

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/2/2018

C O R A M

The Honourable Mr. Justice S. Manikumar
a n d
The Honourable Mrs. Justice V. Bhavani Subbaroyan
Civil Miscellaneous Appeal Nos. 65 and 66 of 2018
a n d
C.M.P. Nos. 937 and 938 of 2018

M/s. Rane TRW Steering System Ltd
38th KM Stone GST Road
NH 45 Vallanherry Village
Guduvancherry 603 202.

Appellant in both the
appeals

Vs

The Commissioner of Central Excise
and Central Tax
Chennai Outer Commissionerate
Newry Towers, No. 2054 I Block
II Avenue, 12th Main Road
Anna Nagar
Chennai 600 040.

Respondent in both the
appeals

Appeals filed under Section 35 G of the Central Excise Act,
to set aside the Final Order Nos. 40617 and 40618 of 2017,
respectively, dated 12/4/2017, passed by the CESTAT, Chennai.

For appellant ... Ms. P. Srija
for Mr. M. Karthikeyan

For respondent ... Mr. V. Sundareswaran

C O M M O N J U D G M E N T
(Judgment of the Court was made by S. Manikumar, J)

Civil Miscellaneous Appeals are filed against the common
order, made in Appeal Nos. 119 and 120 of 2016, dated 29/11/2016,
on the file of the CESTAT, Madras.

2. Facts leading to the appeals are that the Commissioner
of Central Excise and Central Tax, Chennai, respondent herein,

is a registered manufacturer of motor vehicle parts. They were issued with two show cause notices, alleging they have availed CENVAT credit, in respect of Garden Maintenance Service, which cannot be considered as a valid "input service". Show cause notices, dated 5/3/2015 and 8/3/2016, were issued for recovery of CENVAT Credit of Rs.50,857/- and Rs.65,809/-, for the period between February 2014 to January 2015 & November 2014 and October 2015, respectively. Notices proposing recovery of CENVAT credit were issued. under Rule 14 of the CENVAT Credit Rules, 2003, r/w. Section 11 A (1) (a) of the Central Excise Act, 1944, along with applicable interest. Show cause notices also proposed to impose penalty, under Rule 15 (1) of the CENVAT Credit Rules, 2004.

3. After considering the submissions of the revenue and assessee, in respect of the show cause notice, dated 5/3/2015, the adjudicating authority, viz., Superintendent of LTU, vide his order-in-original No.LTU/155/2016, dated 29/3/2016, confirmed the demand against the respondent and imposed penalty of Rs.5,085/-, under Rule 15 (1) of the CENVAT Credit Rules. Similarly, in respect of the show cause notice, dated 8/3/2016, the adjudicating authority, imposed a penalty of Rs.6,582/-.

4. Being aggrieved by the orders imposing penalty, M/s. Rane TRW Steering Systems Ltd., Guduvancherry, appellant herein, filed an appeal, in Appeal Nos.119/2016 and 120 of 2016, to the Commissioner (Appeals - I), Central Excise and Service Tax, Large Tax Payer Unit, Chennai, on the grounds inter alia that Garden Maintenance Service has been used only within the factory premises, to prevent Air Pollution, etc., and that Factories Act, 1948, also mandates maintenance of such garden, in the factory premises. Reliance is also made, on the decisions of High Courts in similar matter. However, vide common order, in Appeal Nos.119-120 of 2016, dated 29/11/2016, the Commissioner (Appeals), Central Excise & Service Tax, Large Tax Payer Unit, Chennai, dismissed both the appeals.

5. Being aggrieved, M/s. Rane TRW Steering System Ltd., Guduvancherry, has filed appeals before the CESTAT, Madras, reiterating the same grounds. Not agreeing with the assessee, CESTAT, Madras, in Common order Appeal Nos.E/40511/2017 and E/40512/2017, dated 12/4/2017, confirmed the decision of both the adjudicating and appellate authorities, holding that garden maintenance service, will not fall within the purview of Input Service, and thus, confirmed the tax liability. However, CESTAT, Madras, set aside the penalty imposed, on the assessee, for the above said period.

6. Being aggrieved by the portion of common order, by which CESTAT, Madras, confirmed tax liability and recovery, instant appeals have been filed on the following substantial questions

of law:-

"a. Whether the Tribunal is right in denying the Input Service Credit availed on Garden Maintenance service as ineligible, to avail credit in terms of Rule 2 (I) of Cenvat Credit Rules, 2004.

b. Whether the CESTAT, Madras, is correct in holding that the ratio of decision of High Court in the appellant's own case in respect of the issue under dispute cannot be relied on as the said decision was rendered taking note of the availment of the Input Service Credit before amendment of CENVAT Credit Rules, 2004.

7. Supporting the substantial questions of law, Ms.P.Srija, learned counsel for the appellant, invited the attention of this Court, to the definition of the term "Input Service", under Rule 2 (1) of the CENVAT Credit Rules, 2004 and submitted that the definition of the term "Input Service" is inclusive, in respect of services used in relation to modernisation, renovation or repairs of a factory and such other input services, included in the definition of Rule 2 (1) of CENVAT Credit Rules.

8. Ms.P.Srija, learned counsel for the appellant further submitted that the definition of input service, contained in Rule 2 (1) of the Cenvat Credit Rules, 2004, is wide enough to include any service used directly or indirectly, in or in relation to any manufacturing activity. She also submitted that garden maintenance service has been availed, to the factory to prevent air pollution and it is an essential input service, for availing license, for the manufacturing activity.

9. In support of the above contention, attention of this Court was invited, to the consent order of the Tamil Nadu Pollution Control Board, dated 22/2/2017, wherein one of the conditions imposed on M/s. RANE TRW Steering Systems Private Limited (Pump Division), Guduvancherry, appellant herein is that the unit shall continue to develop the green belt 25% of the total land area. She further added that when there is a statutory requirement to have 25% of the total land area, for continuation of licence, to run the factory site, availment of such input service, cannot be said that it is not in relation to manufacture. According to her, when maintenance of green belt, stated supra, is a compulsory requirement, availment of garden maintenance service has to be considered as a necessary "input service", within the definition of Rule 2 (1) of the CENVAT Credit Rules, 2004, and therefore, the Tribunal, ought to have set aside the demand also.

10. Learned counsel for the appellant further submitted that the finding of the CESTAT, Madras, holding that though gardening service is compulsorily required by the Pollution control laws, the same cannot be considered as an activity, in relation to manufacture and thus, not entitled to avail the benefit of CENVAT credit, is erroneous.

11. Placing reliance on the following decisions, (i). Commissioner of Central Excise, Ahmedabad - I Vs. Ferromatik Milacron India Ltd., {2011 (21) STR 8 Guj,}, (ii). Commissioner of Central Excise, Bangalore - II Vs. Millipore India Private Limited, {2012 (26) STR - 514 - Kar}, (iii). KCP Limited Vs. Commissioner of Central Excise, Chennai, reported in {2013 (295) ELT - 353 (SC)}, (iv). C.M.A.No.3346 of 2010 in the assessee's own case, Commissioner of Central Excise & Service Tax, Large Tax Payer Unit, Chennai, Vs. M/s. Rane TRW Steering System Ltd., dated 27th March 2015, (v). HCL Technologies Ltd., Vs. Commissioner of Central Excise, Noida {2015 (40) STR - 369 (Tribunal) - Delhi, (vi). Lifelong Meditech Ltd Vs. Commissioner of Central Excise, Sales Tax, Gurgaon - II {2016 (44) STR 626 Tribunal - Chandigarh, (vii). Mukand Limited Vs. Commissioner of Central Excise, Belapur {2016 (42) STR - 88 (Tribunal) - Mumbai and (viii). Commissioner of Central Excise, Nagpur Vs. Ultra tech Cements Limited Vs. 2010 (260) ELT - 369 Bombay, learned counsel for the appellant submitted that common order of CESTAT, Madras, in E/40511/2017 & E/40512/2017 are liable to be set aside.

12. Opposing the prayer sought for and inviting the attention of this Court, to Rule 2 (1) of the CENVAT Credit Rules, 2004, as stood before the amendment, issued on 1/3/2011, given effect from 1/4/2011, Mr.V.Sundareswaran, learned Standing Counsel for the revenue submitted that before amendment, the words "setting up" and "activities relating to business", in Rule 2 (1), were in existence and by the said amendment, the said words were deleted by the legislature. Thus, even taking for granted that input services were used in setting up of factory or it is an activity relating to business, availment of CENVAT credit, on the said input services, garden maintenance, cannot be treated as "input service", in terms of Rule 2 (1) of the CENVAT Credit Rules, 2004, after the amendment and the order of CESTAT, in assessee's own case, in Commissioner of Central Excise and Service Tax, Chennai 1 Vs. Rane TRW Steering Systems Ltd., (C.M.A.No.3346 of 2010), held in favour of the assessee, made prior to the amendment when the words "setting up" and "activities in relation to business", existed in the Statute, cannot be made applicable, after the amendment to Rule 2 (1) of the CENVAT Credit Rules, 2004.

13. On the above aspect, learned counsel for the

respondent, placed strong reliance, to para 33, of judgment in the Commissioner of Central Excise, Nagpur Vs. Ultra Tech Cements Ltd {2010 (260) ELT- 369- Bombay}, and submitted that even though, input services in Section 2 (1) of the CENVAT Credit Rules, 2004, is inclusive in nature, unless and until the assessee, satisfies the substantive part of the provision that it is directly or indirectly in relation to manufacture of the final product, any service availed by the assessee cannot be treated as input service for availing credit.

14. He strenuously contended that availment of credit in service, should be in relation directly or indirectly to manufacture of a product and when it is not so, the Department is empowered to make demand. Attention of this Court was also invited, to the decision of the Hon'ble Supreme Court, in Doypack Systems (Pvt) Ltd., Vs. Union of India, {1988 (36) ELT 201 (SC)}, as to how a provision has to be interpreted.

15. Referring to a plethora of decisions, considered in the latter part of this judgment, learned counsel for the revenue submitted that when the Tribunal, has arrived at a categorical finding that the garden maintenance service, cannot be held to be an "input service", in relation to manufacture, the substantive part of the definition "input service", there is no manifest error, warranting interference. He further submitted that on the finding of the fact, no substantial questions of law arises, much less the one framed in these appeals for answer.

16. Heard the learned counsel for the parties and perused the materials available on record.

17. Rule 2 (k) of the CENVAT Credit Rules as stood prior to the amendment is as follows:-

(k) "input" means--

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared alongwith the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or

(iv) all goods used for providing any [output service; or]

(v) all capital goods which have a value upto ten thousand rupees per piece,]

but excludes--

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as

petrol;

(B) any goods used for--

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

(C) capital goods, except when,--

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;]

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guest house, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product."

18. "Input Service", as per Section 2 (1), as stood before amendment is as follows:-

(1). "Input Service" means any service--

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, from the place of removal,

and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward

transportation upto the place of removal."

19. Amendment to the said Rule has come into force from 1/4/2011, vide Notification No.3/2011/CE (NT), dated 1/3/2011. After the amendment, as per Rule 2 (1) of the CENVAT Credit Rules, 2004,

1. "Input Service" means any service--

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; [but excludes]--

(A) Service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) insofar as they are used for--

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

(B) [services provided by way of renting of a motor vehicle], insofar as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, insofar as they relate to a motor vehicle which is not a capital goods, except when used by--

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

[Explanation : For the purpose of this clause, sales promotion includes, services by way of sale of dutiable goods on commission basis.]

20. The words "setting up" and "activities relating to business", as stood, in Section 2 (k) of the CENVAT Credit Rules, 2004, have been deleted, vide Notification No.3/2011-CE-NT, dated 1/3/2011, with effect from 1/4/2011.

21. In both the appeals, in the show cause notices, dated 5/3/2015 and 8/3/2016, the period covered are between February 2014 to January 2015 & November 2014 and October 2015, respectively. Thus garden maintenance service availed after the amendment, to CENVAT Credit Rules, 2004, is contended by the revenue, as not falling within "input service" in respect of service, used for setting up or activity relating to business.

22. Further, contention has been made that when legislature has omitted, input services used for setting up of a factory and services used for, an activity relating to business, garden maintenance service, cannot be construed to be an input service, directly or indirectly, in or in relation to the manufacture of final products, and therefore, unless and until the input services used, is in relation to either directly or indirectly, on the manufacture of goods, the assessee is not entitled to CENVAT Credit.

23. Let us consider the decisions relied on by the learned counsel appearing for both parties.

24. In Doypack Systems (PVT) Ltd., Vs. Union of India {1988 (36) ELT 201(SC)}, the Hon'ble Supreme Court, considered the words and phrases, "pertaining to", "in relation to", "arising out of" and "includes". Though the above said words and

expressions were explained in the context of the statutes considered therein, principles of law laid down by the Hon'ble Supreme Court, in the matter of interpretation of statute, requires to be considered. While considering the expression, "in relation to", in Doypack Systems (Pvt) Ltd., the Hon'ble Supreme Court, at paragraph No.48, held as follows:-

"The expression "in relation to" (so also "pertaining to"), is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, though State WakfBoard Vs. Abdul Aziz (AIR 1968 Madras 79, 81, paragraph 8 and 10, following and approving Nitai Charan Bagchi Vs. Suresh Chandra Paul (66 CWN 767), Shyam Lal Vs. M. Shayamlal (AIR 1933 All.649) and 76 Corpus Juris Secundum 621)."

25. At paragraph No.48, in Doypack's case, the Hon'ble Supreme Court also referred to Corpus Juris Secundum at pages 620 and 621, wherein the term "relate" has been defined as meaning to bring into association or connection with. In Doypack's case, the Hon'ble Supreme Court also opined that it has been clearly mentioned that "relating to", has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction.

26. While considering the term "includes", at paragraph No.64, the Hon'ble Supreme Court, in Doypack's case, held as follows:-

"The expression "in relation to" has been interpreted to be the words of widest amplitude."

27. Interpretation of Section 4 of Swadeshi Cotton Mills Company Limited (acquisition and transfer of undertakings) Act, 1986, was the subject matter of the discussion in Doypack's case. Adverting to the above, the Hon'ble Supreme Court, at paragraph No.64, in Doypack's case, observed thus:-

"Section 4 appears to us to be an expanding section. It introduces a deeming provision. Deeming provision is intended to enlarge the meaning of a particular word or to include matter which otherwise may or may not fall within the main provisions. It is well settled that the word "includes"

is an inclusive definition and expands the meaning. The Hon'ble Supreme Court has referred to the decision in Corporation of the City of Nagpur Vs. Its Employee {1960 2 SCR 942} and Vasudev Ramchandra Shelat Vs. Pranlal Jayanand Thakar and Others (1975 1 SCR 534).

28. Reverting to the case on hand, when Rule 2 (1) of the CENVAT Credit Rules also uses the words "includes", there is no ambiguity that such inclusive definition has to be interpreted as, "which may or may not fall within the main provision". Let us also consider as to how the Hon'ble Supreme Court has considered the expression "in relation to" the manufacture of final products, employed in Rule 57 A of the Central Excise Rules, 1947. For brevity, Rule 57 A of MODVAT Rules, is reproduced.

"Rule 57A. Applicability. - (1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the "final products"), as the Central Government may, by notification in the Official Gazette, specify in this behalf, for the purpose of allowing credit of any duty of excise or the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified goods used in or in relation to the manufacture of the said final products (whether directly or indirectly and whether contained in the final product or not) (hereinafter referred to as the "inputs") and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the notification :

Provided that the Central Government may specify the goods or classes of goods in respect of which the credit of specified duty may be restricted.

Explanation. For the purpose of this rule, "inputs" includes -

(a) Inputs which are manufactured and used within the factory of production in or in relation to manufacture of final products.

(b) Paints and Packing material,

(c) Inputs used as fuel.

(d) inputs used for the generation of electricity, used within the factory of production for manufacture of final products or for any other purpose.

but does not include

(i) machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products;

(ii) packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products;

(iii) packaging materials the cost of which is not included or had not been included during the preceding financial year in the assessable value of the final products under section 4 of the Act;

(iv) cylinders for packing gases;

(v) plywood for tea (chests; or).

(vi) bags or sacks made out of fabrics (whether or not coated, covered or laminated with any other material) woven from strips or tapes of plastics."

29. In Collector of Central Excise Vs. Solaris Chemtech Limited {2007 (214) ELT 481 (SC)}, the Hon'ble Supreme Court, explained as to how the expression "in or in relation to manufacture of final products", employed in Rule 57 A of erstwhile Central Excise Rules, 1944, has to be understood and interpreted.

30. In the reported case, the question involved was electricity, which was generated inside the plant by heating of LSHS, and which is captively consumed and used to manufacture of cement/caustic soda. Rule 57 A of the erstwhile Central Excise Rules, 1944, had an explanation clause, which state as to what

inputs are included in MODVAT Credit. Explanation clause (c) refers to "input used as fuel". The said clause was introduced by Notification No.4/94, dated 1/3/1994. At that time, the government made it clear that inputs used as fuel were entitled to MODVAT Credit. Fuel either utilised directly or for generating electricity, as an intermediary product, was held to be integrally connected with several operations, which resulted in the emergence of the final product, viz., cement/caustic soda.

31. Thus, while considering that electricity generated, could be an input for availing MODVAT credit, the Hon'ble Supreme Court, in Collector of Central Excise Vs. Solaris Chemtech Limited {2007 (214) ELT-481 (SC)}, at paragraph No.8, held thus:-

"8. The electrolysis process is dependent on continuous flow of electricity. If there is disruption in the supply of electricity from the Electricity Board then the entire plant of the assessee would fail and the manufacture of cement/caustic soda would not take place. Therefore, LSHS would come within the ambit of the expression "used in or in relation to the manufacture of the final product". Further, in the case of Collector of Central Excise v. Rajasthan State Chemical Works - 1991 (55) ELT 444 (SC), it has been held that any operation in the course of manufacture, if integrally connected with the operation which results in the emergence of manufactured goods, would come within the term "manufacture". This is because of the words used in Rule 57A, namely, "goods used in or in relation to the manufacture of the final products". Electricity is one form of heat. It gets generated in several ways. LSHS is a fuel used in the generation of electricity. Since, electricity is self-generated and since it comes into existence as an intermediary product, its utilization for production of final product is crucial. Hence, MODVAT credit on LSHS used in production of electricity cannot be denied. Lastly, we may point out that in order to appreciate the arguments advanced on behalf of the Department one needs to interpret the expression "in or in relation to the manufacture of final products". The expression "in the manufacture of goods"

indicates the use of the input in the manufacture of the final product. The said expression normally covers the entire process of converting raw-materials into finished goods such as caustic soda, cement etc. However, the matter does not end with the said expression. The expression also covers inputs "used in relation to the manufacture of final products". It is interesting to note that the said expression, namely, "in relation to" also finds place in the extended definition of the word "manufacture" in Section 2(f) of the Central Excises and Salt Act, 1944 (for short, 'the said Act'). It is for this reason that this Court has repeatedly held that the expression "in relation to" must be given a wide connotation. The Explanation to Rule 57A shows an inclusive definition of the word "inputs". Therefore, that is a dichotomy between inputs used in the manufacture of the final product and inputs used in relation to the manufacture of final products. The Department gave a narrow meaning to the word "used" in Rule 57A. The Department would have been right in saying that the input must be raw-material consumed in the manufacture of final product, however, in the present case, as stated above, the expression "used" in Rule 57A uses the words "in relation to the manufacture of final products". The words "in relation to" which find place in Section 2(f) of the said Act has been interpreted by this Court to cover processes generating intermediate products and it is in this context that it has been repeatedly held by this Court that if manufacture of final product cannot take place without the process in question then that process is an integral part of the activity of manufacture of the final product. Therefore, the words "in relation to the manufacture" have been used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract goods which do not enter into finished goods. In the case of M/s. J.K. Cotton Spinning and Weaving Mills, Co. Ltd. v. The Sales Tax Officer, Kanpur and another - AIR 1965 SC 1310, this Court has held that Rule 57A refers to inputs which are not only goods used in the manufacture of final

products but also goods used in relation to the manufacture of final products. Where raw-material is used in the manufacture of final product it is an input used in the manufacture of final product. However, the doubt may arise only in regard to use of some articles not in the mainstream of manufacturing process but something which is used for rendering final product marketable or something used otherwise in assisting the process of manufacture. This doubt is set at rest by use of the words "used in relation to manufacture". In the present case, the LSHS is used to generate electricity which is captively consumed. Without continuous supply of such electricity generated in the plant it is not possible to manufacture cement, caustic soda etc. Without such supply the process of electrolysis was not possible. Therefore, keeping in mind the expression "used in relation to the manufacture" in Rule 57A we are of the view that the assesseees were entitled to MODVAT credit on LSHS. In our opinion, the present case falls in clause (c), therefore, the assesseees were entitled to MODVAT credit under Explanatory clause (c) even before 16.3.95. Inputs used for generation of electricity will qualify for MODVAT credit only if they are used in or in relation to the manufacture of the final product, such as cement, caustic soda etc. Therefore, it is not correct to state that inputs used as fuel for generation of electricity captively consumed will not be covered as inputs under Rule 57A."

32. Thus, the Hon'ble Supreme Court, explained as to how the expression, "in relation to manufacture of final products", have to be understood. The Hon'ble Supreme Court held that words, in relation to manufacture, in Rule 57 A of the erstwhile Central Excise Rules, 1944, have been used to wider and explain the scope, meaning and content of the expression "inputs", so as to attract goods, which do not enter into finished goods. Though the Hon'ble Supreme Court, explained the expression, in relation to manufacture, dealing with electricity, generated inside the plant and captively consumed for the manufacture of cement and caustic soda, the said decision, can be made applicable to the extent that even though the "input" does not enter into the finished goods, the inclusive definition has to be given wider meaning to the expression in relation, directly or indirectly in the manufacture of goods. In Solari's case,

the Hon'ble Supreme Court considered the term "input" and the instant case, we are dealing with Section 2 (1) of the CENVAT Credit Rules, "Input Services".

33. "Input" as defined in Rule 2 (k) of the CENVAT Credit (Amendment) Rules, 2011, is different from input services, as defined in 2 (1) of the CENVAT Credit (Amendment) Rules, 2011. Decision rendered in Solaris case, can be made applicable with reference to Rule 2 (k) of the CENVAT Credit (Amendment) Rules, 2011, with the exception to the interpretation of inclusive definition.

34. Commissioner of Central Excise, Service Tax, Nagpur Vs. Ultra Tech Cement Ltd., 2010 (260) ELT - 369 (Bombay), rendered, on 25/10/2010, is with reference to the period prior to the amendment dated 1/3/2011. While considering the definition of "input service" as stood before the amendment, at paragraph No.27, the Bombay High Court, explained the same, as hereunder:

"The definition of 'input service' as per Rule 2 (1) of 2004 Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services. The first category, covers services which are directly or indirectly used in or in relation to the manufacture of final products. The second category, covers the services which are used for clearance of the final products upto the place of removal. The third category, includes services namely:-

- (a). Services used in relation to setting up, modernisation, renovation or repairs of a factory,
- (b). Services used in an office relating to such factory,
- (c). Services like advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,
- (d). Activities relating to business such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Thus, the definition of 'input' service

not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition."

35. In Ultratech, the Bombay High Court considered as to whether outdoor catering services are covered under the inclusive definition of "input service". The Bombay High Court also considered an earlier decision, in Maruti Suzuki Ltd., Vs. Commissioner of Central Excise, Delhi - III {2009 (240) ELT 641 (SC)}. After considering the same, at paragraph Nos.28 to 30, the Bombay High Court, held as follows:-

"28. In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of "input service". The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product.

29. The expression "activities in

relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under Rule 2(1) of the 2004 Rules.

30. The Apex Court in the case of Maruti Suzuki Ltd. (supra) has considered the expression 'used in or in relation to the manufacture of final product' in the definition of "input" under Rule 2(k) of 2004 Rules and held as follows :-

"14. Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input", and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that

consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety."

36. After considering the rival submissions, as to whether outdoor catering has nexus of integral connection with the business of manufacturer, viz., Cement, at paragraph No.35, the Hon'ble Division Bench held as follows:-

"35. The argument of the Revenue, that

the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service' purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing..... etc. Thus the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is nothing in the definition of 'input service' to suggest that the Legislature intended to define that expression restrictively. Therefore, in the absence of any intention of the Legislature to restrict the definition of 'input service' to any particular class or category of services used in the business, it would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacturing the final product are covered under the definition of 'input service' and in the present case, the outdoor catering services being integrally connected with the business of the manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal."

37. Now the question remains to be considered is whether garden maintenance service is an "input service", falling under the "input service", an inclusive definition.

38. Though the learned counsel for the revenue submitted that the decision of the assessee's own case, in Commissioner of Central Excise and Service Tax, Large Tax Paying Unit, Chennai Vs. M/s. Rane TRW Steering Systems Limited, in C.M.A.No.3346 of 2010, cannot be made applicable, to the facts and circumstances

of the instant case, on the grounds that the said decision, was rendered before 1/4/2011 and further submitted that the decision in Ultratech's case, can be made applicable to the facts of this case, as to how the expression in relation to the manufacture of final products, has been considered and interpreted, let us consider as to how the assessee's own case, in C.M.A.No.3347 of 2010, came to be decided. Perusal of the judgment in C.M.A.No.3347 of 2011, dated 27th March 2015, shows that the assessee therein, who had availed service tax, on house keeping and gardening services, was issued with a show cause notice, for recovery of credit of Rs.3,30,486/-. The Deputy Commissioner, disallowed the credit and also imposed penalty. Appeal preferred by the assessee was dismissed and the matter was taken to CESTAT, Madras, by the assessee.

39. Following the decision, in Commissioner of Central Excise, Bangalore 2 Vs. Millipore India P Ltd., {2012 (26) STR 514 (Kar.)}, a Hon'ble Division Bench of this Court, framed the following substantial question of law.

Whether the Hon'ble Tribunal was right in including 'Housekeeping and Landscaping services' in the scope of term 'input service' defined in Rule 2 (1) of the CENVAT Credit Rules, 2004, without examining whether it was a service used directly or indirectly in or in relation to the manufacture of final products (or) used directly or indirectly in or in relation to the manufacture of final products upto the place of removal especially when the Hon'ble Supreme Court in the case of Solaris Chemtech reported in 2007 (214) ELT 481 = 2007 - TIOL - 135 - SC - CX has held that the term "in relation to" would refer to an essential process or activity and in the case of Maruti Suzuki Ltd., reported in 2009 (240) ELT 641 = 2009 - TIOL - 94 - SC - CX has held that the expression 'in or in relation to the manufacture' is the substantive/specific and crucial requirement of the definition?",

40. At paragraph No.9, in the assessee's own case, this Court in C.M.A.No.3347 of 2010, dated 27/3/2015, held as follows:-

"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."

41. It could be from the above that even at the time of framing the substantial question of law, the Hon'ble Division Bench has taken note of both Solari's and Maruthi Suzuki's cases. Now, let us revert to Millipore India Private Limited's case. In the reported case, assessee M/s. Millipore India Private Limited was engaged in the manufacture of excisable goods, viz., filtration apparatus. Besides availing many services, assessee was also engaged in land scaping of factory garden, which was a requirement, under the pollution laws. The Tribunal held that the aforesaid services utilised by the assessee falls within phrase, "activities relating to business", as mentioned in definition of input services and therefore, assessee was entitled to the benefit of CENVAT Credit on those services and accordingly, restored the benefit of the assessee. Being aggrieved, revenue went on appeal before the High Court and one of the substantial questions of law raised before the High Court was that whether on the facts and circumstances of the case, the Tribunal was correct in interpreting the term "input services", as enumerated in Rule 2 (1) of the CENVAT Credit Rules, 2004 and allowing the various ineligible input service tax credit, which are not covered or not remotely connected with the manufacture of the final products.

42. Though the learned counsel for the revenue strenuously urged that in Millipore's case, the Hon'ble Division Bench of Karnataka High Court, considered land scaping of factory garden as one falling within the activities relating to business and any services rendered in connection therewith, we are not inclined to accept the said contention for the reason that the sentence in paragraph No.7 of the judgment, in Millipore's case, is only a general observation and not a finding with reference to the service land scaping of factory garden. At this juncture, this Court, deems to consider, few decisions on "Obiter Dicta".

43. Rupert Cross and J.W.Harris in "Precedent in English Law" (4th Edition - page 41) say thus:-

"There are undoubtedly good grounds for the importance attached to the distinction between ratio decidendi and obiter dictum. In this context an obiter dictum means a statement by the way, and the probabilities are that such a statement has received less serious consideration than that devoted to a proposition of law put forward as a reason for the decision. It is not even every proposition of this nature that forms part of the ratio decidendi."

44. Distinction between obiter dicta and a ratio decidendi has been explained by the Hon'ble Supreme Court in Director of Settlements, A.P. v. M.R.Apparao reported in AIR 2002 SC 1598, held that,

"So far as the first question is concerned. Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly

raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See AIR 1970 SC 1002 and AIR 1973 SC 794). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court."

45. In *Arun Kumar Aggarwal v. State of Madhya Pradesh* reported in AIR 2011 SC 3056, the Hon'ble Supreme Court explained "obiter dicta", as follows:

"21.The expression obiter dicta or dicta has been discussed in American Jurisprudence 2d, Vol. 20, at pg. 437 as thus:

"74. -Dicta Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decide all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum.

"Dictum" or "obiter dictum: is distinguished from the "holding of the court in that the so-called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis, As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court." Further at pg. 525 and 526, the effect of dictum has been discussed:

"190. Decision on legal point; effect of dictum ... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts

of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."

22.....

23. The Wharton's Law Lexicon (14th Ed. 1993) defines term "obiter dictum" as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, ; a remark by the way.

24. The Blacks Law Dictionary, (9th ed, 2009) defines term "obiter dictum" as a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). -- Often shortened to dictum or, less commonly, obiter. "Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a judge, in his decision upon a cause, 'by the way' -- that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as 'dicta,' or 'obiter dicta,' these two terms being used interchangeably."

25. The Word and Phrases, Permanent Edition, Vol. 29 defines the expression "obiter dicta" or "dicta" thus:

"Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; It is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; "Obiter dictum" is made as

argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; Discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is "obiter dictum".

26. The concept of "Dicta" has also been considered in Corpus Juris Secundum, Vol. 21, at pg. 309-12 as thus:

"190. Dicta a. In General A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and not necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term "dictum" is generally used as an abbreviation of "obiter dictum" which means a remark or opinion uttered by the way.

Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a dictum is not the "law of the case," nor res judicata."

27. The concept of "Dicta" has been discussed in Halsbury's Laws of England, Fourth Edition (Reissue), Vol. 26, para. 574 as thus:

"574. Dicta. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in

hand are generally termed "dicta". They have no binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as "obiter dicta", whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "judicial dicta". A third type of dictum may consist in a statement by a judge as to what has been done in other cases which have not been reported.

... Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

28. In *Municipal Corporation of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101 and *Divisional Controller, KSRTC v. Mahadeva Shetty*, (2003) 7 SCC 197, this Court has observed that, "Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

29. In *State of Haryana v. Ranbir*, (2006) 5 SCC 167, this Court has discussed the concept of the obiter dictum thus:

"A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See *ADM, Jabalpur v. Shivakant Shukla*. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See *Divisional Controller, KSRTC v. Mahadeva Shetty*)"

30. In *Girnar Traders v. State of Maharashtra*, (2007) 7 SCC 555, this Court has held:

"Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."

31. In view of above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual

issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment."

46. In Millipore's case, the Hon'ble Division Bench has categorically held that land scaping of factory or garden certainly would fall within the concept of modernisation, renovation, repair etc., of the office premises. The Hon'ble Division Bench has also taken note of the fact that environmental law expects the employer to keep the factory without contravening any of those laws and held that fulfilment of a statutory and mandatory obligation, and if any service is availed, the same has to be treated as input service.

47. Though the learned counsel for the revenue contended that decision in assessee's own case, in C.M.A.No.3346 of 2010, cannot be made applicable, on the grounds inter alia that the judgment rendered was in respect of input service, prior to the amendment Act, which came into force, on 1/4/2011, we are not inclined to accept the same, for the reason that a Hon'ble Division Bench of this Court, while applying Millipore's case, to identical set of facts on hand, has taken into consideration that land scaping of factory or garden, falls within the input service of modernisation, renovation, repair, etc., of the office premises and not as an activity relation to "setting up" or in relation to business.

48. In Commissioner of Central Excise, Nagpur Vs. Manikgarh Cement, reported in {2010 (20) STR 456 (Bom)}, services engaged by the assessee was relating to repair maintenance and civil constructions in the residential colony. CESTAT held the same as input services for which credit can be availed. Revenue, challenged the same, before the High Court, by raising the following substantial questions of law:-

"Whether the CESTAT was correct in holding that the service tax credit on services of repair, maintenance and civil constructions used in the residential colony is admissible when such services are not related to manufacture whether directly or indirectly in or in relation to the manufacture of final product especially when the service rendered in residential colony of

the factory for maintenance and up keeping of the same are not covered in the definition of inputs service defined under Rule 2 (1) of CENVAT Credit Rules, 2004 and judicial authorities have held that such service would not fall as inputs service in terms of Rule 2 (1) *ibid.*"

49. After considering Maruti Suzuki Limited's case, at paragraph Nos.8 and 9, the Hon'ble Division Bench of Bombay High Court, held as follows:-

"8. In our opinion, establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such an expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in Rule 2(I) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

9. Applying the ratio laid down by the Hon'ble Apex Court in the case of Maruti Suzuki Limited v. Commissioner of Central Excise, Delhi (*supra*), we hold that unless the nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit is not allowable. In the present case, in our opinion, rendering taxable services at the residential colony established by the assessee for the benefit of the employees, is not an activity integrally connected with the business of the assessee and therefore, the Tribunal was not justified in holding that the services such as repairs, maintenance and civil construction rendered at the residential colony constitutes 'input service so as to claim credit of service tax paid on such services under Rule 2(1) of the CENVAT Credit Rules, 2004."

50. From the reasoning of the Hon'ble Division Bench of Bombay High Court, it could be seen that the very aspect of a residential colony for the employees and rendering taxable services was construed to be a welfare activity, while carrying

on business and such an expenditure incurred may be allowed under the Income Tax Act, but then such an activity has no nexus with the business of the assessee. The Hon'ble Division Bench of Bombay High Court, has considered the aspect of residential colony and rendering taxable service only with reference to the expression relating to business or in other words activities in relation to business and thus held that the same would not fall under the definition of input service and hence ineligible as input service.

51. As observed earlier, after considering Millipore's case, this Court has held that garden maintenance or landscaping of factory would certainly fall within the concept of modernisation, renovation, repair etc., of the office premises.

52. In Mukand Ltd's case Vs. Commissioner of Central Excise, Belapur {2016 (42) STR 88 (Tri-Mumbai)}, a show cause notice was issued to the assessee therein, stating that they have wrongly availed Cenvat credit of service tax, on the input services, viz., Rent-a-Cab service, out door catering service, services by air travel agency, services by CHA in respect of exports, cleaning and repair/maintenance service of guest house, Gymnasium and sports club/sports ground, etc., were wrongly availed and therefore, the Department proposed to disallow and recover the same. Interest and penalty were also imposed under Section 11 AC (1) (a) of the Central Excise Act r/w. Rule 15 (2) of the Cenvat Credit Rules. The matter went upto the Tribunal. One of the contentions raised by the assessee therein before CESTAT was that the garden maintenance was essential for running the factory. Likewise, in the instant appeal, letter of Maharashtra Pollution Control Board, captioned as "Consent to Operate" was produced. Cestat, Mumbai, after considering the definition

of input services and the contention of the assessee at paragraph Nos.2.4 and 4.1, held as follows:-

2.4. As regards gardening expenses, it is pointed out that the same are essential for running the factory in support of which the appellant has produced the "Consent to operate" letter issued by the 'Maharashtra Pollution Control Board' dated 26-3-2007, wherein the Pollution Control Board considering the parameters that the Trade Effluent and discharge sewage, etc, have given the consent subject to the condition that green belt afforestation is to be done up to 33% on available open space land as per the said consent letter. Thus, maintenance/afforestation and green belt in

and around factory premises is an essential part, is the Mandatory Activity under the law of the land, so as to comply with the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 read with relevant Rules. Accordingly, the disallowance is uncalled for and pleads the same to be set aside.

2.5. As regards cleaning expenses of Rs.33,182/-, it is stated that the residential colony is situated within the factory premises, forming part of the factory area, as per approved map by the Central Excise authority. Further, the colony is an 'industrial township' and the appellant is responsible to provide all types of municipal services in the colony. As such, the disallowance is bad, and fit to be set aside.

3. The learned AR relies on the impugned order and prays for dismissal of the appeal.

4. Having considered the rival contentions and perusing the appeal filed and the documents produced by the appellant, as regards the 'canteen expenses', which is only the labour component for manpower engaged for running the canteen, I hold that no proportionate disallowance is called for as there is no element of outdoor catering nor there is any element for recovery of Service Tax from the employees.

4.1. As regards the 'gardening expenses', the credit on the same is fully allowable as the same is required for maintaining the good atmosphere in the manufacturing area and also a condition precedent as laid down by the State Pollution Control Board, without which the appellant cannot resort to manufacturing Activity.

53. Reading of Mukand Ltd's case, makes it clear that what is mandatory under a law, for the purpose of manufacture of any product, satisfies the substantive part of the definition "input service."

54. In HCL Technologies Ltd., Vs. Commissioner of Central Excise, Noida {2015 (4) STR 369 (Tri-Del)}, the period of dispute was between October 2011 and December 2011. Assessee therein, filed a refund claim, under Rule 5 of the Cenvat Credit Rules, 2004, r/w. Notification No.05/2006-CE (NT) dated 14/3/2006. Adjudicating authority, rejected the claim of refund of some of

the input services. Commissioner of Appeals, Appellate Authority, allowed refund of a portion of the amount. Some of the input services for which refund was denied, along with reasons therefor, extracted in HCL Technologies Ltd., are reproduced hereunder:-

Sl.No .	Input Service	Amount in Rs.	Reasons for denying the credit/refund
1.	Car Parking Service	37,427/-	No nexus between input service and output service provided.
2.	Room Service Charges	1,442/-	It is for stay of an individual and has nothing to do with the export of service.
3.	Dry Cleaning Charges	28,292/-	It is not essential for the export of service.
4.	Renting of equipments for organizing events +	6,95,878 + 11011/-	No nexus between the input service and output service provided.
5.	VAT Registration of additional place	361/-	It is not ascertainable from the invoice, the additional place which got registered.
6.	Advertisement and Sponsorship Services	18,49,953/-	It is for promotion of their brand and Brand HCL also which includes hardware as well.
7.	Out of Pocket expenses	84,905/-	It has no nexus with provision of the output service.
8.	Fee for Visa and immigration	26,050/-	It is not eligible for spouse and daughter.
9.	Maintenance of garden	11,872/-	It has no nexus with provision of the output service.

Sl.No .	Input Service	Amount in Rs.	Reasons for denying the credit/refund
10.	Rent-a-cab service	22,751/-	Service has been used prior to the relevant period (refund calim for the period Oct.2011 to Dec.2011).
11.	Charges for accommodation	63,345/-	Service have been availed to provide onsite support and software implementation to the domestic customers and not overseas customers.

55. When the correctness of the orders of the above said authority was questioned, CESTAT, Delhi, at paragraph No.10, ordered as follows:-

"In a series of judgments, the Tribunal has held Garden Maintenance Services qualify as input services. Therefore, the observation of the authorities below that it has no nexus with the output service is untenable. The same is therefore allowed."

56. In Lifelong Meditech Ltd., Vs. Commissioner of Central Excise and Service Tax, Gurgaon - II {2016 (44) STR 626 (Tri-Chan)}, one of the input services credit has been denied, to the appellant therein, was horticulture service. Placing reliance on Millipore India Pvt Ltd's case, submission has been made before CESTAT, Chandigarh, that the appellant/assessee therein is compulsorily required to maintain the factory in the garden. Without maintenance of the garden, appellant cannot run the factory. Submission has been made that horticulture service is indirectly linked to the manufacturing activity and therefore, the appellant is entitled to avail Cenvat Credit on the said service. Having regard to the above said submissions, at paragraph Noa.5.1 to 5.5, CESTAT, Chandigarh, held as follows:-

"5.1. On careful consideration of the submissions made by the learned counsel, I find that warehouse has been used by the appellant for storage of raw material and finished goods, which is a registered place for removal goods. In the circumstances, storage of goods is an integral part of manufacturing, therefore, appellant is

entitled to avail Cenvat Credit on these services.

5.2. With regard to Project for Modification/Modernisation services, I find that these services are none other than a renovation of the factory premises which is covered by the Rule 2 (1) of Cenvat Credit Rules, 2004. Therefore, I hold that the appellant is entitled to avail Cenvat Credit for project for Modification/Modernisation services.

5.3 With regard to Horticulture services, I find that the appellant is compulsorily required to maintain a garden in their factory to pollution control norms. Therefore, the horticulture services are directly related to the manufacturing activity by the appellant as without maintaining the garden, the appellant cannot run their factory. Therefore, I hold that the appellant is entitled to avail Cenvat Credit for horticulture services.

5.4. I also observe that courier service has been used by the appellant for various correspondences made with suppliers of the goods, without these correspondences, the appellant cannot do their business. Therefore, the courier service is an integral part of their activity. Therefore, I hold that the appellant is entitled to avail Cenvat credit for courier service.

5.5. The transportation service has been used by the appellant for marketing/sales, which is directly related to the manufacturing activity. Therefore, I hold that the appellant is entitled to avail Cenvat credit on Transportation service."

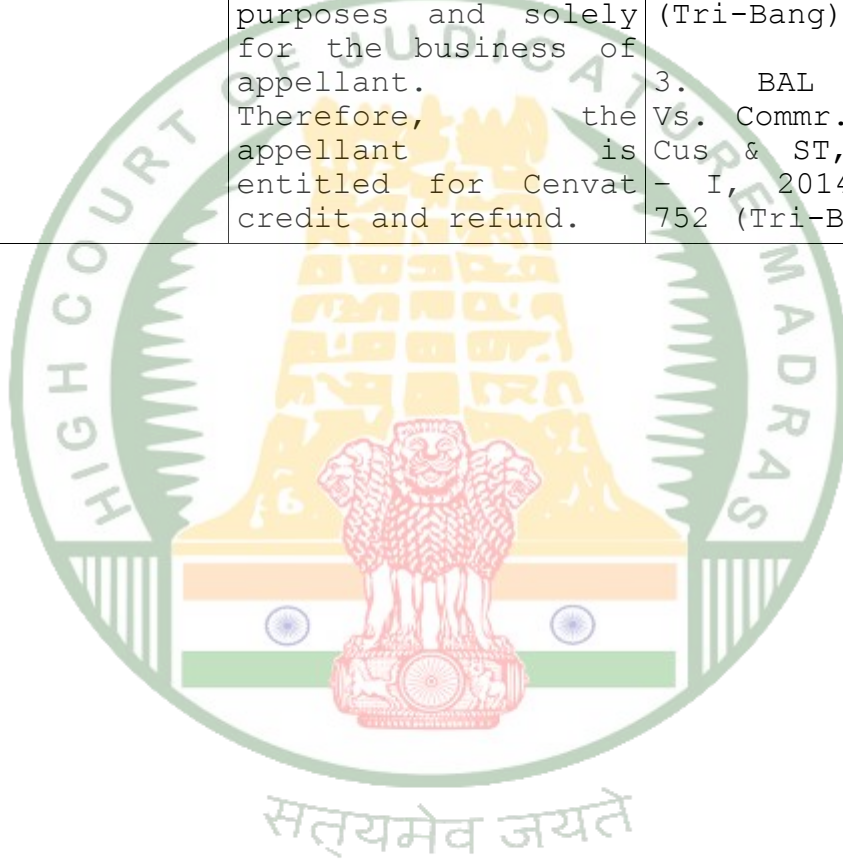
57. In M/s. Strides Arcolab Ltd., Opposite IIMB, Bilekahalli, Bannerghatta Road, Bangalore 560 076, Karnataka Vs. Commissioner of Central Excise, Customs and Service Tax, Bangalore - 1, reported in 2016 SCC Online CESTAT, 7824, Commissioner of Appeals, rejected the refund of credit on the following services. Banking and Financial Services; Credit Distributed as ISD; Annual subscription; Garden Maintenance; Listing Fees; Validation Charges; Project Management; Registration renewal; Insurance; share holding charges; xerox machine charges; house keeping services. Aggrieved by the same, assessee, approached CESTAT, Bangalore and sought for reversal,

relying on few decisions, reproduced hereunder:

"4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is passed by ignoring the definition of 'input services' as contained in Rule 2 (1) of CENVAT Credit Rules as well as various decisions of the higher judicial fora. He further submitted that all the input services on which refund has been claimed have been used in or in relation to the manufacture of the goods. He also submitted that the refund claim has been rejected mainly on the ground that the appellant failed to produce the sufficient documents whereas the appellant has all the documents which can clearly establish the nexus between the input service and the manufacture of the goods. He further submitted that the impugned order does not have any specific findings under the ISD head. In support of his submission, the counsel has given a table containing the nature of service and the nexus as well as the decision, which is reproduced herein below:

NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Garden Maintenance	These services are used for maintenance of garden, which is mandatory under Factories Act for the Pharmaceutical Industries. They are not beatification per se. Therefore, the appellant is entitled for Cenvat Credit.	1. CCE V. Lupin Ltd, 2012 (28) STR 291 (Tri) 2. Mukand Ltd., V. C. of C.Ex., Belapur, 2016 (42) STR 88 (Tr-Mum) 3. Sterlite Industries India Ltd., V. C of C, Ex., Madurai, 2016 (41) STR 867 (Tri-Chennai). 4. HCL Technologies Ltd., V. C. of C.Ex., Noida, 2016 (40) STR 369 (Tri.Del)

NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Xerox machine charges	These services are used for maintaining photo copying machine, therefore, very much necessary for processing of documents used by quality control dept. besides for accounting and administrative purposes and solely for the business of appellant. Therefore, the appellant is entitled for Cenvat credit and refund.	1. In case of Parason Machinery (I) Pvt Ltd V. CCE, 2009 (16) STR 20 (Tri-Mum) 2. MEGMA Design Automation (I) Pvt Ltd., V. Commr. Of S.T., Bangalore, 2015 (40) STR 800 (Tri-Bang) 3. BAL Pharma Ltd Vs. Commr. Of C.Ex., Cus & ST, Bangalore - I, 2014 (34) STR 752 (Tri-Bang).



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NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
House keeping services	In terms of GMP (Prescribed Good Manufacturing Practices) and statutory obligations, every Pharmaceuticals Industries should keep the premises/plant/production area clean and hygiene in terms of ISO and Regulatory Compliance. The appellant wishes to rely upon the decision of L'oreal Indian Pvt Ltd., Vs. CCE - 2011 (22) STR 89 (Tri-Mum), where it was held that activity is in relation to business and hence are eligible for cenvat credit. Therefore, these services are very much used for manufacturing purpose indirectly. Therefore, the question of denial of credit is not sustainable.	1. Commissioner of Service Tax Vs. Jubilant Biosys Ltd., 2016 (42) STR 729 (Tri-Bang) 2. Hinduja Foundries Ltd Vs. CCE, Chennai I, 2016 (42) STR 494 3. Mega Design Automation (I) Pvt Ltd., Vs. Comm.of ST., Bang 2015 (40) STR 800 4. Reliance Industries Ltd., Vs. C.Ex.& ST, LTU, Mum., 2016 - TOIL - 2392-CESTAT-MUM 5. HCL Technologies Ltd., V. C.Cus., Ex., & ST, Noida, 2015 (400) STR 1124 (Tri-Del).

4.1. The learned counsel also submitted that bills of certain input services were received at the corporate office and the corporate office after registering as an ISD has distributed the credit to the manufacturing unit and appellant has also given below the details of those input services with nexus distributed as ISD to its manufacturing units.

NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Clearing and Forwarding	Includes loading and unloading charges, hamali charges towards procurement of import material which are used in manufacture and export of finished goods. Therefore, the same is very essential for manufacturing/business purpose and eligible for Credit and refund.	1. Reliance Industries Ltd., V. C.E & ST, LTU, Mum., 2016 - TOIL - 2392 - CESTAT - Mum 2. Heera Overseas (P) Ltd V. CCE, 2012 (26) STR 545 (Tri-Bang) 3. 2013 (29) STR 385 (Tri-Bang) C. Cubed Solutions Pvt Ltd
Freight Inwards/outwards	- Service tax paid on expenditure relating to freight inward and outward. The appellant submits that in the case of export, port is the place of removal.	1. Delta Energy Systems Ltd V. CCE, 2013 (31) STR 684 (Tri-Del) 2. Adani Pharmachem (P) Ltd V. CCE, 2009 (238) ELT 179 (Tri.)
Installation charges	Charges towards installation of machinery and equipment in manufacturing area.	

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NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Maintenance and Repair/Annual Maintenance	Charges towards maintenance of equipment, machinery, computers, etc., at regular interval (Annual/Quarter/Monthly). Machinery includes Plant and Machinery, Compressor, Air conditioners, AHU's, Weighing balance, Spectrometer, boiler, DG set, etc., which are used in plant for manufacture of the finished products. Regular maintenance of the equipment, plant and machinery is a mandatory to comply with guidance of the Regulatory Authorities. Without the routine maintenance activity, plant will not be able to function effectively/efficiently for the smooth manufacturing of final products. Therefore, the Annual maintenance is an activity directly related to the manufacture of finished goods/final products.	1. Reliance Industries Ltd., V. C>Ex. & ST, LTU, Mum., 2016-TOIL-2392-CESTAT-MUM 2. CCCE V. Aricent Communications Pvt Ltd 2013 (31) STR 548 (Tri-Bang) 3. HCL Technologies Ltd., V. C.Cus., Ex., & ST, Noida, 2015 (40) STR 1124 (Tri-Del).

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NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Security charges	Security charges for factory building and office building.	1. CCE V. Deloitte tax services India Pvt Ltd., 2008 (11) STR 266 (Tri-Bang) Reliance Industries Ltd., V. C.Ex & ST, LTU, Mum., 2016-TOIL-2392-CESTAT - MUM 3. HCL Technologies Ltd., V. C.Cus., Ex., & ST, Noida, 2015 (4) STR 1124 (Tri-Del)
Technical Testing and Analysis services	Charges towards testing and analysis of raw material, packing material used in the manufacture of final goods. These tests are compulsorily required to be fulfilled as per statutory regulation and GMP requirements.	1. CCE V. Lupin Ltd., 2012 (28) STR 291 (Tri) 2. Utopia India Pvt Ltd., V. Commissioner of Service Tax, Bangalore, 2011 (23) STR 25 (Tri-Bang)
Telephone Charges	Charges towards telephone to factory, office, etc.,	1. CCE V. Lupin Ltd, 2012 (28) STR 291 (Tri) 2. Reliance Industries Ltd., V. C.Ex. & ST, LTU, Mum., 2016 - TOIL-2392-CESTAT-MUM 3. Alliance Global Services IT (I) (P) Ltd V. C.C., CE & ST., Hyderabad - II, 2016 (42) STR 438 (Tri-Hyd)

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NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Advertisement	Service towards publication of quarterly/annual accounts, printing of literature, promotion of brands, etc.	1. CCE V. Lupin Ltd., 2012 (28) STR 291 (Tri). 2. CCE V. Deloitte tax services India Pvt Ltd., 2008 (11) STR 266 (Tri-Bang) 3. 2013 (29) STR 385 (Tri-Bang) C. Cubed Solutions Pvt Ltd. 4. HCL Technologies Ltd., V. C.of C.Ex., Noida, 2016 (40) STR 369 (Tri.Del)
Audit fees	Services towards compliance and Plant audit under various statutes which are mandatory for Pharma Industry and Statutory Audit (Internal/External).	1. CCE V. Lupin Ltd, 2012 (28) STR 291 (Tri) 2. HCL Technologies Ltd., V.C.Cus., Ex., & ST, Noida, 2015 (40) STR 1124 (Tri.Del)
Banking and Financial Services	The appellant submits that these services are used for the purpose of meeting its day to day banking operations like DD charges, bank charges on loan etc. As the definition of input service clearly covers financial services, therefore the question of denying refund on the same is not sustainable.	1. Wipro Ltd., V. Union of India, 2013 (29) STR 545 (Del) 2. Commissioner V. Jeans Knit Pvt Ltd., 2015 (37) STR J 244 (Kar) 3. Commissioner of Service Tax V. Jubilant Biosys Ltd., 2016 (42) STR 729 (Tri-Bang) 4. 2016 (41) STR 994 (Tribunal Bombay/Mumbai) CCE V. Rosy Blue (India) Pvt Ltd.

NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Business Auxiliary Services	Credit available on service tax paid on import of services/reverse charge mechanism for the services received by appellant such as -Export sales commission, professional fees, brand fees, etc., which are directly related to manufacturing activity.	1. Commissioner of Service Tax. V. Jubilant Biosys Ltd., 2016 (42) STR 729 (Tri-Bang) 2. VST Industires Ltd., V. CCE, Hyd-II, 2010 (262) ELT 749 (Tri-Bang)
Catering services	Charges towards supply of food and catering for staff and plant operators which is statutory requirement as per the Factories Act, since the appellant has more than 250 employees	1. Stazen Toyotetsu India (P) Ltd., 2011 (23) STR 444 2. BNY Mellon International Operations (I) P Ltd., V. CCE (A) Pune - III, 2013 (30) STR 567 (Tri.Mumbai) 3. Semco Electrical Pvt Ltd., V. CCE, Pune, 2010 (18) STR 177 (Tri-Mumbai) 4. Commissioner of Service Tax V. Jubilant Biosys Ltd., 2016 (42) STR 729 (Tri-bang) 5. Reliance Industries Ltd., V.C.Ex & ST, LTU, Mum., 2016 - TOIL-2392-CESTAT-Mum

NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Consulting services	Services towards Inspection, ship, advisory services, certification, investor relations, etc. These services are used for obtaining services in various fields like, production, HR, legal etc.	1. CCE V. Deloitte Tax Services India Pvt Ltd., 2008 (11) STR 266 (Tri-Bang) 2. Reliance Industries Ltd., V. C.Ex.& ST, LTY, Mum., 2016 - TOIL-2392-CESTAT-Mum 3. Hearland Bangalore Transcription Services (P) Ltd., V. CST:2011(21) STR 430 (Tri-Bang).
Courier services	Charges towards sending and receiving documents/materials/parcel/samples in the course of business.	1. CCE V. Lupin Ltd., 2012 (28) STR 291 (Tri) 2. Reliance Industries Ltd., V. C.Ex.& ST.LTU.Mum 2016-TOIL-2392-CESTAT-MUM 3. HCL Technologies Ltd., V.C.Cus., Ex., & ST, Nida, 2015 (40) STR 1124 (Tri-Del)
Insurance services	These services are used for obtaining insurance on plant and machinery, which are used for manufacturing activity. Further, these services also include insurance to employees, which is a statutory requirement in the terms of Factories Act, as the appellant has more than 250 employees.	1. CCE V. Stanzen Toyotetsu India (P) Ltd., 2011 (23) STR 444 (Kar) 2. Reliance Industries Ltd., V. C.Ex & ST, LTU, Mum., 2016 - TOIL-2392-CESTAT-Mum 3. CCE V> Millipore Indi Pvt Ltd., 2012 (26) STR 514 (Kar) 4. Utopia India Pvt Ltd V. Commissioner of Service Tax, Bangalore, 2011 (23) STR 25 (Tri.Bang)

NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Listing fees	Service in respect of stock exchange charges, as the appellant is a listed company. In terms of stock Exchange Regulation, every listed company is required to pay listing fees for various service provided by the stock exchange for various service. Therefore, the service availed by the appellant will clearly fall within the ambit of financial charges, which is also covered, within the definition of input service, therefore, refund on these services cannot be denied.	Appellant submits that listing fees being a statutory requirement, therefore, the appellant is entitled for credit and refund of the same.
Manpower supply	Charges towards supply of labour and operator for production, packing, maintenance, storage and other services that support production of finished goods.	1. HCL Technologies Ltd., V. C.Cus., Ex., & ST, Noida, 2015 (40) STR 1124 (Tri.Del) 2. Reliance Industries Ltd., V.C of C.Ex &ST (LTU) Mum., 2016 (42) STR 457 (Tri.Mum) 3. Alliance Global Services IT (I) (P) Ltd., V. C.C., CE & ST., Hyderabad - II, 2016 (42) STR 438 (Tri.Hyd)

NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Professional fees	Fees towards inspection, retainer ship, advisory services, certification etc.	1. HCL Technologies Ltd., V. C.Cus., Ex., & ST, Noida, 2015 (40) STR 1124 (Tri-Del) 2. Commissioner of S.T., Mumbai - II, V. MMS Maritime (India) Pvt Ltd., 2016 (41) STR 869 (Tri.-Mumbai)
Recruitment expenses	These services are used for recruitment of employees, who are utilised for production and administration works	1. Reliance Industries Ltd., V. C of C.Ex & ST (LTU) Mum., 2016 (42) STR 457 (Tri.Mum) 2. Alliance Global Services IT (I) (P) Ltd., V. C.C., CE & ST., Hyderabad - II 2016 (42) STR 438 (Tri-Hyd) 3. 2013 (29) STR 385 (Tri-Bang) C. Cubed Solutions Pvt Ltd



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NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Rent charges	Rent mainly relating to factory buildings and office premises	1. Jeans Knit P Ltd., V. CC 2011 (21) STR 460 (Tri-Bang) 2. Reliance Industries Ltd., V. C.Ex & ST, LTU, Mum., 2016 - TOIL-2392-CESTAT-MUM 3. HCL Technologies Ltd., V. C.CUs., Ex., & ST, Noida, 2015 (40) STR 1124 (Tri-Del) 4. Alliance Global Services iT (I) (P) Ltd., V.C.C., CE & ST., Hyderabad - II, 2016 (42) STR 438 (Tri-Hyd)
Software Development	Charges towards upgradation/development of software-SAP-ERP system such as Production Planning-Procurement-Production-Finance etc.	Commissioner of Service Tax Bangalore V. Yodlee Infotech (P) Ltd., 2015 (39) STR 695 (Tri-Bang)
Stock Exchange Charges	Fees paid towards approval of ESOP scheme for employees (Employee Stock option Plan)	This being a statutory requirement in terms of company law, therefore, the appellant was entitled for credit and refund of the same.

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NATURE OF SERVICE	SUBMISSIONS	SUPPORTED BY
Training Charges	These services are used to the employees, in the area of manufacture.	1. CCE V. Deloitte Tax Services India Pvt Lt., 2008 (11) STR 266 (Tri-Bang) 2. Commr. of Cus & ST, Bangalore V. Suprajit Automotive Pvt Ltd., 2015 (37) STR 408 (Tri-Bang) 3. Wipro Ltd., V. Union of India, 2013 (29) STR 545 (Del).
Travelling expenses	Air travel incurred for the production, Marketing and Management personal for the furtherance/enhancement of business.	1. Dell International Services India Pvt Ltd., V. CCE, Bang, 2010 (17) STR 540. 2. CCE V. Stanzen Toyotetsu India (P) Ltd., Kar HC 2011 (23) STR 444. 3. Commissioner of Service Tax V. Jubilant Biosys Ltd., 2016 (42) STR 729 (Tri-Bang)
Bio study charges	These services are used for bio study of the products which is nothing but testing and analysis, which is very much used for its manufacture of its final product, which is exported.	These services being essential for the pharma company which was direct on impact on R & D for manufacturing. Therefore, appellant entitled for credit and refund of the same.

58. In M.s, Orient Bell Ltd., Vs. Commissioner of Central Excise, Noida, reported in 2016 SCC Online CESTAT, 7923, the following services were availed by the assessee, and Cenvat Credit claimed was rejected, imposing duty and penalty.

S.No (1)	Nature of Service (2)	Cenvat Credit taken Dec 2010 to March 2011 (3)	Cenvat Credit taken April 2011 to Dec 2011 (Rs.) (4)	Cenvat Credit taken Jan 2012 to Nov 2012 (Rs.) (5)	Total (2 + 3 + 4) Rs. (6)
1	Garden Maintenance	15,867/-	29,063/-	-	44,930
2	Repair & Maintenance (Painting gutter + white wash)	-	2,433	-	2,433
3	Plant Housekeeping - (Manpower supply)	-	61,813	1,44,063	2,05,876
4	Warehouse Sweeping	-	-	25,336	25,336
5	Housekeeping Services - utilized at different botique/showroo ms	-	4,415	-	4,415
6	Public relation charges (specific category of service not mentioned)	1,44,715	2,86,855	-	4,31,570
7	Public Relation services - organising conferences	6,723	9,270	-	9,270
8	Services for filing VAT/Income Tax Return + VAT Audit	-	4,071	1,994	12,788
9	Services for common area - maintenance in stairs	361	12,080	-	12,080

S.No (1)	Nature of Service (2)	Cenvat Credit taken Dec 2010 to March 2011 (3)	Cenvat Credit taken April 2011 to Dec 2011 (Rs.) (4)	Cenvat Credit taken Jan 2012 to Nov 2012 (Rs.) (5)	Total (2 + 3 + 4) Rs. (6)
10	Services of peon at H.O + services utilised for a ppty of Mr.Daga at Kolkata	-	2,046	-	2,407
11	Rent-a-cab services	-	18,955	8,368	27,323
12	WBM service	-	3,456	-	3,456
13	Recreational services	-	30,385	-	30,385
14	Tractor Trolly - not regd. Public Transport Vehicle - Inside factory	13,535	-	618	14,153
15	Construction services - repair	-	79,631	-	79,631
16	Neither service tax amount - nor category of service shown in invoice (Bills of Hyatt Hotel)	-	9,382	-	9,382
17	Repair of Battery/UPS	-	350	-	350
18	Payment of sea Court in Jaypee Green	-	3,605	-	3,605
19	Loading/unloading of trading goods.	-	2,181	-	2,181
		1,81,201	5,59,991	1,80,379	9,21,571

59. When correctness of the order of the appellate authority was tested, CESTAT, Delhi ordered as hereunder:-

So far as garden maintenance is concerned, the same is input service as it is a pollution control requirement and improves the aesthetics and overall atmosphere and thus is an expenditure in or in relation to manufacture.

60. At para No.7, Cestat, Delhi, held thus:-

"7. Accordingly, I hold that all the above services are eligible to input service, save and except the service at serial number 10, 11, 18 & 19 (of the table), total input service tax amounting to Rs.35,516/-."

61. At para 6, CESTAT, Bangalore held as follows:-

"So far, garden maintenance is concerned, the same is input service as it is a pollution control requirement and improves the aesthetics and overall atmosphere and thus is an expenditure in or in relation to manufacture. Similarly, repair and maintenance, plant housekeeping, warehouse sweeping are also expenditure incurred in relation to the manufacture of dutiable output as well as essential for running the factory. So far, housekeeping services are concerned, it is explained that the same have been used in maintenance of their botique/showrooms and the appellant directly selles through own showrooms and shops and, accordingly, the said service is held as input service being incurred in relation to the manufacturing business. So far public relation service charges Rs.4,31,570/- is concerned, I find that the appellant have entered into an agreement with the Ad factors, PR Private Ltd., situated at Mumbai for the objective of enhancing their Brand Value, Support to marketing & Promotional Initiatives, Building Corporate Image, Creating Awareness, so as to develop interest in the products of appellant and further the scope of service includes conducting ongoing research to identify communications and opportunities, provide consultancy on all aspects of communication needs and corporate reputation, development, suggest and assist better media relations, media monitoring/includes providing reports to the management as regards the overall industry

scenario and the consumer tastes and preferences etc. Further, for such services, the agreement provides a monthly retainer's fee of Rs.2,50 lakhs + reimbursement of certain costs like - Photocopying, Postage, Courier, Car hire, Video conferencing, Broadcasting, Preparation & Translation of Press Releases, Cost of Electronic Media Monitoring etc., etc. I also find that he bills have been raised in consonance with the agreement, as one of the bills, dated 28/2/2011, have been raised for organising Press Conference for launch of showroom at Hyderabad. Accordingly, I hold that the said services have been availed with respect to sales promotion, which is an eligible input service and, accordingly, the same is held to be allowable. So far, the services received with respect to tax compliances like, Filing of VAT/Income Tax Returns, the same is also held to be eligible input service as tax compliances are also essential and it is important not to make errors and make timely compliances. So far, the common area maintenance services received, the disallowance of service tax on bills etc., is concerned, the allegation is that the service tax amount is not reflected in the invoice/bills. The ld.counsel have taken me through the applicable bills, placed in the appeal file and I find that the Court below have committed mistake of fact as service tax have been duly charged and paid in the bills raised by Hyatt Hotel. Further the service tax on repair of UPS battery, is also held as eligible input service as the same is incurred to ensure uninterrupted power supply which is essential to run the business."

62. In Commissioner of Central Excise, Delhi - III, Suzuki Motor Cycle India Private Limited {2017 (47) STR 85 (Tri-Chan), Insurance service gardening maintenance service, availed prior to 1/4/2011 and latter have been considered. At paragraph No.4 of the order, in Suzuki Motor Cycle India Private Ltd's case, CESTAT, Chandigarh held as follows:-

"With regard to the gardening maintenance service, I find that the issue came before this Tribunal, in the case of Lifelong Meditech Ltd., vide, Final Order No.A/60023/2016 dated 11/5/2016 {2016 (44) STR 626 (Tribunal), wherein this

Tribunal has observed as under:-

"5.3 With regard to Horticulture services, I find that the appellant is compulsory required to maintain a garden in their factory to pollution control norms. Therefore, the Horticulture services are directly related to the manufacturing activity by the appellant as without maintaining the garden, the appellant cannot run their factory. Therefore, I hold that the appellant is entitled to avail cenvat credit for horticulture services.

In the light of the above cited decision, I hold that the assessee is entitled to avail the gardening service."

63. Though Mr.V.Sundareswaran, the learned counsel for the revenue pressed into service, a Hon'ble Division Bench judgment of this Court, in National Co-operative Sugar Mills Ltd., Vs. Commissioner of Central Excise, Madurai {2016 (344) ELT 832 (Mad)}, to which one of us is a party (Mr.Justice S.Manikumar), the said judgment, would not render any assistance, to the case on hand, for the reason that it was rendered with reference to the definition to Rule 2 (k) of the Cenvat Credit Rules, 2004, dealing with goods used in relation to the manufacture of the final product, whether directly or indirectly or in relation to the manufacture of final products and clearance of final products, upto the place of removal. Contention of the learned counsel for the revenue that input services should be restricted only to the manufacture of final product, either directly or indirectly cannot be countenanced. At this juncture, this Court deems it fit to consider a decision of the Hon'ble Supreme Court in Ramala Sahkari Chini Mills Ltd., Vs. CCE, reported in {2010 (14) SCC - 744}, wherein the Hon'ble Supreme Court held that the definition of "input services", cannot be restricted.

64. All the input services used in relation to modernisation, renovation or repairs of a factory, advertisement or sales promotion, security, legal services, etc., are included in the inclusive definition of input services. Requirement of 25% of the green belt is mandatory, for the very purpose of existence and consequently, manufacture of the final product. It is not only the process of manufacture which results in the production of excisable goods, attracting duty, but the input services which are integrally connected with the manufacture of such final products, should also be considered, so as to give effect to the inclusive definition of input services. Such input services may not in all cases, be in or in relation to manufacture of the final product, but they may be integrally

connected and that there should be nexus with manufacture.

65. Ordinarily speaking, 'integral' means "of a whole or necessary to the completeness of a whole' and as "forming a whole' (Concise Oxford Dictionary).

Meaning of the word, "integral" as mentioned in Black's Law Dictionary at page 808, VI Edition, is that "essential part of the facts, which constitute cause of action for getting relief".

In Macmillan Dictionary, word "integral" means, forming an essential part of something and needed to make it complete.

66. In Orient Bell Limited vs. Commissioner of Central Excise, Noida, {2017 (52) STR 56 (Tri-ALL)}, the relevant period under the notice was 1/12/2010 to 30/11/2012. Among the services for which Cenvat credit claimed was gardening maintenance and as regards the same, Cestat, Regional Bench, Allahabad, at paragraph No.6 held as follows:-

"So far garden maintenance is concerned, the same is input service as it is a pollution control requirement and improves the aesthetics and overall atmosphere and thus is an expenditure in or in relation to manufacture."

67. In Sri Rama Vilas Services Ltd., Vs. CESTAT, Chennai, {2017 (3) GSTL 24 (Mad)}, the substantial question of law framed therein by this Court on 28/11/2011, is as follows:-

"Whether the Tribunal is correct in holding that the appellants are not eligible to Cenvat Credit for service tax paid on gardening service used within their factory while such gardening service was received and used in compliance with the regulation enforced by Pollution Control authorities?"

68. After considering, the same, at paragraph No.7, a Hon'ble Division Bench held as follows:-

"Evidently, that the issue raised, is directly covered in favour of the assessee, by a judgment of the division Bench of this Court passed in the matter of Commissioner of Central Excise and S.T.Vs. Rane TRW Steering Systems Limited {2015 (39) STR 13 (Mad)}."

69. Having gone through the statutory provisions which stood prior and after the amendment, and the decisions, we hold that the garden maintenance service would fall within the definition of "input service", in terms of Rule 2 (1) of the Cenvat Credit Rules, 2004 and consequently, declare that the

Tribunal was not right in denying input service credit availed on garden maintenance service. Substantial questions of law 1 and 2 are answered in favour of the assessee.

70. In the light of the above discussions and decisions, the instant Civil Miscellaneous Appeals are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

mvs.
To

1. The Customs, Excise & Service Tax Appellate Tribunal,
Chennai Bench, Sastri Bhavan, Haddows Road, Chennai 06.
2. The Commissioner of Central Excise and Central Tax
Chennai Outer Commissionerate
Newry Towers, No.2054 I Block
II Avenue, 12th Main Road
Anna Nagar
Chennai 600 040.

+2 Ccs to Mr.S. Jaikumar, Advocate sr 10701, 10546.
+2 Ccs to Mr.V. Sundareswarar, Advocate sr 10749.

Civil Miscellaneous Appeal Nos.65 and 66 of 2018

PVS (CO)
SP (01/03/2018)

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