

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11966 of 2019

(Arising out of OIA-CCESA-SRT-APPEAL-PS-041-2019-20 dated- 27/04/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Hubergroup India Pvt Ltd

.....Appellant

SURVEY NO. 8/1/2/P, 9/P/10/3, 10/4, 10/5, & 8/2,
VILLAGE- MORKHAL, SILVASSA, DADRA AND NAGAR HAVELI

VERSUS

C.C.E. & S.T.-Daman

.....Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat -396191

With

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Hubergroup India Pvt Ltd

.....Appellant

Survey No. 11 & 13, Village- Morkhal
Silvassa, Dadra And Nagar Haveli

VERSUS

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.....Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
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Vapi, Gujarat -396191

APPEARANCE:

Shri S. Suriyanarayanan, Advocate for the Respondent
Shri Ghanshyam Soni, Joint Commr.(AR) for the Appellant

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

FINAL ORDER NO. A/ 10303-10304 /2022

DATE OF HEARING: 05.04.2022
DATE OF DECISION: 05.04.2022

RAMESH NAIR

The issue involved is the admissibility of the Cenvat Credit in respect of garden maintenance service for the garden being maintained within the factory premises.

2. Shri S. Suriyanarayanan, Learned Counsel appearing on behalf of the appellant submits that the garden maintenance is a mandatory requirement as per Pollution Control Board. He invited my attention to Consent Order dated 14.03.2018 and 23.01.2015 issued by Pollution Control Committee wherein he pointed out that the consent order is subject to green up the surrounding area inside and outside the factory, therefore, to meet with this condition they are maintaining the garden in the factory. He further submits that they are manufacturing goods falling under Chapter 32 which is 'Printing inks' which creates pollution, therefore, it is a mandatory requirement to maintain the garden to keep the environment pollution free, therefore, the credit is admissible on garden maintenance service. He placed reliance on the following judgements:

- CCE & ST vs Lupin Ltd. 2012 (28) STR 291 (Mumbai)
- CCE Bangalore vs Millipore India 2012 (26) STR 514 (Kar.)
- CCE & ST LTU Chennai vs Ranetrew Steering Systems Ltd. 2015 (39) STR 13 (Mad.)

3. Shri Ghanshyam Soni, Learned Joint Commissioner (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order. He further submits that the garden is not maintained for Pollution control, whereas the same is maintained for beautification, therefore, the credit is not admissible.

4. I have carefully considered the submission made by both the sides.

5. I find that the lower authorities had not denied the cenvat credit on gardening service per se but on the ground that the appellant have not established that the garden is maintained for the purpose of Pollution Control. This reason of the lower authorities is absolutely incorrect on the face of the facts of the case as submitted by the Learned Counsel. It is

evident from the consent order of the Pollution Control Committee for renewing the pollution control license that the appellant is required to green up the surrounding of the factory inside and outside. For this reason only the appellant are maintaining the garden, therefore, the entire basis of the department to deny the cenvat credit does not stand. In various judgements this Tribunal has considered the admissibility of the cenvat credit in respect of garden service. Some of the judgements are reproduced below:

- In case of Lupin Ltd. the Tribunal held as follows:-

“6.1 After hearing the arguments made by both the sides, I am of view that the appeals themselves can be disposed of at this stage. Therefore, after granting stay against the recovery of dues, I take up the appeals for consideration and disposal.

6.2 The Hon’ble High Court of Bombay in the case of *CCE v. Ultratech Cement Ltd.* - TIOL-2010-745-HC-MUM = [2010 \(20\) S.T.R. 577](#) (Bom.) = [2010 \(260\) E.L.T. 369](#) (Bom.) considered the issue at length and held that the definition of input service under Rule 2(1) of the Cenvat Credit Rules, is very wide and covers not only services which are directly or indirectly used in or in relation to the manufacturing of final product but also after manufacturing of the final products. The definition covers not only services which are used in or in relation to the manufacture of the final product but also services used in the business of manufacture of the final product. Following the ratio of this Judgment, the input services on which Cenvat Credit has been availed by the appellant in the instant case qualifies as input service. In respect of many of these services, there are a large number of decisions passed by this Tribunal allowing such credit. In respect of photographic services, the learned, Advocate submits that the services were used for taking photograph of the machines to be submitted to the insurance company for obtaining insurance and, therefore it is related to the business of the manufacture. Similarly, in respect of dry cleaning services, the same was used for dry cleaning the uniform of their staff and therefore, forms part of business of manufacturing. With regard to construction, the same is undertaken for construction of premises for the manufacturing activity and it is directly connected with the business of manufacturing and similarly in respect of brokerage, the same is connected with commission paid to the brokers for selling products of the company which amounts to sales promotion. All other services detailed above qualify under input services definition and accordingly, I hold that the appellant is rightly entitled for Cenvat credit of the tax paid on these services.

7. In view of the above, I allow the appeals filed by M/s. Lupin Ltd. and dismiss the appeals filed by the Revenue.”

- In case of CCE vs Millipore India, the Tribunal held as follows:-

“6. Therefore, it is clear that those factors have to be taken into consideration while fixing the costs of the final products. If services tax is paid in respect of any of those services which forms part of the costs of the final products certainly the assessee would be entitled to the cenvat credit of the tax so paid.

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.”

6. As per my above discussion and finding which are supported with the above case laws, the appellants is entitled for the cenvat credit in respect of maintenance of gardening service. Accordingly, the impugned order is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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