credit is not admissible under Rule 3 read with Rule 2 (l) of Cenvat Credit Rules, 2004 for the "Outdoor Catering Service/Canteen Service" used by the assessee.

v) Garden maintenance services-

It is being contested by the asessee that they are required to create and maintain a garden inside the factory premises as per the conditions/norms of Maharashtra Pollution Control Board. Cenvat credit of Service Tax is governed by the provisions of Cenvat Credit-Rules, 2004 and not under Factories Act. Hence, the assessee should follow what is allowed under the Cenvat Credit Rules, 2004. All expenses incurred by business cannot be considered as activities related to business activity - there should be some nexus between services utilized and manufacture of final product. If the intention was to include such services, the definition of input service could have been made much simpler to include all services paid for by the manufacture. Maintenance of garden could not said to be an input service as there is no relation with the manufacturing activity. I find that the Hon'ble Bombay High Court in the case of M/s. Ultratech Cement held that the services having nexus or integral connection with the manufacture of final product as well as the business of manufacture of final product would qualify to be "input service". The relevant portion of the order para 31 is as under-

"31. In our opinion, the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra) in the context of the definition of 'input' in Rule 2(k) of 2004 Rules would equally apply while interpreting the expression "activities relating to business" in Rule 2(1) of 2004 Rules: No doubt that the inclusive part of the definition of "input" is -restricted to the inputs used in or in relation to the manufacture of final products. _whereas the inclusive part of the definition of input service extends to services used prior to/during the course of after the manufacture of the final products. The fact that the definition of "input service is wider than the definition of "input would make no difference in applying the ratio laid down in the case of Maruti Suzuki Ltd. (supra) while interpreting The scope of input service'. Accordingly, in the light of the judgment of the Apex Court in the case of Maruti Suzuki Ltd. (supra), we hold that the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under Rule 2(1) of 2004 Rules..

In view of the above, I hold that cenvat credit is not admissible under 'Rule 3 read with Rules 2(1) of Cenvat Credit Rules, 2004 for the Garden Maintenance services used by the assessee."

4.3 The period involved in the present appeal is prior to the amendments made in the definition of the "input services" with effect from 01.04.2011. For the said period issue of admissibility of CENVAT Credit in respect of these services is no longer res-integra as is evident from the decisions as follows:

6.1 The issue involved in these appeals is the eligibility to avail the Cenvat credit on various input services which were utilized by the appellants during the course of his business of manufacturing of final products on which undisputedly Central Excise duty is paid. There is no dispute that the appellant is eligible to avail Cenvat credit. The dispute is relating to whether these services are used in or in relation to the manufacturing of final products. The services which are in dispute are :-

(a) to (l) .....

(m) Outdoor Catering Service

(n) Rent-a-Cab Operator's Service

(o) Tour Operator's Service

(p) to (ag) ....

It can be seen from the above that all the said services were utilized by the appellant during the course of activity of manufacturing. For example ....

6.2 On deeper perusal of the rule, we find that on the services on which input service credit were availed were in relation to the business activities undertaken by the appellants. Accordingly, we hold that Service Tax paid on these services are eligible to be availed of Cenvat credit as per the following judgments :-

(a) John Deree India Pvt. Ltd. - 2016 (41) S.T.R. 990

(b) Force Motors Ltd. - 2009 (16) S.T.R. 591

(c) Force Motors Ltd. - 2009 (13) S.T.R. 692

(d) Mangalore Refinery & Petrochemicals Ltd. - 2016 (42) S.T.R. 6

(e) J.P. Morgan Services (I) Pvt. Ltd. - 2016 (42) S.T.R. 196

(f) Solaris Chemtech Ltd. - 2008-TIOL-253-ITAT-HYD

(g) Verizon Data Services India Pvt. Ltd. - 2015 (39) S.T.R. 522

(h) Dell International Services India P. Ltd. - 2010 (17) S.T.R. 540

(i) Castrol India Ltd. - 2013 (30) S.T.R. 214

(j) Reliance Industries Ltd. - Order No. A/225/14/CSTB/C-I, dated 7-3-2014 - 2014 (36) S.T.R. 467 (Tri.)

(k) Toyota Kirloskar Motors - 2011 (24) S.T.R. 645

(l) Finecare Biosystems - 2009 (244) E.L.T. 372

(m) Bharat Fritz Werner Ltd. - 2011 (22) S.T.R. 429

(n) Ultratech Cement Ltd. - 2010 (260) E.L.T. 369 (Bom.)

(o) Stanzen Toytetsu India P. Ltd. - 2011 (23) S.T.R. 444 (Kar.)

(p) Federal Mogul Goetze (India) Ltd. - 2015 (39) S.T.R. 735

(q) Cadmach Machinery - Order Nos. A/1933-1934/WZB/AHD/2011, dated 14-10-2011

(r) Reliance Industries Ltd. - Order Nos. A/3412-3419/15/STB, dated 26-8-2015

(s) Savita Oil Technologies Ltd. - 2014-TIOL-114-CESTAT-MUM

(t) Delta Energy Systems Ltd. - 2013 (31) S.T.R. 684 (Tri.-Del.)

(u) Reliance Inds. Ltd. - Order No. A/11576/2013, dated 1-11-2013

(v) Lupin Ltd. - 2012 (28) S.T.R. 291.

4.4 In respect of Garden Maintenance services, Hon'ble Karnataka High court ahs in case of Millipore India Pvt Ltd. [2012 (26) STR 514 (Kar)] observed as follows:

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 there- with, 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.*

4.5 Following the judicial precedence Commissioner (Appeal) has in the case of appellant allowed the credit in respect of these services for the period prior to 01.04.2011 vide order in appeal No CD/36/Belapur/2015 dated 02.01.2015 holding as follows:

"3. Personal hearing in the matter was held on 20.11.2014. Shri Prashant Patankar, appeared on behalf of appellants and reiterated their earlier submission and presented paper book in support to services availed on rent a cab, canteen, garden maintenance, terminal handling and Commissioner's order. With respect to recovery from employees for transport detailed were given at page No.81 out of this amount 10.3% may be reduced or disallowed with respect of this issue, CA certificate will be given by 24 November,2014. CESTAT order in their own case (CESTAT New Delhi final Order No.54132/2014 dated 14.10.2014 stated that rent-a-cab service was provided for transporting workers to the factory premises for which he allowed benefit of cenvat credit. No penalty is warranted. The appellant have furnished Certificate from their Chartered Accountants on 8 Jan 2014 showing details of payment recovered from employees of Taloja unit for Canteen and Bus services.

4. I have gone through the facts of the case, records placed in the file and submissions made during the course of personal hearing. The issue to be decided in the instant case is whether the cenvat credit of service tax paid on the input service of Transportation of employees, canteen service, garden maintenance and terminal handling charges, available to the appellant or otherwise.

5. In respect of the credit on Bus facility services, the appellant submitted that they have recovered the cost from their employees and reversed the proportionate credit, hence in view of the above discussion I hold that the appellant is eligible for credit of service tax paid on bus services.

6. In respect of credit on Garden maintenance services, there is strict statutory norms of MCPB, the appellants required to maintain sufficient portion i.e. around 33% as green beltgarden open land so as to minimize the effect of various types of pollution emanating from the manufacturing activity carried out in the said area and they create and maintain a garden inside the factory premises. I rely on following case laws on the similar issue:

i) In the case of Murugappa Morgan Thermal Ceramics Ltd. reported in 2014 (33) S.T.R. 181 (Tri. - Ahmd.) Hon'ble Tribunal held as under:

"On the issue of admissibility of Cenvat credit on gardening services the appellant has made out a strong case because as per the Gujarat Pollution Control Board permission dated 16-3-2006 the appellant was required to maintain a garden which is therefore an obligation under the relevant pollution control law and Cenvat credit with respect to the services used for maintaining the garden will be admissible and is accordingly allowed".

ii) In the case of Gujarat State Fertilizers & Chemicals Ltd reported in 2013(291)ELT 375 (Tri-Aḥmd) Hon'ble Tribunal held as under:-

"Cenvat Credit Input Service credit- Gardening Service - Services undertaken by assessee within the factory premises and is requirement of the Pollution Control Board- Held: If the condition of the Pollution Control Board is to maintain adequate plantation, undoubtedly assessee would require professional services of gardening service providers- Rule 2(1) of Cenvat Credit Rules, 2004,"

I hold that the applicant is eligible for cenvat credit of service tax paid on gardening service.

In respect of credit on Terminal handling charges(Export), ...

7. The payment of Service by the appellant .....

8. In view of above, the above cited judgements, I hold that the applicant is eligible for availing cenvat credit of service tax paid on ***Bus and Car hire, Canteen and gardening services as input services upto March, 2011****. Further, the credit availed for the period April, 2011 to August, 2011 is not admissible in view of the definition of Input services as amended Rule 2(1) of the Cenvat Credit Rules, 2004 came into force vide Notification No. 3/2011- C.E. (NT) dated 01.03.2011 with effective from 01.04.2011.”*

4.6 The order of Commissioner (Appeal) was not challenged by the revenue. The appeal filed by the appellant for the period 01.04.2011 onwards was allowed by the tribunal vie order No A/91796-91798/2017 dated 18.12.2017.

4.7 In view of the above we are inclined to agree with the submissions made by the appellant in respect of admissibility of CENVAT Credit in respect of these three services namely, - Bus and Car Hire Service- Rent a Cab, Outdoor Catering Service/Canteen Service, garden maintenance services, during the period in dispute. We also take note of the decision of

Hon'ble Bombay High court in case of Ultratech cement Ltd. [2010 (20) STR 577 (Bom)] wherein following has been held:

"39. *The Larger Bench of CESTAT in the case of GTC Industries Ltd. (supra) has also observed that the credit of service tax would be allowable to a manufacturer even in cases where the cost of the food is borne by the worker (see last para). That part of the observation made by the Larger Bench cannot be upheld, because, once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer. Shri Shridharan, learned Counsel for the assessee fairly conceded to the above position in law and in fact filed an affidavit affirmed by a responsible officer of the assessee wherein it is stated that the proportionate credit to the extent embedded in the cost of food recovered from the employee/worker has been reversed."*

4.8 In view of the above decision the credit in respect of the services of Outdoor Catering/ Canteen & Bus and Car Hire Service - rent a Cab, to the extent of amount recovered from the employees shall not be admissible and need to be reversed. Appellant has during course of hearing has furnished self certified details of the amount recovered and service tax needs to be reversed. The same is reproduced below:

"I hereby certify the amount recovered from employees of Asahi India Glass Ltd. located at Plot no. T-7,, MIDC Ind. Area, Taloja, District Raigad, for Transport (Bus & Car) Facility & Canteen facility and the cenvat credit availed during the period from 01/10/2006 to 30/11/2010 as under:

Type of Services	*Value of Service*	*Service Tax*	*ED Cess*	*SHE Cess*	*Total Cenvat Credit Availed*	*Values recovered from employees*	*Credit Proportionate to the Recovery from Employees*
Bus & Car Hire Services	*92,78,298*	*3,51,988*	*7,047*	*3,142*	*3,62,177*	*10,24,150*	*41,068*
Canteen Services	*1,23,53,502*	*6,55,989*	*13,116*	*6,546*	*6,75,651*	*4,57,50*	*25,535*

This certificate has been issued in respect of the show cause notice dated 08/06/2011 for the period from 01/10/2006 to 30/11/2010."

As we have no means to verify the correctness of the above self certified details of the amount recovered from the employees and the amount of Cenvat credit to be reversed, the matter needs to be remanded back to the original authority only for verification of the details as submitted by the appellant.

5.1 The impugned order is set aside allowing the appeal filed and matter is remanded to original authority for verification of the details of the credit sought to be recovered in respect of Transport (Bus & Car) Facility & Canteen facility services on the amounts recovered from the employees.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)

Member (Judicial)