


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:aaahmedabad2@gmail.com">aaahmedabad2@gmail.com</a></p>		

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा सं./ V.87/15-24/OA/2017

DIN : 20210564WT0000999DE6

आदेश की तारीख /

Date of Order : 07.05.2021

जारी करने की तारीख /

Date of Issue : 07.05.2021

द्वारा पारित/Passed by -

अमरजीत सिंह

/ AMARJEET SINGH

आयुक्त

/ COMMISSIONER

मूल आदेश संख्या /

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-05-06/2021-22**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए।) अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अंग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम एक प्रतियाँ संलग्न की जाएंगी एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notices no. 48/commr/GLT-4/TML-AMD/STD/Non Cera/2015-16 dated 04.01.2016 and V.87/15-24/OA/2017 dated 07.11.2017 issued to M/s TATA Motors Ltd., Survey No. 1, Village North Kotpura, Tal: Sanand, Ahmedabad - 382 170

**Brief facts of the case:**

1. M/s. Tata Motors Limited, Survey No. 1, Village North Kotpura, Taluka Sanand, Ahmedabad Gujarat, 382170 (for the sake of gravity herein after referred to as "TML" or "the assessee") is engaged in manufacture of Motor Vehicles falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985.

2. During the course of EA-2000 Audit conducted by the department at the factory premises of TML, it was observed by the Auditors from the records (electronic data ) that TML have availed Service Tax Credit amounting to Rs.1,58,96,712/- on the following services which cannot be considered as "input service" in light of definition stipulated under Rule 2(I) of the CENVAT Credit Rules 2004 (hereinafter referred to as CCR 2004) during the period from February 2009 to December 2011

- Rent-a-Cab Operator service,
- Interior Decorator service,
- Health Check up and Treatment Service
- Outdoor Catering service
- Travel agent service provided by M/s Thomas Cook
- Event Management service provided by Clubs and Hotels,
- Services provided by Confederation of Indian Industry,
- Maintenance and Repair services of Company vehicles
- Fencing work as Erection and installation services
- Landscaping and gardening,
- Mandap Keeper and Banquet Services
- Maintenance & House-keeping of Guest House
- Translation service.
- Construction service availed after 01.04.2011.

3. Definition of Input Service under Rule 2(I) of the CCR 2004 [ prior to 1.04.2011 and after 1.04.2011] reads as under :

3.1 Prior to 1.4.2011.

*"Input service" means any service,*

- (i) *used by a provider, of output 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 up to the place of removal*

*and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sale, promotion, market research, storage upto the place of removal, procurement of inputs, activities relating 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;*

3.2 With effect from 1.4.2011.

*"input service" means any service,-*

- (i) *used by a provider of output 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 upto the place of removal,*

*and includes services used in relation to modernization, 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, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*

3.3 It appeared that use of the input service must/be integrally connected with the manufacture of the final product. The input service must have nexus with the process of manufacture. It has to be necessarily established that the input service is used in or in relation to the manufacture of the final product. It appeared that the above mentioned services had no nexus with the manufacture and clearance of finished goods directly or indirectly. For example, it appeared that, if the services of Rent-a-cab operator, interior decorator or health check up

were not availed it would not lead to stoppage of production or clearance as these services were availed outside factory and had not; even remotely related with the manufacture and clearance of final products. Similarly the services of event management, club and hotels or the membership service, maintenance and repair of company vehicles, landscaping and gardening were not essential for manufacturing activity and manufacture can take place without these activities.

4. It therefore appeared that the above mentioned services received by TML did not fall within the purview of the main or inclusive part of the definition of 'input service' as laid down in Rule 2(l) of the CCR 2004, and; therefore it appeared that TML was not eligible for CENVAT credit in respect of the service tax paid on the above mentioned services.

5. It is well established law that the burden for admissibility of credit shall always lie upon the person taking such credit. TML has resorted such *modus operandi* with intent to avoid the payment of Service Tax. Thus, it is clear that TML had purposefully contravened the provisions of CCR 2004 as elaborately discussed hereinabove and rendered them liable for penalty under Rule 15 of the CCR 2004 read with Section 11AC of the Central Excise Act, 1944.

6. It appeared that such credit had been taken by the assessee in contravention of the provisions of the CCR 2004, with intent to evade payment of duty. It appeared that it was very well known to the assessee that the services in respect of which they had taken cenvat credit were services availed, either beyond the factory gate, ineligible documents, without documents or on the services which have not been used in or in relation to manufacture of final product and also not used for clearance of final product from the place of removal and also not related in relation to activity specified in the inclusive part of the definition of the input service. It is the responsibility of the assessee to take cenvat credit only if the same is admissible. Further, Rule 9(6) of the CCR 2004 stipulates that the burden of proof regarding admissibility of cenvat credit shall lie upon the manufacturer or provider of output service taking such credit. In this era of self assessment, the onus of taking legitimate cenvat credit had been passed on the assessee in terms of the said rule. In other words, it is the responsibility of the assessee to take cenvat credit only if the same is admissible. In the instant case, the credit taken in respect of services availed are inadmissible in as much as the same do not fall within the ambit of the definition of 'input services' as specified under Rule 2(l) of the CCR 2004 as discussed hereinabove. Thus, it appeared that it was very well known to them that the services in respect of which they had taken Cenvat Credit were services which are not admissible. Thus, it appeared that the assessee had taken cenvat credit on services which do not qualify as 'input services' despite of knowing that the same do not fall within the ambit of the definition of 'input service'. Thus, it appeared that the assessee have failed to discharge the obligation cast on them under Rule 9(6) of the CCR 2004. The said cenvat credit which appeared to have been wrongly taken and utilized for the payment of duties of excise resulted in revenue loss to the Government. Thus, it appeared that the assessee had contravened the provisions of the CCR 2004 with an intent to evade payment of duty especially in light of the fact that the assessee admittedly knew that the services had been availed are not admissible in terms of the above paras.

7. Thus, it appeared that the said assessee had contravened the provisions of Rule 2(l) read with Rule 3(1) of the CCR 2004, by wrongly availing Cenvat credit on the services, which were not falling under the definition of 'input service' as discussed in foregoing paras; Rule 9(6) of the CCR 2004 in as much as they have failed to discharge the burden of proof regarding admissibility of cenvat credit; All these acts of contravention on the part of the assessee have rendered themselves liable for penal action under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

8. Thus it appeared that some of these services could not be considered as 'input services' in the light of the definition stipulated under Rule 2(l) of the CENVAT Credit Rules, 2004 as they appeared to have no nexus whatsoever with the manufacture and clearance of their finished products directly or indirectly. the credit taken in respect of services availed are inadmissible in as much as the same do not fall within the ambit of the definition of 'input services' as specified under Rule 2(l) of the CCR 2004 as discussed hereinabove.

9. Accordingly, the following Show Cause Notices were issued to TML Sanand Unit for contravention of the provision of Rule 2(l) read with Rule 3(1) of the CENVAT Credit Rules, 2004 by wrongly availing CENVAT Credit on the taxable services, which were not falling under the definition of 'input service':-

Sr. No.	Show Cause Notice No.	Date of issue	Period of SCN	Service Tax Credit Amount demanded (Rs.)
1	F.No. V.87/15-12/OA/2014 issued by the Commissioner, Central Excise Ahmedabad-II Commissionerate	27.02.2014	February 2009 to December 2011	1,58,96,712
2	F.No. V.87/15-123/OA/2014 issued by the Commissioner, Central Excise Ahmedabad-II Commissionerate	19.11.2014	January 2012 to December 2013	1,17,43,333
3	Centralised SCN No. 35/ADC/GLT-4/TML-AMD/STD/Non-CERA/14-15 issued by the Additional Commissioner, Central Excise and Service Tax, LTU, Mumbai	28.01.2015	January 2014 to November 2014	48,47,017
4	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai	04.01.2016	December 2014 to October 2015	1,56,88,188
5	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North	07.11.2017	Nov-2015 to June-2017	2,27,97,741

10. Information for the period December 2014 to October 2015 was called for from TML Sanand Unit. TML Sanand unit vide their letter No. AC / SND / EXE / 22 /2017-18 dated 13.06.2017 and letter No- AC/SND/EXE/72/2015-16, dated 17.12.2015, submitted the details for the said period as detailed below :-

Period	Service Category	Service Tax Credit availed and Utilised			Total (In Rs.)
		Service Tax (in Rs.)	Ed. Cess (in Rs.)	SHE Cess (In Rs.)	
December 2014 to October 2015	Erection Commissioning of Installation	9129043	168698	84349	9382090
	Event Management	13797	276	138	14211
	Maintenance & House Keeping of Guest House	330843	4571	2286	337700
	Management Maintenance & Repair Service	4102941	66954	33463	4203358
	Services provided by Confederation of Indian Industry(CII)	23852	435	218	24505
	Travel Agent Service	126943	2719	1359	131021
	Repair and Maintenance of Construction Service	1447821	24461	12240	1484522
	Management Consultant Service	78115	324	162	78601
	Hotel Accommodation Service	8816	176	88	9080
	Goods Transport Agency	23100	0	0	23100
			15285271	268614	134303

11. It therefore appeared that TML Sanand Unit is not eligible for the CENVAT Credit of Service Tax amounting to Rs. 1,56,88,188/-. The CENVAT Credit so incorrectly availed and utilized by M/s. TML Sanand during the period from December 2014 to October 2015 is recoverable from them along with interest under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11(A)(1) of the Central Excise Act, 1944.

12. The grounds and legal positions as explained in the earlier Show Cause Notices bearing F. No. V.87/15-12/OA/2014 dated 27.02.2014 and F.No. V.87/15-123/OA/2014 dated 19.11.2014 issued by the Commissioner, Central Excise, Ahmedabad-II Commissionerate are also applicable to the present case. Hence the Show Cause Notices under consideration had been issued in terms of Section 11A(7A) of the Central Excise Act, 1944 & Rules framed there under.

13. In view of the above mentioned facts, M/s TATA Motors Ltd, Survey No. 1, Village North Kotpura, Taluka Sanand, Ahmedabad, Gujrat-382170, vide Show Cause Notice No. LTU/MUM/ST/GLT-4/TML-AMD/166/2015, dated 4.1.2016, were hereby called upon to show cause as to why:

1. CENVAT Credit of Service Tax amounting to Rs. 1,56,88,188/- (Rupees One Crore Fifty Six Lakhs Eighty Eight Thousand One Hundred Eighty Eight Only) for the period from December 2014 to October 2015 should not be disallowed and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944;
2. Interest should not be demanded from them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944;
3. Penalty should not be imposed on them under the provisions of Rule 15(1) of the CENVAT Credit Rules, 2004.

14. Further, information for the subsequent period i.e. from 01.11.2015 to 31.03.2017 was called for from TML Sanand Unit vide letter F. No. LTU/MUM/CX/GLT-4/TML-AMD/166/2015 dated 02.05.2017 by Central Excise and Service Tax, LTU, Mumbai & for the period from Apr. 2017 to June 2017 by the Range Superintendent, AR-IV, Division-III(Sanand), Ahmedabad North vide letter dated 18.08.2017. TML Sanand unit vide their letter No. AC / SND / EXE / 22 /2017-18 dated 13.06.2017 and letter No-TML/SND/GST/013/2017-18 dated 05.09.2017 submitted the information for the period from 01.11.2015 to 31.03.2017 & for the period from 01.04.2017 to 30.06.2017 respectively, as detailed below :-

Period	Service Category	Service Tax credit availed & utilized (in Rs.)
01.11.2015 to 30.06.2017	Landscaping and Gardening	768740
	Mandap Keeper & Banquet	17385
	Construction service	2566894
	Maintenance & House Keeping of Guest House	1061107
	Management & Maintenance	9139454
	Services provided by Confederation of Indian Industry(CII)	84782
	Travel Agent Service	73905
	Event Management Service provided by Clubs and Hotels	279314
	Hotel Accommodation	274585
	Management Consultant	182000
	Goods Transport Agency	8349575
	<b>TOTAL</b>	<b>22797741</b>

15. It appeared that TML Sanand Unit was not eligible for the CENVAT Credit of Service Tax amounting to Rs. 2,27,97,741/-. Therefore, the irregular CENVAT Credit so availed and utilized by TML Sanand Unit during the period from 01.11.2015 to 30.06.2017 is recoverable from them along with interest under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11(A)(1) of the Central Excise Act, 1944.

16. In view of the above mentioned facts, M/s TATA Motors Ltd, Survey No. 1, Village North Kotpura, Taluka Sanand, Ahmedabad, Gujarat-382170, vide Show Cause Notice No. V.87/15-24/OA/2017, dated 7.11.2017, were hereby called upon to show cause as to why:

1. CENVAT Credit of Service Tax amounting to Rs. 2,27,97,741/- (Rupees Two Crore Twenty Seven Lakh Ninety Seven Thousand Seven Hundred Forty One Only) for the period from 01.11.2015 to 30.06.2017 as shown in Annexure-A to this show cause notice should not be disallowed and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944;
2. Interest should not be demanded from them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944;
3. Penalty should not be imposed on them under the provisions of Rule 15(1) of the CENVAT Credit Rules, 2004.

### 17.DEFENCE REPLY:

A: SCN NO. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 , dated 4.1.2016, for the period from period from December 2014 to October 2015

The assesee has filed their written submissions in respect of No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16, dated 4.1.2016, on 8.12.2020, wherein they interalia stated as under:

#### Submissions

- 2.1 Since the subject SCN is issued by relying upon all the grounds relied upon by the department in earlier show cause notices issued to us, we are making our submissions on the basis of grounds taken by the department in earlier Show cause Notices to rebut the demand proposed in the subject SCN issued to us.
- 2.2 The Noticee submit that said SCN is incorrect in facts as well as law. It is submitted that each & every allegation made in the SCN is incorrect & perverse. It is further submitted that the Noticee counter and do not agree with any allegations made in the SCN. Hence, proposals made in the SCN is liable to be dropped forthwith.
3. Input services disputed in the SCN, falls in the definition of 'input service' as prevailing during the relevant period & thus credit was rightly availed by the Noticee.
  - 3.1 The issue involved in the present case is concerning the admissibility of Cenvat credit on services namely Erection, commissioning or installation service, event-management service, maintenance & housekeeping of guest house, management, maintenance or repair services, services provided by CII, travel agent service, Construction service (repair & maintenance), management consultant service, hotel accommodation service & goods transport agency service availed during the period from December 2014 to October 2015.
  - 3.2 It is submitted that the allegations contained in the SCN is not correct and the SCN has been issued to the Noticee without proper appreciation of facts on records and settled legal position on admissibility of Cenvat credit. Even the submission of the Noticee that they have inadvertently submitted the information for Cenvat credit availed on additional services viz; Management consultant services, hotel accommodation and Goods Transport Agency service though cenvat credit on these services was never in dispute i.e. neither Cenvat credit on these services was objected to by Audit team nor these services were covered in any of the earlier SCNs issued for the period upto November 2014 was not considered by the department.
  - 3.3 It was the allegation of the department that the Noticee have misinterpreted the definition of 'input services' as prescribed in Rule 2(l) of the said Rules. It was also alleged in the SCN that they have gone beyond the definition and availed Cenvat credit on services, which do not have nexus with the manufacture and clearance of finished goods directly or indirectly.
  - 3.4 It is respectfully submitted that after the amendment in the definition of 'input service' w.e.f. 01.04.2011, the Noticee is not availing Cenvat credit on input services, which are specifically excluded from the definition of "input service".
  - 3.5 The department is aware that as per the definition of "input service" contained in Rule 2(l) of the said Rules, the Noticee are entitled to avail Cenvat credit of service tax paid on all services which are used by them, inter-alia, whether directly or indirectly, in or in relation to the manufacture of the final products and clearance of the final products up to the place of removal.
  - 3.6 At this stage, it is relevant to refer to definition of term 'input service' under Rule 2(l) of the said Rules which is reproduced below:

(l) "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) in so far 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], in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far 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.

3.7 It may be observed from the above that the term "input service" has been defined by the method of "means and includes". Such a definition is very specific in its scope. While the "means" part of the definition lays down the meaning of the term, the "includes" portion brings within its ambit certain more activities, though such activities could not be covered under the means part, the "inclusive" part of the definition further expands the scope of the coverage of the definition.

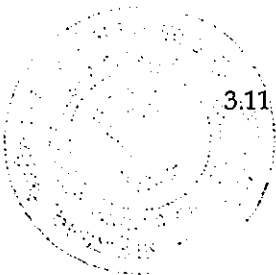
3.8 The hon'ble High Court of Gujarat in the case of CCE vs Parth Poly Woven (P) Ltd as reported in 2012 (25) STR 4 (Guj) has held as under:

*"17 It is by now well settled that when a word is defined to mean such and such, the definition is, prima facie, restrictive, whereas where the word is defined to include something, the definition is prima facie expansive. On the other hand, when the Legislature uses the expression 'means and includes', the definition is meant to be exhaustive."*

3.9 The department is aware that as per the definition of "input service" contained in Rule 2(l) of the said Rules, the Noticee are entitled to avail Cenvat credit of service tax paid on all services which are used by them, inter-alia, whether directly or indirectly, in or in relation to the manufacture of the final products and clearance of the final products upto the place of removal.

3.10 It is further submitted that the inclusive part of the definition of "Input service" under Rule 2 (l) of the said Rules makes it clear that credit of service tax paid on services which are used in relation to the business such as accounting, auditing, etc. would be allowable even if the said services are not per se used in or in relation to manufacture of the final product. It is also submitted that the very object of the Cenvat Scheme is to allow credit of taxes paid on inputs used in or in relation to the manufacture of the final product and service tax paid on services used in relation to the manufacture of final products as well as the services used in relation to the business of the manufacture. The expression "such as" in Rule 2 (l) of the said Rules is merely illustrative and not exhaustive. Therefore, credit of service tax paid on any service used in relation to the business of manufacturing automobiles has to be allowed.

3.11 It is respectfully submitted that the input service in dispute was availed in the course of our manufacturing/business activity and therefore the Noticee is entitled to avail input service tax credit on these services as held by the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Nagpur vs Ultra tech Cement Ltd. as reported in 2010-TIOL-745-HC-MUM-ST wherein it was held that 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. Para 35 of the decision as would be relevant in the instant case is reproduced below:

*"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."*

3.12 With respect to Cenvat credit proposed to be denied on construction service alleged to be availed by the Noticee for the period after 01.04.2011, it is respectfully submitted that, as per amended definition of input service effective from 01.04.2011, construction services are excluded if used for:

- construction or execution of works contract of a building or civil structure or part thereof; or
- laying of foundation or making of structures for support of capital goods

However, there is no exclusion to services used in relation to modernization, renovation or repairs of factory, premises of provider of output service or an office relating to such factory or premises from the definition of input service, rather the same is mentioned in the inclusive portion of the definition of 'input service' itself.

3.13 In the instant case, there is no doubt to the fact that for the period subsequent to amendment in definition of input service, activity undertaken is in relation to renovation, repair & modernization of factory, however, subject SCN was issued without appreciating the definition of input service as defined under Rule 2(l) of the said Rules.

3.14 During the period Dec'14 to Oct'15, the Noticee have availed Cenvat credit of Rs. 14, 84,522/- on the strength of total number of 155 invoices as issued by the service providers. A detailed statement showing invoice no., invoice date, vendor name, nature of services or purpose for which services were received, GL and amount of service tax availed for all the 155 invoices are enclosed as Exhibit 'B'. A perusal of nature of the work in the statement will clarify that all these services have been procured by the Noticees for the purpose of carrying out work related to repair work of already existing factory premises.

3.15 Illustrative copies of 1 invoice on the strength of which Cenvat credit of Rs. 4,88,873/- was distributed to us are collectively marked as Exhibit 'C'. From the perusal of the enclosed invoice, it will be clear that, the Noticee have availed credit only in respect of those services, which have been used for the purpose of repair of the factory/office premises. The aforesaid 1 invoices covers almost 33% of the aforesaid credit taken with respect to repair work of our factory/office premises.

In the instant case, there is no doubt to the fact that for the period subsequent to amendment in definition of input service, activity undertaken is in relation to repair of factory/office premises, however, subject SCN was issued without appreciating the definition of input service as defined under Rule 2(l) of the said Rules.

From the illustrative copy of invoice pertaining to credit in dispute, it is clear that, the Noticee have availed services in relation to overlying works at test track and above-referred service do not fall under the exclusion clause & thus credit was correctly availed by the Noticee.

3.16 The Noticee is also relying upon the circular no. 943/04/2011-CX dated 29.04.2011 wherein it was specifically clarified that "Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of

provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services".

- 3.17 The Hon'ble Tribunal in the case of Lifelong Meditech Ltd vs CCE&ST, Gurgaon-II as reported in 2016-TIOL-1685-CESTAT-CHD while allowing Cenvat credit on modification/modernization of factory premises has held as under:

"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(l) of Cenvat Credit Rules, 2004. Therefore, I hold that the appellant is entitled to avail Cenvat credit for Project for Modification/ Modernisation Services."

- 3.18 The Hon'ble CESTAT, Mumbai in the case of Mahanagar Gas Ltd vs CCE, Mumbai as reported in 2018-TIOL-1973-CESTAT-MUM has held that dismantling of cement & brick work, excavation for foundation, plastering etc are not construction and civil work, so as to be excluded from the purview of the definition of 'input service' in terms of 2(l) of CCR, 2004. Para 4 of the decision, as would be relevant in the instant proceeding, is reproduced below:

"4. As correctly pointed out by the learned Counsel, I find that the work order which is issued to the service provider indicates that the work order pertains to the factory outlets for the services of dismantling cement & bricks work, excavation for foundation, plastering, providing dry trap/rubble stone soling etc. at the retail outlet. In my view, by no stretch of imagination, it can be stated that this activity undertaken by the service provider would fall under the ambit of exclusion clauses of Rule 2(l) of Cenvat Credit Rules, 2004. In view of the foregoing, the impugned order is set aside and the appeal is allowed."

- 3.19 In case of Carrier Air-conditioning & Refrigeration Vs. CCE - 2016 (41) STR 824 (T), the Hon'ble CESTAT has allowed the credit in respect of the services received by the assessee in relation to repair of the factory premises. Applying the same ratio in the facts of present case, the service tax credit under question is correctly admissible to the Noticee.

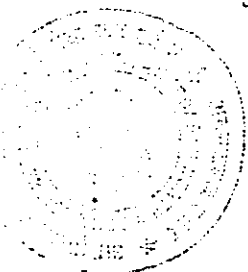
- 3.20 With respect to availment of Cenvat credit on maintenance & housekeeping of guesthouse, it is respectfully submitted that, the guesthouse is used primarily for lodging of employees for official purpose and thus maintenance & housekeeping of the guesthouse has direct nexus with the manufacture & clearance of excisable goods and therefore credit is rightly availed by the Noticee.

- 3.21 To support their submission, the Noticee also relied upon the decision of Hon'ble CESTAT, Mumbai in the case of M/s ISMT Ltd vs Commissioner of Customs & Central Excise, Aurangabad as reported in 2015-TIOL-1842-CESTAT-MUM, wherein while allowing the Cenvat credit on security service provided at guest house, it was held as under:

"5. I find that service in question is security services provided to the guest house of the appellant. The guest house is used for lodging of the employees, outside auditors which performing their service to the appellant's factory. Nothing is available on record to show that guest house is used for any other purpose. In view of this fact, since guest house used for the stay of employee, auditors which has direct nexus with factory which produces excisable goods therefore Cenvat credit is admissible to the appellant. On going through judgments relied upon by the rivals, I find that in the case of L'Oreal India Pvt. Ltd. (supra) house keeping service of guest house has been held admissible and in the case of Hindustan Zinc Ltd. (supra) maintenance service of guest house was allowed as input service. Since the similar service involved in the present case, the ratio of both the judgments are squarely applicable in the appellant's case also. As regard reliance placed by the Ld. A.R. on various judgments, I find that the judgment of Gujarat Heavy Chemicals Ltd and Manikgarh Cement (supra) facts were different as in these judgments services were provided to the residential quarters of the employee whereas in the present case service was provided to the guest house which is used by appellant for the purpose of smooth function of the factory. As regard the MRF Ltd. (supra) case the credit of security service availed at guest house was denied on the ground that it is use not only for the business purpose for personal engaged in the manufacturing process but also for satisfaction of their personal needs. In the present case no such material was available that guest house was available for the personal needs of the employee therefore judgment of MRF Ltd. is distinguished. In view of my above discussion and careful consideration of the judgments relied upon by the both sides, I am of the view that in facts and circumstances of the case, security service provided to the guest house in the factory is admissible input service, therefore I set aside the impugned order and allow the appeal."

- 3.22 It is also submitted that on similar issue raised on us at earlier occasion, Joint Commissioner, LTU (Audit), Mumbai vide its Order-in-Original no. 46/Joint Commissioner (SK)/ LTU-A/CX/2016-17 dated 27.03.2017 (copy enclosed & marked as Exhibit 'D') has *inter-alia* allowed the Cenvat credit on maintenance & housekeeping of guesthouse. Para 25.4 & 25.5 of the order as would be relevant in the instant proceedings is reproduced below:

"25.4 On perusal of these decisions of various authorities, I am convinced by the decision referred by the assessee reported in 2015-TIOL-1842-CESTAT-MUM, wherein while allowing the Cenvat credit



on security service provided (it guest house. I also rely on judgement of MRF Ltd (2013 (31) STR 689 (T)) wherein it has been held that, credit of Cenvat of service tax paid on the security agency services on the security personnel posted at job-worker premises is admissible to principal manufacturer.

25.5 Therefore I allow the credit of Cenvat of service tax amounting to Rs. 3,53,463/- in respect of landscaping and gardening services and Rs. 2,91,764/- in respect of maintenance and housekeeping of guest house."

3.23 With respect to Cenvat credit availed on 'Event management service', it is submitted that expenditure incurred on above referred services are commercially required to be incurred for review meet, conference etc. which is intrinsically linked with the activity of manufacture & clearance of finished products and thus the credit was rightly availed by the Noticee.

3.24 The Noticee also places reliance on the decision of hon'ble CESTAT in the case of Castrol India limited vs CCE, Vapi as reported in 2013 (291) ELT 469 (Tri-Ahmd) wherein Cenvat credit on event management service was held to be admissible. Para 11 of the said decision, as would be relevant in the instant proceedings is reproduced as under:

"11. As regards event management service, event management firms provide services to companies to undertake promotional activities for their products in various places. In the absence of any evidence to show that the said event management services were received for other purposes, the services have to be held as relatable to business of manufacturing only since the services are directly relatable to promotion of goods. Technical inspection services are availed in respect of quality verification etc. and such services are definitely relatable to manufacture. Therefore, credit is admissible in respect of such services also."

3.25 Further, the hon'ble CESTAT, Allahabad in the case of TV 18 Broadcast Limited vs Commissioner of Central Excise, Noida II as reported in 2017-TIOL-3993-CESTAT-ALL has held that, "..... further as regards the Outdoor catering services received during events is concerned, I hold that the same is also allowable as such events are meant for business promotion purposes and building of goodwill"

3.26 With respect to the Cenvat credit proposed to be denied on Erection, Commissioning or installation service, it is respectfully submitted that erection, commissioning or installation are with respect installation & commissioning of compressed air pipeline, fire hydrant, electrical items, pumping & piping facility, electrical work at powertrain shop & it is very much inclusive in the definition of input services. The erection, commissioning or installation services is integrally associated with the manufacturing activity since it is impossible to carry out the manufacturing activity without erection, commissioning or installation of plant & machinery. Therefore the Cenvat credit of Rs.93,82,090/- was correctly availed by the Noticee as the same constitutes as input services integrally connected with manufacture of final product.

3.27 Without prejudice to what has been stated above, it is also respectfully submitted that in the 01st SCN dated 27.02.2014 (copy enclosed & marked as Exhibit 'E'), dispute was raised only w.r.t. fencing work as erection & installation services, but in the subsequent period, while submitting the information, details of Cenvat credit availed on other installation & commissioning services were also submitted by the Noticee which was never a subject matter of dispute and the Noticee accordingly, request to drop the demand raised on Cenvat credit availed in respect of installation & commissioning services other than those related to fencing work as erection & installation services.

3.28 During the period from Dec 2014 to Oct 2015, the Noticees have taken the Cenvat credit of Rs.93,82,090/- on the strength of total number of 168 invoices issued by the service providers. A detailed statement showing invoice no., invoice dates, vendor name, nature of services or purpose for which services were received and amount of service tax availed for all the 168 invoices are enclosed as Exhibit 'F'.

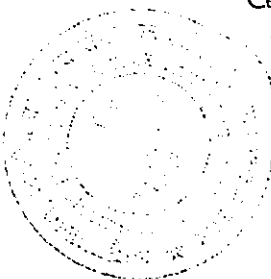
3.29 From the nature of the work as per above statement, it is crystal clear that all these services have been procured by the Noticees for the purpose of installation & commissioning of paint shop, machines, commissioning of tools & fixtures, development & modification of machines, relocation of machines etc. which is integral part of the manufacturing activity.

3.30 Illustrative copies of 3 invoice on the strength of which Cenvat credit of Rs. 28,57,236/- was distributed to the Noticee is collectively marked as Exhibit 'G'. From the perusal of the enclosed invoices, it will be clear that the noticees have taken credit only in respect of those services, which have been used only for the purpose of installation & commissioning weld equipment, paint shop etc. The aforesaid 3 invoices covers almost 30% of the aforesaid credit taken with respect to erection, commissioning & installation service.

- 3.31 With respect management, maintenance or repair service it is respectfully submitted that the Noticee have availed aforesaid service for maintenance of equipment such operation & maintenance of electric utility, operation & maintenance of HVAC system, repair of machinery component, modification of tools or equipment, for efficiently manufacturing of output of finished product.
- 3.32 With respect to management consultant service it is submitted that management of any organization needs a lot of technical knowledge on various laws, procedure, and process of development in the field of business. The services availed by the Noticee from management consultant who are experienced in handling the matters used for government permissions, drawing preparation, stability certification etc. & the same is necessary to ensure statutory compliance.
- 3.33 With respect to Goods Transport Agency service it is respectfully submitted that, Noticee has inadvertently submitted the information for Cenvat credit availed on Goods Transport agency services though Cenvat credit on this service was never in dispute i.e. neither Cenvat availed on these services was objected to be the Audit nor these services were covered in any of the SCNs issued for earlier period till Nov'2014 and thus the cenvat credit proposed to be denied on Goods Transport Agency service is liable to be dropped on this count alone.
- 3.34 However, without prejudice to above, it is respectfully submitted that, the expenses incurred by Noticee is pertaining to transportation of goods upto the place of removal and is covered under main part of the definition of 'input service', etc and thus the Cenvat credit of service tax paid on Goods Transport Agency service is admissible as per Rule 2(l) of the said Rules and no portion of the Cenvat credit availed by the Noticee is liable to be reversed.

During the period Dec'14 to Oct'15, the Noticee have availed Cenvat credit of Rs. 23,100/- on the strength of various invoices raised by the service providers and these expenses were incurred for inward transportation of inputs.

- 3.35 It may be appreciated that any service 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 is covered in the main part of the definition of 'input service' itself and thus the Noticee has correctly availed the Cenvat credit on inward transportation and it is accordingly submitted that SCN issued to Noticee is liable to be set aside on this ground along.
- 3.36 With respect to other input services in dispute i.e. Travel agent service, service provided by Confederation of Indian Industries, Hotel accommodation services, it is respectfully submitted that, Cenvat credit is available on these services as none of the services were appearing in the exclusion list even for period subsequent to amendment in the definition of 'input service'. It is also submitted that all services required in relation to purchase, manufacture & sale of final product, if not specifically covered by the phrases used in the 'inclusive portion' of the definition would be covered by means portion. The illustrative copies of the invoices on strength of which the Noticee have taken credit on Services provided by travel agent & Confederation of Indian Industries service are collectively enclosed as Exhibit 'H'.
- 3.37 It can be seen from the above invoices raised by travel agents & CII that, they have provided travel booking for official travel, delegate fees which is not restricted for Cenvat credit in the definition of 'input service'
- 3.38 The Noticee further submits that, it is not possible for the Government to mention the exhaustive list of the services required in relation to business of manufacturing. Therefore, though the phrase 'activities relating to business' has been specifically deleted w.e.f. 01.04.2011, any services required for carrying out the manufacturing activity, would qualify as 'input service'.
- 3.39 The above referred services are very much relevant for manufacturing activity & are used in the course of business activity. The issue of admissibility of Cenvat credit on above services is no more res-integra. The Noticee rely upon the following decisions wherein Cenvat credit on these services were held to be admissible:
- JSW Ispat Steel Ltd vs Commissioner of Central Excise, Raigad- 2014-TIOL-240-CESTAT-MUMBAI- Air Travel Agent service
  - CCE, Chennai-III vs M/s Faivelley Transport India Ltd as reported in 2013-TIOL-619-CESTAT-MAD- Air Travel Agent service
  - One Advertising & Communication Services Ltd vs CST Ahmedabad- 2012 (27) STR 344 (Tri-Ahmd.)- Hotel accommodation



- 3.40 The Hon'ble CESTAT, Chennai in the case of CCE, Chennai-III vs M/s Faivelley Transport India Ltd as reported in 2013-TIOL-619-CESTAT-MAD while dismissing the appeal filed by the Revenue, Cenvat credit on air travel agent service was held to be admissible. In the above referred decision, the hon'ble Tribunal has also referred to para 10 & 11 of the adjudication order passed by the Hon'ble Commissioner, which is reproduced as under:

"10. The other pertinent point is that in any definition, the scope of the inclusive portion of a definition should be interpreted in conjunction with the main definition. It is an accepted canon of interpretation of law that one cannot interpret the inclusive portion of a definition in a manner so as to render the main definition redundant. The main definition of "input services" in Rule 2 of the CENVAT Credit Rules clearly carries a stipulation that the services must be used "in or in relation to the manufacture of the final product in order to be treated as an "input service" in the case of a manufacturer. Therefore, if the illustrated items are read harmoniously with the main definition, one would come to the conclusion that the activities relating to business expounded in the inclusive portion of the definition are, in fact, those activities which are used "in relation to the manufacture of the final product". Therefore, while these services may be 'unrelated' in terms of their direct use in the manufacture, but they are not 'unrelated' when their use is considered "in relation to the manufacture of the final product" (emphasis supplied). It can be seen that the illustrative examples given for 'activities relating to business', broadly cover 'finance' and 'personnel' both of which underpin manufacturing activity in an indirect way. Any manufacturing concern would require an accounting and audit system to document the transactions and publish the financial accounts which are mandatory requirements under the statute. Similarly activities like coaching, training and quality control are matters relating to the "personnel" side of manufacturing.

11. From the facts of the case and the submissions made, it is clear that the manufacturer is consuming the rent a cab and air travel services for carrying the employees/officials to various zonal offices of the railways and to arrange supply of materials by the suppliers/sub-contractors for the official use as distinct from the conveyance or perquisite account for the employees. Therefore, it can be said that the "rent a cab services / tour operator and air travel services" are used by the manufacturer and cannot be treated as perquisites for the employees. The other part of the test is whether the activity of business which is treated as a cost to the company is also used "in relation or in relation to the manufacture of the final product". I find from the submissions made that the rent a cab and air travel agent's services are hired by the company for specific purposes of use by the officers of the company in coordinating vendors of inputs, sub-contractors engaged in the manufacture and therefore, all these purposes, in my view, are closely related to manufacture of the final product. The Board vide F.No. 354/268/2009-TRU (120/01/2010-ST) dated 19.1.2010, had also clarified in a similar case that carrying workers to call / BPO Centers (work sites) on hired transportation would be treated as use in the provisions of output services and further clarified vide Board's Circular No. 943/4/2011-CX dated 29.4.2011 (vide Sl. No.12 of the Table). This analogy would apply in this case also"

- 3.41 The Noticee further submits that, as per the organization's policy, they are not incurring any air travel/land travel expenses of any employee of the organization, other than for business/official purpose. Whatever travel expenses are booked in books of accounts are related to business/official purpose only. It means that the officer of the organization has traveled by any mode, across the country is only for business/official purpose of the organization. It is thus crystal clear that, entire travel related expenses incurred by them is only for the business/official purpose and it is thus submitted that no part of the cost incurred on air travel agent service is attributable to any employee of the organization & it is completely for business purpose only and thus subject SCN is not tenable & liable to be set-aside unconditionally.
- 3.42 With respect to Cenvat credit on hotel accommodation, the Hon'ble Tribunal in the case of One Advertising & Communication Service Ltd vs CST Ahmedabad as reported in 2012 (27) STR 344 (Tri Ahmd.) has held that expenses is directly relatable to business to business & hence credit is admissible. Relevant portion of para 4 of decision would be relevant in the instant proceeding is reproduced as under:

"4.....As regards Hotel services, the authorized representative submitted that the Service Tax was paid in respect of Hotel rent for the stay of Chief Executive for the purpose of business and meeting the clients. Even though, it was contested by authorized representative, I find that the issue is directly relatable to the business of the appellant and has a nexus and therefore is admissible."

- 3.43 The hon'ble High Court of Andhra Pradesh at Hyderabad in the case of CCCE, Hyderabad-III vs ITC Ltd as reported in 2012-TIOL-199-HC-AP-ST has held that maintenance of staff colony and plantation activity is directly and intrinsically linked to the manufacturing activity. Para 8 & 9 of the aforesaid decision as would be relevant in the instant proceedings is re-produced as under:

"8. The language of the definition makes it clear that the phrase 'input service' has been given the widest amplitude. The definition by its very nature is an inclusive one and the words used therein leave no room to doubt that all services used in relation, directly or indirectly, to the manufacture of final products and clearance of such products upto the place of removal are covered. The inclusive

*part of the definition manifests that services used in relation to the setting up of the factory or office or premises, including its modernization, renovation, repair etc., and also services used in relation to advertisement, sales promotion, market research, procurement of inputs and all activities relating to the business would also fall within the ambit of 'input services'.*

- 3.44 Since the hon'ble High Court of Andhra Pradesh has allowed Cenvat credit even on maintenance of staff colony & held that all activities related to business would also fall within the ambit of input services, it is submitted that in view of the above, all the input service in dispute being connected to manufacturing activity, cenvat credit has been rightly availed by the Noticee.
- 3.45 In support of our contention, we are also relying upon the decision of Hon'ble CESTAT, Chandigarh in the case of M/s Carrier Air conditioning & Refrigeration Ltd vs CCE, Delhi-IV as reported in 2016-TIOL-450-CESTAT-CHD wherein inter-alia, cenvat credit of service tax was allowed on Construction service related to dismantling of building & construction of storage shed, Travel agent service, Interior decorator service etc for the period prior to as well as post 01.04.2011.
- 3.46 The Noticee also relies upon the decision of hon'ble Supreme Court in the case of Bharat Coop. Bank (Mumbai) Ltd vs Coop. bank Employees union as reported in (2007) 4 SCC 685 wherein it was held that 'when the word "includes" is used in the definition, the legislature does not intend to restrict the definition. It makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise.
- 3.47 In para 2 of the SCN, it was stated that the services listed in SCN does not fall under the definition of input service. It is submitted that the definition of input service specifically provides that Cenvat credit of service tax on the services would be available only in case where these services are used directly or indirectly 'in or in relation to manufacture' of final product or used in relation to the specified activity. The hon'ble Supreme Court in the case of State of Karnataka vs Azad Coach Builders (P) Ltd & ANR as reported in 2010-TIOL-70-SC-CST-CB has held that the word 'in relation to' is very broad expression and are word of comprehensiveness which might have both a direct or indirect significance depending on the context. They are not the word of restrictive content.
- 3.48 It is also submitted that in the case of Commr. of C. Ex. & Service Tax, LTU, Bangalore v. Micro Labs Ltd. as reported in (2011) 270 E.L.T. 156 (Kar.) it was held by the Karnataka High Court that merely because services are not specified in input service definition, credit is not deniable. Service tax paid on all those services which the assessee has utilised directly or indirectly in or in relation to manufacture of final product is eligible for credit under Rule 2(l) of the said Rules.
- 3.48 It is also submitted that, on similar issue raised at Noticee's TML's Pimpri, Chinchwad & Lucknow Unit, the Cenvat credit was allowed by O-I-A no. Pun-Excus-001-APP-170/2019-20 dated 14.01.2020 and O-I-A no. 510-CE/APPL/LKO/2019 dated 07.10.2019 passed by Commissioner of Central Tax (Appeal-I), Pune and Commissioner (Appeals), Customs, GST & Central Excise, Lucknow respectively (copy enclosed & collectively marked as 'Exhibit T')

Further, on similar issue raised for earlier period the hon,ble Commissioner (Appeals) - Central Excise, Ahmedabad by O-I-A AHM-EXCUS-002-APP-118-18-19 dated 09.11.2018 has already allowed the Cenvat credit on various services like Event Management, Travel Agent services, Services provided by CII, Management & maintenance & Repair services. Copy of OIA enclosed and marked as Exhibit 'T'.

1. Allegation of contravention of Rule 9(6) is incorrect in law as well as on facts

- 1.1 In the SCN dated 19.11.14 relied upon by the department in raising the subject dispute, it was alleged on the Noticee that they have contravened the provisions of Rule 9(6) of the said Rules.

Rule 9(6) of the said Rules casts responsibility on the manufacturer of final products or provider of output service to maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, Cenvat credit taken and utilized, the person from whom the input service has been procured is recorded and burden of proof regarding admissibility of the Cenvat credit shall lie upon the manufacturer or provider of output service taking such credit.

In this regard, the Noticee submits that while alleging contravention of Rule 9(6) of the said Rules on them, the department has not bothered to deal with the exact nature of

contravention committed. In the instant case, when the Noticee have clearly demonstrated that they have received the input service, which is related to the functioning of their business, and that they are maintaining all the details with respect to the input service in their ERP system, the allegation of the department that they have contravened provisions of Rule 9(6) of the said Rules is not sustainable. For the elaborate submissions made in the preceding paras, the Noticee have demonstrated that their availment of Cenvat credit on the input service received by them is as per the provisions governing Cenvat credit.

- 1.2 It is further submitted that time to time, department is conducting the audit of Noticee's books of accounts and at each occasion, Noticee's are making available all the records and documents sought by the department for their verification and thus allegation of wrong availment of Cenvat credit is not sustainable.
- 1.3 In the SCN, the amount of Cenvat credit alleged to be irregularly availed by us has been proposed to be recovered under Rule 14 of the said Rules read with Section 11A(1) of the said Act. In this regard the abstract of Rule 14 of the said Rules as was relevant during the impugned period is reproduced below:

upto 28.02.15

"RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. – Where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.

From 01.03.15

"RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. – 14(1)(i)- Where the CENVAT credit has been taken wrongly but not utilized, the same shall be recovered from the manufacturer or the provider of the output service, as the case may be, and the provisions of Section 11A of the Excise Act or Section 73 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.

(ii) Where the Cenvat credit has been taken and utilized wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or provider of output service, as the case may be, and the provisions of Section 11A and 11AA of the Excise Act or sections 73 & 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries."

From the reading of the above provisions, it is evident that the Cenvat credit can be recovered along with interest on the occurrence of event, namely credit 'taken wrongly but not utilized/and utilized wrongly or erroneously refunded'. It is not the case that the Cenvat credit was wrongly availed by us or erroneously refunded to us. In the instant case, we have for valid submissions made in the preceding paras, substantially demonstrated that our availment of Cenvat credit amounting to Rs. 1,56,88,188/- was legal, proper and valid and hence there is no merit to invoke the provisions of Rule 14 of the said Rules.

5. Interest and Penalty not Imposable

5.1 The SCN proposes recovery of interest under the provisions of Rule 14 of the said Rules read with Section 11AA of the said Act. For the valid submissions elaborately made above, the alleged demand itself is not sustainable. When the demand itself is not sustainable, as per the settled legal position, the interest claim also fails and accordingly it is submitted that the Noticee is not liable for any interest payment.

5.2 The SCN also proposes the imposition of penalty under the provisions of Rule 15(1) of the said Rules. For easy reference, the Noticee reproduce below the abstract of provisions of Rule 15(1), as was prevalent at the relevant point of time:

"[RULE 15. Confiscation and penalty. – (1) If any person, takes or utilizes Cenvat credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then all such goods shall be liable to confiscation and such person, shall be liable to a penalty in terms of clause (a) or clause (b) of sub-section (1) of Section 11AC of the Excise Act or sub-section(1) of Section 76 of the Finance Act, as the case may be.

- (2) .....
- (3) ....
- (4) ...."

5.3 As far as the present proceedings are concerned, the said provision cannot be invoked on the Noticee.

In the instant case, for the valid submissions made in the preceding paras, the Noticee have correctly availed the Cenvat credit on the services received from the said service provider. Accordingly, it is submitted that there was no contravention of any of the provisions of the

said Rules are involved in the instant issue, thus department's proposal to levy penalty by framing allegation of contravention of provisions of these rules is legally not tenable. Thus the entire approach of the department proposing to invoke the said provision on the Noticee is legally not tenable.

- 5.4 In the case of JSW Steels Ltd. v. CCE, Belgaum as reported in 2010 (254) E.L.T. 318 (Tri.-Bang.), it was held as follows:  
"...12. As regards penalties imposed, we find that the failure to pay the duty demanded had arisen on account of a bona fide belief on the part of the assessee as regards the correctness of the classification it adopted. There was no mensrea on the part of the assessee. Penalty cannot be imposed for the reason that it was lawful to do so, in the absence of dishonest or contumacious conduct of the assessee as held by the Apex Court in Hindustan Steel v. State of Orissa [1978 (2) E.L.T. 159 (S.C.)]. Accordingly we set aside the penalties imposed and sustain the demands thus partly allowing the appeals filed by the assessee
- 5.5 The ratio of the above decision applies in all force to the present case. The Noticee have availed the impugned credit in the bona fide belief that they were entitled to avail the same. In view of the foregoing, no penalty is imposable.
- 5.6 It is submitted that for the reasons given in the foregoing paragraphs, the demand in the present case is not sustainable in law. Once the demand is found to be non-sustainable, the question of levy of penalty does not arise. In the case of Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC), Hon'ble Supreme Court held that the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC), Hon'ble Supreme Court held that penalty is not imposable when the differential duty is not payable.
- 5.7 In light of the foregoing, it is our humble submission that the proposal to impose penalty on the Noticee is not sustainable and is liable to be dropped.

**B : SCN NO. V.87/15-24/OA/2017 dated 07.11.2017, for the period from period from Nov-2015 to June-2017**

The assessee has filed their reply to the above SCN, vide their submissions dated 06.11.2020, wherein, they interalia stated as under:

**Submissions**

- 2.1 Since SCN is issued to us relying upon all the grounds relied upon by the department in earlier show cause notices issued to us, we are making our submissions on the basis of grounds taken by the department in earlier Show cause Notices to rebut the demand proposed in the subject SCN issued to us.
- 2.2 The Noticee submit that said SCN is incorrect in facts as well as law. It is submitted that each & every allegation made in the SCN is incorrect & perverse. It is further submitted that the Noticee counter and do not agree with any allegations made in the SCN. Hence, proposals made in the SCN is liable to be dropped forthwith.
3. **Input services disputed in the SCN, falls in the definition of 'input service' as prevailing during the relevant period & thus credit was rightly availed by the Noticee.**
- 3.1 The issue involved in the present case is concerning the admissibility of Cenvat credit on services namely Landscaping & gardening, mandap keeper & banquet, Construction service (repair & maintenance), maintenance & housekeeping of guest house, management & maintenance service, services provided by CII, travel agent service, event management service, hotel accommodation service, management consultant service and goods transport agency service availed during the period from November'2015 to June'2017.
- 3.2 to 3.13 : Repeated in the submissions above.
- 3.3 . Repeated in the submissions above.
- 3.4 Repeated in the submissions above.
- 3.5 Repeated in the submissions above.
- 3.6 Repeated in the submissions above.
- 3.7 Repeated in the submissions above.
- 3.8 Repeated in the submissions above.
- 3.9 Repeated in the submissions above.
- 3.10 Repeated in the submissions above.
- 3.11 Repeated in the submissions above.
- 3.12 Repeated in the submissions above.
- 3.13 Repeated in the submissions above



3.14 During the period Nov'15 to Jun'17, the Noticee have availed Cenvat credit of Rs. 25,66,894/- on the strength of total number of 367 invoices as issued by the service providers. A detailed statement showing invoice no., invoice date, vendor name, nature of services or purpose for which services were received, GL and amount of service tax availed for all the 367 invoices are enclosed as Exhibit 'B'. A perusal of nature of the work in the statement will clarify that all these services have been procured by the Noticees for the purpose of carrying out work related to repair and Maintenance work of already existing factory premises.

3.15 Illustrative copies of 33 invoice on the strength of which Cenvat credit of Rs. 12,70,783/- was distributed to us are collectively marked as Exhibit 'C'. From the perusal of the enclosed invoices, it will be clear that, the Noticee have availed credit only in respect of those services, which have been used for the purpose of renovation or modernization or repair of the factory/office premises. The aforesaid 36 invoices covers almost 49% of the total credit taken with respect to renovation or modernization of our factory/office premises.

In the instant case, there is no doubt to the fact that for the period subsequent to amendment in definition of input service, activity undertaken is in relation to renovation, repair & modernization of factory, however, subject SCN was issued without appreciating the definition of input service as defined under Rule 2(l) of the said Rules.

From the illustrative copies of invoices pertaining to credit in dispute, it is clear that, the Noticee have availed services in relation to road patch work, plumbing & structural repair work at existing premises, leakage work, levelling of ground surface, and other repair/renovation activities and none of the above-referred service falls under the exclusion clause & thus credit was correctly availed by the Noticee.

3.16 The Noticee is also relying upon the circular no. 943/04/2011-CX dated 29.04.2011 wherein it was specifically clarified that "*Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services*".

- 3.17 Repeated in the submissions above.
- 3.18 Repeated in the submissions above.
- 3.19 Repeated in the submissions above.
- 3.20 Repeated in the submissions above.
- 3.21 Repeated in the submissions above.
- 3.22 Repeated in the submissions above.
- 3.23 Repeated in the submissions above.
- 3.24 Repeated in the submissions above.

3.25 Illustrative copies of 20 invoice on the strength of which Cenvat credit of Rs. 7,68,740/- availed by the Noticee is collectively marked as Exhibit 'F'. From the perusal of the enclosed invoices, it is clear that, aforesaid expenses were incurred for horticulture maintenance work, operation & maintenance of irrigation system which is intrinsically linked with the activity of manufacture & clearance of finished products. The aforesaid 20 invoices covers 100% of the aforesaid credit taken with respect to landscaping and gardening service.

3.26 Repeated in the submissions above.

3.27 With respect to Cenvat credit availed on 'Event management service', it is submitted that expenditure incurred on above referred services are commercially required to be incurred for various sales promotion activities viz; Annual sales meet, dealers meet, annual business review meet, vehicle display event etc which is intrinsically linked with the activity of manufacture & clearance of finished products.

It was also submitted that activity of 'sales promotion' is expressly mentioned in the inclusive part of the definition of 'input service' and thus the credit was rightly availed by the Noticee.

3.28 Illustrative copies of 9 invoice on the strength of which Cenvat credit of Rs. 1,15,138/- was distributed to the Noticee is collectively marked as Exhibit 'H'. From the perusal of the enclosed invoices, it is clear that, aforesaid expenses were incurred for various sales promotion activities viz; Car display event, show room event etc which is intrinsically linked with the activity of manufacture & clearance of finished products. The aforesaid 9 invoices covers almost 42% of the aforesaid credit taken with respect to Event management services.

- 3.29 Repeated in the submissions above.
- 3.30 Repeated in the submissions above.
- 3.31 With respect management, maintenance or repair service it is respectfully submitted that the Noticee have availed aforesaid service for maintenance of equipment's, housekeeping etc. which is necessary for efficiently manufacturing of output of finished product & accordingly the same would fall under the definition of input service and hence eligible as input service.
- 3.32 Illustrative copies of 43 invoice on the strength of which Cenvat credit of Rs. 49,43,588/- availed by the Noticee is collectively marked as Exhibit 'Y'. From the perusal of the enclosed invoices, it is clear that, aforesaid expenses were incurred for housekeeping of factory premises which is intrinsically linked with the activity of manufacture & clearance of finished products. The aforesaid 43 invoices covers almost 54% of the aforesaid credit taken with respect to management, maintenance or repair service
- 3.33 With respect to Goods Transport Agency service it is respectfully submitted that, Noticee has inadvertently submitted the information for Cenvat credit availed on Goods Transport agency services though Cenvat credit on this service was never in dispute i.e. neither Cenvat availed on these services was objected to be the Audit nor these services were covered in any of the SCNs issued for earlier period till Nov'2014 and thus the cenvat credit proposed to be denied on Goods Transport Agency service is liable to be dropped on this count alone.
- 3.34 However, without prejudice to above, it is respectfully submitted that, the expenses incurred by Noticee is pertaining to transportation of goods upto the place of removal and is covered under main part of the definition of 'input service',etc. and thus the Cenvat credit of service tax paid on Goods Transport Agency service is admissible as per Rule 2(l) of the said Rules and no portion of the Cenvat credit availed by the Noticee is liable to be reversed.
- 3.35 During the period Nov'15 to Jun'17, the Noticee have availed Cenvat credit of Rs. 83,49,575/- on the strength of various invoices raised by the service providers  
Illustrative copies of 55 invoice on the strength of which Cenvat credit of Rs. 6,66,239/- availed by the Noticee is collectively marked as Exhibit 'Y'. From the perusal of the enclosed invoices, it is clear that, aforesaid expenses were incurred for inward transportation of inputs. The aforesaid 55 invoices covers 8% of the aforesaid credit taken with respect to goods transport agency services.
- 3.36 It may be appreciated that any service 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 is covered in the main part of the definition of 'input service' itself and thus the Noticee has correctly availed the Cenvat credit on inward transportation and it is accordingly submitted that SCN issued to Noticee is liable to be set aside on this ground along.
- 3.37 With respect to other input services in dispute i.e. Travel agent service, service provided by Confederation of Indian Industries, Mandap keeper & banquet service, Hotel accommodation services, Management consultant service, it is respectfully submitted that, Cenvat credit is available on these services as none of the services were appearing in the exclusion list even for period subsequent to amendment in the definition of 'input service'. It is also submitted that all services required in relation to purchase, manufacture & sale of final product, if not specifically covered by the phrases used in the 'inclusive portion' of the definition would be covered by means portion.
- 3.38 The services viz. travel agent, CII, mandap keeper, hotel , management consultant have been used by Noticee for travel booking for official travel, delegate fees, hotel accommodation by employees for official purpose, temporary mandap & services to ensure statutory compliance which is not restricted for Cenvat credit in the definition of 'input service'.
- 3.39 Repeated in the submissions above.
- 3.40 Repeated in the submissions above.
- 3.41 Repeated in the submissions above.
- 3.42 Repeated in the submissions above.
- 3.43 Repeated in the submissions above.
- 3.44 Repeated in the submissions above.
- 3.45 Repeated in the submissions above.
- 3.46 Repeated in the submissions above.
- 3.47 Repeated in the submissions above.

3.48 In para 2 of the SCN, it was stated that the services listed in SCN does not fall under the definition of input service. It is submitted that the definition of input service specifically provides that Cenvat credit of service tax on the services would be available only in case where these services are used directly or indirectly 'in or in relation to manufacture' of final product or used in relation to the specified activity. The hon'ble Supreme Court in the case of State of Karnataka vs Azad Coach Builders (P) Ltd & ANR as reported in 2010-TIOL-70-SC-CST-CB has held that the word 'in relation to' is very broad expression and are word of comprehensiveness which might have both a direct or indirect significance depending on the context. They are not the word of restrictive content.

3.49 Repeated in the submissions above.

3.50 3.48 Repeated in the submissions above.

3.49 Further, on similar issue raised for earlier period i.e. Jan'12 to Dec'13 & Jan'14 to Nov'14, at TML Sanand also the Hon'ble Commissioner (Appeals) - Central Excise, Ahmedabad by O-I-A No. AHM-EXCUS-002-APP-118-18-19 dated 09.11.2018 & O-I-A No. AHM-EXCUS-002-APP-212-18-19 dated 25.03.2019 and Asst. Commissioner, CGST, Ahmedabad vide O-I-O No. 08/AC/D/BJM/18-19 dated 27.07.2018 has already allowed the Cenvat credit on various services like Event Management, Travel Agent services, Services provided by CIL, Maintenance & Housekeeping of Guest House, Hotel charges, Management maintenance & Repair services, Mandap Keeping services. Copy of OIA enclosed and collectively marked as Exhibit 'L'.

4. Allegation of contravention of Rule 9(6) is incorrect in law as well as on facts: Repeated in the above submissions

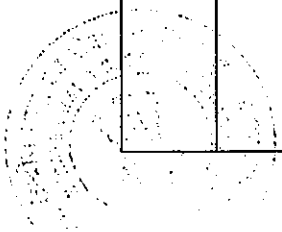
5. Interest and Penalty not Imposable: Repeated in the above submissions

#### 18. PERSONAL HEARING:

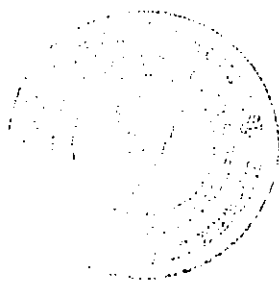
Personal hearing(Virtual) in the matter was held on 23.2.2021, wherein Shri Mukesh Dokania, DGM, Indirect Taxation, appeared on behalf of the assessee. He referred to their written submissions dated 6.11.2020 and 1.12.2020 regarding the Show Cause Notices dated 7.11.2017 and 4.1.2016 respectively. He reiterated the submissions made in their replies to the SCNs and conveyed that similar issues have been adjudicated by Commr(A) in Lucknow and Pune in their case. During the course of the personal hearing, the assessee also submitted a summary of their submissions, as under:

SCN Ref.No-→		48/COMMR /GLT- 4/TML- AMD/STD/ NON - CERA/2015- 16 Dated 04.01.2016	V.87/15- 24/OA/201 7 dated 07.11.2017		
Period covered under SCN		Dec 2014 to Oct 2015	Nov 2015 to Jun 2017		SCN 1 SCN2
Sr.no	Category of Service	Amount (In Rs.)		Noticee's submission	
1	Construction Service (Repairs-L&B)	14,84,522	25,66,895	1) As per amended definition of input service effective from 01.04.2011, construction services are excluded if used for: - construction or execution of works contract of a building or civil structure or part thereof; or - laying of foundation or making of structures for support of capital goods However, there is no exclusion to services used in relation to modernization, renovation or repairs of factory, premises of provider of output service or an office relating to such factory or premises from the definition of input service, rather the same is mentioned in the inclusive	chart- 22-25 Inv-26- 27 Chart- 29-33 Inv- 34-95

				<p>portion of the definition of 'input service' itself</p> <p>2) In the instant case, there is no doubt to the fact that for the period subsequent to amendment in definition of input service, activity undertaken is in relation to renovation, repair &amp; modernization of factory, however, subject SCN was issued without appreciating the definition of input service as defined under Rule 2(l) of the said Rules.</p> <p>3) From the illustrative copy of invoice pertaining to credit in dispute, it is clear that, we have availed services in relation to overlying works at test track, road patch work, plumbing &amp; structural repair work at existing premises, leakage work, levelling of ground surface and the these services do not fall under the exclusion clause &amp; thus credit was correctly availed by us.</p> <p>4) Noticee's contention is further substantiated from the fact that these invoices are accounted as Repairs &amp; Maintenance expense in the Noticee's books of account.</p> <p>5) Case laws &amp; Circulars relied upon:-</p> <p>a) Ion Exchange India Ltd vs CCE, Customs &amp; Service Tax, Surat-II- 2018-TIOL-752-CESTAT-AHM</p> <p>b) Elara Securities India (P) Ltd vs Asst. Comm, Service Tax, Mumbai- 2019-TIOL-1826-CESTAT-MUM</p> <p>c) Shell India Markets (P) Ltd vs Comm, GST &amp; CE, Chennai-2019-TIOL-2307-CESTAT-MAD</p> <p>d) Circular no. 943/04/2011-CX dated 29.04.2011</p> <p>e) Mahanagar Gas Ltd vs CCE, Mumbai as reported in 2018-TIOL-1973-CESTAT-MUM</p> <p>f) Carrier Air-conditioning &amp; Refrigeration Vs. CCE – 2016(41)STR 824 (T)</p> <p>g) Red Hat India (P) Ltd vs Pr. Commissioner, Service Tax Commissionerate - 2016-TIOL-1300-CESTAT-MUM</p> <p>h) M/s Allen Career Institute vs CCCE, Jodhpur-2018-TIOL-2549-CESTAT-DEL</p> <p>i) Aurangabad Electricals Ltd vs CCE, Pune-II-2018-TIOL-2577-CESTAT-MUM</p> <p>j) M/s Harsha Engineers Ltd vs CCE &amp; ST, Ahmedabad-2018-TIOL-3855-CESTAT-AHM</p>		
2	Maintenance & House Keeping of Guest House	3,37,699	10,61,106	<p>1) The guesthouse is used primarily for lodging of employees for official purpose and thus maintenance &amp; housekeeping of the guesthouse has direct nexus with the manufacture &amp; clearance of excisable goods and therefore credit is rightly availed by us</p> <p>2) Case laws relied upon:-</p> <p>a) M/s ISMT Ltd vs Commissioner of Customs &amp; Central Excise, Aurangabad - 2015-TIOL-1842-CESTAT-MUM</p>	NS	96-110



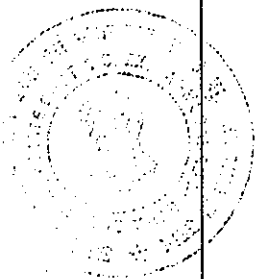
3	Event Management service	14,211	2,79,315	<p>1) That expenditure incurred on above referred services are commercially required to be incurred for review meet, conference etc. which is intrinsically linked with the activity of manufacture &amp; clearance of finished products which is intrinsically linked with the activity of manufacture &amp; clearance of finished products. From the illustrative copy of invoice pertaining to credit in dispute it is clear that, aforesaid expenses were incurred for various sales promotion activities viz; Car display event, show room event etc.</p> <p>2) The activity of 'sales promotion' is expressly mentioned in the inclusive part of the definition of 'input service' and thus the credit was rightly availed by us.</p> <p>3) Case laws relied upon:-a) Castrol India limited vs CCE, Vapi- 2013 (291) ELT 469 (Tri-Ahmd) b) TV 18 Broadcast Limited vs Commissioner of Central Excise, Noida II- 2017-TIOL-3993-CESTAT-ALLC) Delphi Automotive Systems (P) Ltd vs Commissioner of Customs, Central Excise &amp; Service tax, Noida- 2014-TIOL-2597-CESTAT-DELD) Axis Bank Ltd vs Commissioner of Service Tax, Mumbai- 2017 (3) GSTL 427 (Tri-Mumbai)</p>	NS	178-186
4	Erection, Commissioning or Installation	93,82,090	-	<p>1) In this case, the dispute was raised only w.r.t. fencing work as erection &amp; installation services, but in the subsequent period, while submitting the information, details of Cenvat credit availed on other installation &amp; commissioning services were also submitted by the Noticee which was never a subject matter of dispute and the Noticee accordingly, request to drop the demand raised on Cenvat credit availed in respect of installation &amp; commissioning services other than those related to fencing work as erection &amp; installation services.</p> <p>2) The erection, commissioning or installation services is integrally associated with the manufacturing activity since it is impossible to carry out the manufacturing activity without erection, commissioning or installation of plant &amp; machinery.</p> <p>3) Noticees have taken credit only in respect of those services, which have been used only for the purpose of installation &amp; commissioning of paint shop, electrical items, machines, development &amp; modification of machines, relocation of machines etc which is integral part of manufacturing activity.</p>	chart-64-67 Inv-68-71	NA



5	Travel agent Services by M/s Thomas Cook	1,31,021	73,906	<p>1) With respect to Travel agent service, service provided by Confederation of Indian Industries, Mandap &amp; Banquet services, Landscaping &amp; gardening service and Management ,Maintenance or repair service, it is respectfully submitted that, Cenvat credit is available on these services as none of the services were appearing in the exclusion list even for period subsequent to amendment in the definition of 'input service'. It is also submitted that all services required in relation to purchase, manufacture &amp; sale of final product, if not specifically covered by the phrases used in the 'inclusive portion' of the definition would be covered by means portion.</p> <p>2) It can be seen from the sample invoices that, service provider have provided service for travel booking for official travel, delegate fees, horticulture maintenance work, operation &amp; maintenance of irrigation system, housekeeping of factory premises etc which is not restricted for Cenvat credit in the definition of 'input service'</p> <p>3) As per Noticee's organization's policy, Noticee as an organization is not incurring any air travel/land travel expenses of any employee of the organization, other than for business/official purpose. Whatever travel expenses are booked in books of accounts are related to business/official purpose only.</p>	72-74	
6	Services provided by CII	24,504	84,782	<p>4) Case Laws &amp; Decisions relied upon:-</p> <p>a) JSW Ispat Steel Ltd vs Commissioner of Central Excise, Raigad- 2014-TIOL-240-CESTAT-MUMBAI- Air Travel Agent service</p> <p>b) CCE, Chennai-III vs M/s Faivelley Transport India Ltd as reported in 2013-TIOL-619-CESTAT-MAD- Air Travel Agent service</p> <p>c) Kotak Mahindra Asset Management Co. Ltd vs Commissioner of Service Tax-I, Mumbai as reported in 2018-TIOL-45-CESTAT-Mum - Mandap Keeper</p>	75	
7	Mandap keeper and Banquet services	-	17,385	<p>d) CCE, Delhi III vs Maruti Suzuki India Ltd as reported in 2017 (49) STR 261 (P&amp;H)- Mandap Keeper</p>		
8	Landscaping & gardening	-	7,68,740	<p>e) M/s BASF India Ltd vs CCE, Mangalore as reported in 2012-TIOL-974-CESTAT-BANG - landscaping and gardening services</p> <p>f) Commissioner of Central Excise &amp; Service Tax, LTU, Chennai vs Rane TRW Steering Systems Ltd as reported in 2015-TIOL-1057-HC-MAD-CX- Gardening services</p>	NA	128-147
9	Management, Maintenance or repair service	42,03,359	91,39,455	<p>g) M/s Larson &amp; Toubro Ltd vs CCE-2015-TIOL-314-CESTAT-MUM -Landscaping &amp; gardening</p> <p>h) M/s Hindustan Coca-cola Beverages (P) Ltd vs CCE, Jaipur- 2015-TIOL-2460-CESTAT-DEL- Landscaping &amp; Gardening</p> <p>i) CCCE, Hyderabad-III vs ITC Ltd as reported in 2012-TIOL-199-HC-AP-ST</p> <p>j) M/s Carrier Air conditioning &amp; Refrigeration</p>	NS	187-229



				<p>Ltd vs CCE, Delhi-IV as reported in 2016-TIOL-450-CESTAT-CHD</p> <p>k) Bharat Coop. Bank (Mumbai) Ltd vs Coop. bank Employees union as reported in (2007) 4 SCC 685</p> <p>l) Collector of Central Excise vs Solaris Chemtech limited as reported in 2007 (214) ELT 481 (SC)</p> <p>m) State of Karnataka vs Azad Coach Builders (P) Ltd &amp; ANR as reported in 2010-TIOL-70-SC-CST-CB</p> <p>n). Commr. of C. Ex. &amp; Service Tax, LTU, Bangalore v. Micro Labs Ltd. as reported in (2011) 270 E.L.T. 156 (Kar.)</p>		
10	Hotel Service	9,080	2,74,584	1) The noticee inadvertently submitted the information of Cenvat credit availed against these services & these services was never in dispute i.e. neither Cenvat credit on these services was objected to by Audit team nor these services were covered in any of the earlier SCNs.		
11	Management or Business consultants	78,601	1,82,000	2) These services are relevant for manufacturing activity & are used in the course of business activity.		
12	Goods Transport Agency Service	23,100	83,49,575	<p>3) The services provided by hotel, Management or Business consultants &amp; GTA have been used by Noticee for the purpose of providing accommodation to its employees for official purpose, to ensure statutory compliance, inward transportation of inputs etc &amp; it has direct nexus with the manufacture &amp; clearance of excisable goods and therefore credit is rightly availed by the Noticee.</p> <p>4) Expenses incurred for transportation of goods upto place of removal is covered under main part of the definition of 'input service'</p> <p>5) Case Laws &amp; Decisions relied upon:- a) One Advertising &amp; Communication Services Ltd vs CST Ahmedabad- 2012 (27) STR 344 (Tri-Ahmd.)- Hotel accommodation</p>	NS	230-288
13	Common submissions			<p>1) Ø As per Rule 2(l) of the CCR, 2004, the term "input service" has been defined by the method of "means and includes". Such a definition is very specific in its scope. While the "means" part of the definition lays down the meaning of the term, the "includes" portion brings within its ambit certain more activities, though such activities could not be covered under the means part. The "inclusive" part of the definition further expands the scope of the coverage of the definition</p> <p>2) The expression "such as" in Rule 2 (l) of the said Rules is merely illustrative and not exhaustive. Therefore, credit of service tax paid on any service used in relation to the business of manufacturing automobiles has to be allowed.</p> <p>3) The Hon'ble supreme Court in the case of Bharat Co-Op Bank (supra) has held that when the word 'includes' is used in the definition, the legislature does not intend to restrict the definition and it make the definition enumerative but not exhaustive.</p>		



			<p>4) The hon'ble Supreme Court in the case of Collector of C Ex vs Solaris Chemtech Ltd. (supra) held that expression 'in relation to' must be given wide connotation.</p> <p>5) It is not possible for the Government to mention the exhaustive list of the services required in relation to business of manufacturing. Therefore, though the phrase 'activities relating to business' has been specifically deleted w.e.f. 01.04.2011, any services required for carrying out the manufacturing activity, would qualify as 'input service'.6) On similar issue raised in Appellants own case at different locations, Cenvat credit was allowed by the Hon'ble Commissioner (Appeals), CGST &amp; CX</p> <p>a) Lucknow- O-I-A no. 510-CE/APPL/LKO/2019 dated 07.10.2019 passed by Commissioner (Appeals), Customs.GST &amp; Central Excise, Lucknow.- Travel Agent, Event Management, services provided by CII, Mandap Keeper &amp; Banquet service, Maintenance &amp; Housekeeping of GH, Translation service, Landscaping &amp; gardening and Construction service (R&amp;M-L&amp;B)</p> <p>b) Chinchwad- O-I-A no. PUN-EXCUS-001-APP-125/2019-20 dated 28.10.2019 passed by Commissioner of Central Tax, (Appeals-I), Pune-Travel Agent, Event Management, services provided by CII, Mandap Keeper &amp; Banquet service, Maintenance &amp; Housekeeping of GH, Translation service &amp; Construction service (R&amp;M-L&amp;B)</p> <p>c) Pimpri- O-I-A no. Pun-Excus-001-APP-170/2019-20 dated 14.01.2020- Travel Agent, Event Management, services provided by CII, Mandap Keeper &amp; Banquet service, Maintenance &amp; Housekeeping of GH, Translation service, Erection, commissioning &amp; Installation and Construction service (R&amp;M-L&amp;B)</p> <p>d) Sanand- O-I-O no 46/Joint Commissioner (SK)/LTU-A/CX/2016-17 dated 27.03.17 passed by Joint Commissioner, LTU (Audit), Mumbai-Landscaping &amp; Gardening Service and Maintenance and housekeeping of GH</p> <p>e) Sanand-OIA No. AHM-EXCUS-002-APP-118-18-19 dated 09.11.2018, - Event Management, Travel Agent Service, service provided by CII, Maintenance &amp; Housekeeping of GH, Hotel Charges, Management, Maintenance &amp; Repair service and Mandap Keeper service,</p>	
		1,56,88,187	2,27,97,744	

#### DISCUSSION AND FINDINGS:

19. I find that the above Show Cause Notices had been issued to the assessee, denying Cenvat Credit taken on Services, as detailed in the foregoing paras and recovering the same under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11 A of the Central Excise Act, 1944, alongwith the applicable interest and penalty.

20. The issue to be decided is whether the assessee is entitled for availing Cenvat Credit for the following services listed in TABLE A below:



SR.NO.	Show Cause Notice No. & Date-→	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
1	Landscaping and Gardening	0	768740
2	Mandap Keeper & Banquet	0	17385
3	Construction service	0	2566894
4	Maintenance & House Keeping of Guest House	337700	1061107
5	Management Maintenance and Repair Service	4203358	9139454
6	Services provided by Confederation of Indian Industry(CII)	24505	84782
7	Travel Agent Service	131021	73905
8	Event Management Service provided by Clubs and Hotels	14211	279314
9	Hotel Accommodation	9080	274585
10	Management Consultant	78601	182000
11	Goods Transport Agency	23100	8349575
12	Erection Commissioning of Installation	9382090	0
13	Repair and Maintenance of Construction Service	1484522	0
	Service Tax Credit Amount demanded (Rs.)	1,56,88,188	2,27,97,741

21. Before discussing the admissibility of Cenvat Credit of the above services, it is imperative to analyse the definition of "Input Service", which is defined in Rule 2(I) of the Cenvat Credit Rules, 2004, which is as under:

Definition of input service: The definition of input service w.e.f. 1.7.2012 is as below:  
Rule 2(I) "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) in so far 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, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far 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]

21.1 From the above definition, the term of 'input service' can be said to consist of three parts.

- (i) The first is the main part which specifies the meaning of 'input service' and clarifies that any services which are used directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal to be considered as input service.
- (ii) The second is inclusive part of the meaning of the 'input service'. It specifies certain activities for which if any service is being used then that service has to be considered as input service.
- (iii) The third part is exclusive part which specifies the services which cannot be considered as input service.

21.2. From the above, it is very clear that to avail Cenvat Credit of any service, the service has to either fit in the first or the second part as explained above.

22. In this backdrop, I hereby proceed to examine the admissibility of Cenvat Credit of each service individually.

### 1: Landscaping and Gardening Service:

SR.NO. of TABLE A	Show Cause Notice No. & Date-->	Centralised SCN No. 48/COMMR/GLT-4/TML- AMD/STD/Non-CERA/15- 16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15- 24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
1	Landscaping and Gardening	0	768740



23.1 The assessee has submitted illustrative copies of 20 invoices on the strength of which Cenvat credit of Rs. 7,68,740/- availed by them. On scrutiny of the said invoices, it is clear that aforesaid expenses were incurred for horticulture maintenance work, operation & maintenance of irrigation system which is intrinsically linked with the activity of manufacture & clearance of finished products. The assessee has also submitted a copy of the letter No. GPCB/CE/ABD/GEN/NOC-1319/30516, dated 27.10.2008 issued by Gujarat Pollution Control Board, from which it is clear that gardening and horticulture is a statutory requirement within the factory premises.

23.2 The assessee has relied on various decisions of CESTAT and judgment passed by Hon'ble High Court at Madras, which point to the fact that landscaping of factory or garden would certainly fall within the concept of modernisation, renovation, repair etc., which fall within the inclusive part of the definition of "Input service"

23.3. I rely on the judgment passed by the Hon'ble High Court of Karnataka, Bangalore, in the case of M/s. MILLIPORE INDIA PVT. LTD., reported in 2012 (26) S.T.R. 514 (Kar.), wherein, it was held as under:

*Cenvat credit - Input service - Landscaping of factory garden - It falls within concept of modernization, renovation, repair etc. of office premises - Also, credit rating of industry is dependent on how factory is maintained inside and outside the premises, and environmental law expects employer to keep factory without contravention thereof - In this regard, concept of social responsibility and statutory obligation of employer to maintain their factor in eco friendly manner, are also relevant - In that view, these services are 'activities relating to business' of manufacturer of excisable goods - Service tax paid on them form cost of final products, and assessee is entitled to take credit thereof - It is more so as definition of input services is too broad - Rule 2(1) of Cenvat Credit Rules, 2004. [paras 6, 7]*

*7. That apart, the definition of input services is too broad. It is an inclusive definition. What is contained in the definition is only illustrative in nature. Activities relating to business and any services rendered in connection there- with, would form part of the input services. The medical benefit extended to the employees, insurance policy to cover the risk of accidents to the vehicle as well as the person, certainly would be a part of the salary paid to the employees. Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The Environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. The appeal is dismissed.*

23.4. I also rely on the judgment passed by the Hon'ble High Court of Madras, in the case of M/s. RANE TRW STEERING SYSTEMS LTD., reported in 2015 (39) S.T.R. 13 (Mad.), wherein, it has been held as under:

*Cenvat - Input service - Housekeeping and gardening services where an employer spends money to maintain their factory premises in an eco-friendly manner, tax paid on such services would form part of the cost of final products and the same would fall within the ambit of "input services" and therefore assessee is entitled to claim the benefit - Thus, Housekeeping and landscaping services included in the scope of term "input services" defined in Rule 2(1) of Cenvat Credit Rules, 2004. [paras 8, 9]*

*7. In Commissioner of Central Excise, Bangalore-II v. Millipore India Pvt. Ltd. [2012 (26) S.T.R. 514 (Kar.)], the Division Bench of the Karnataka High Court had occasion to consider similar issue and in the facts of the said case, while considering the definition 'input services' as defined under Section 2(1) of the Cenvat Credit Rules, 2004, the Karnataka High Court held as under :-*

*"7. That apart, the definition of input services is too broad. It is an inclusive definition. What is contained in the definition is only illustrative in nature. Activities relating to business and any services rendered in connection therewith, would form part of the input services. The medical benefit extended to the employees, insurance policy to cover the risk of accidents to the vehicle as well as the person, certainly would be a part of the salary paid to the employees. Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The Environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in*

an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the Revenue. The appeal is dismissed."

8. 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.

23.5. I also rely on the judgment passed by the Hon'ble High Court at Madras, in the case of M/s. WIPRO LTD., wherein, it has been held as under:

*Cenvat credit - Input services - Housekeeping and landscaping - Availed in factory premises of assessee manufacturing computers and automatic data processing machines - HELD : These services were input services and assessee was entitled to Cenvat credit of Service Tax paid on them - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 7, 8]*

5.4 As indicated above, this Court in similar circumstances held that Cenvat credit would be available to an Assessee with respect to house keeping and land scaping services.

5.5 This Court, followed the view of the Division Bench of the Karnataka High Court in Commissioner of Central Excise, Bangalore-II v. Millipore India Pvt. Ltd., 2012 (26) S.T.R. 514 (Kar.). The relevant observations of this Court in Rane TRW Steering Systems Limited case are extracted hereinafter :

"7. In Commissioner of Central Excise, Bangalore-II v. Millipore India Pvt. Ltd. [2012 (26) S.T.R. 514 (Kar.)], the Division Bench of the Karnataka High Court had occasion to consider similar issue and in the facts of the said case, while considering the definition 'input services' as defined under Section 2(l) of the Cenvat Credit Rules, 2004, the Karnataka High Court held as under :

8. 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."

6. ....

7. Having regard to the aforesaid, to our minds, the ratio of the judgments rendered in Commissioner of Central Excise and Service Tax v. Rane TRW Steering Systems Limited, 2015 (39) S.T.R. 13 (Mad.) and in Commissioner of Central Excise, Bangalore-II v. Millipore India Pvt. Ltd., 2012 (26) S.T.R. 514 (Kar.), would apply to the facts of this case. Accordingly, both the questions of law, are answered in favour of the Assessee and against the Revenue.

23.6 In view of the above judgments and also relying on the cases cited by the assessee, I am convinced that the availment of Landscaping and Gardening service was in accordance with the discharge of statutory obligation and therefore, I hereby allow the Cenvat Credit amounting to Rs. 7,68,740/-, availed by the assessee.

## 2. CONSTRUCTION SERVICE(MAINTENANCE AND REPAIR ONLY):

SR.NO. of TABLE A	Show Cause Notice No. & Date—>	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
13	Repair and Maintenance of Construction Service	1484522	0



24.1. The definition of input service is as below:  
Rule 2(l) "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,....."*

24.2 From the perusal of the above definition, it is crystal clear that *services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to factory premises, are included in the inclusive part of the definition. From the scrutiny of the invoices pertaining to provision of such service, also it comes out clear that the said services have been used in the factory premises and fall within the purview of the definition.*

24.3 As per the amended definition of input service effective from 01.04.2011, availment of Cenvat Credit of construction services are excluded if used for:

- construction or execution of works contract of a building or civil structure or part thereof; or
- laying of foundation or making of structures for support of capital goods.

However, there is no exclusion to services used in relation to modernization, renovation or repairs of factory, premises of provider of output service or an office relating to such factory or premises from the definition of input service, rather the same is mentioned in the inclusive portion of the definition of 'input service' itself.

24.4 During the period Dec'14 to Oct'15, the Noticee have availed Cenvat credit of Rs. 14,84,522/- on the strength of total number of 155 invoices as issued by the service providers. A detailed statement showing invoice no., invoice date, vendor name, nature of services or purpose for which services were received, GL and amount of service tax availed for all the 155 invoices were submitted by the assessee. A perusal of nature of the work in the statement and on scrutiny of the sample invoices revealed that these services had been received by the assessee for the purpose of carrying out work related to repair work of already existing factory premises. From an illustrative copy of invoice pertaining to credit in dispute, it is found that the assessee had availed services in relation to overlying works at test track and the said service do not fall under the exclusion clause & thus credit was correctly availed by the assessee.

24.5. Further, the board, vide Circular no. 943/04/2011-CX dated 29.04.2011, has also clarified as under:

*"Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services".*

24.6. The Hon'ble High Court of Andhra Pradesh at Hyderabad in the case of CCCE, Hyderabad-III vs ITC Ltd, reported in 2012-TIOL-199-HC-AP-ST, has held that maintenance of staff colony and plantation activity is directly and intrinsically linked to the manufacturing activity. Para 8 & 9 of the aforesaid decision as would be relevant in the instant proceedings is reproduced as under:

"8. The language of the definition makes it clear that the phrase 'input service' has been given the widest amplitude. The definition by its very nature is an inclusive one and the words used therein leave no room to doubt that all services used in relation, directly or indirectly, to the manufacture of final products and clearance of such products upto the place of removal are covered. The inclusive part of the definition manifests that services used in relation to the setting up of the factory or office or premises, including its modernization, renovation, repair etc., and also services used in relation to advertisement, sales promotion, market research, procurement of inputs and all activities relating to the business would also fall within the ambit of 'input services'."

24.7. Since the Hon'ble High Court of Andhra Pradesh has allowed Cenvat credit even on maintenance of staff colony & held that all activities related to business would also fall within the ambit of input services, I am of the opinion that the input service in dispute are services used in

relation to renovation or repairs of a factory premises of the assessee and they are specifically, provided for in the inclusive part of the definition of input services.

24.8. I also rely upon the decision of Hon'ble CESTAT, Chandigarh in the case of M/s Carrier Air conditioning & Refrigeration Ltd vs CCE, Delhi-IV as reported in 2016-TIOL-450-CESTAT-CHD wherein inter-alia, Cenvat credit of service tax was allowed on Construction service related to dismantling of building & construction of storage shed.

24.9 I also rely on the following decisions relied upon by the assessee in support of their claim and I am also convinced that the said decisions are relevant and applicable to this issue at hand.

(i) Lifelong Meditech Ltd vs CCE&ST, Gurgaon-II as reported in 2016-TIOL-1685-CESTAT-CHD, wherein it has been held as under:

*"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(l) of Cenvat Credit Rules, 2004. Therefore, I hold that the appellant is entitled to avail Cenvat credit for Project for Modification/ Modernisation Services."*

(ii) CESTAT, Mumbai in the case of Mahanagar Gas Ltd vs CCE, Mumbai as reported in 2018-TIOL-1973-CESTAT-MUM, wherein it has been as under:

*"....dismantling of cement & brick work, excavation for foundation, plastering etc are not construction and civil work, so as to be excluded from the purview of the definition of 'input service' in terms of 2(l) of CCR, 2004.*

Para 4 of the decision, relevant to the present case is reproduced below:

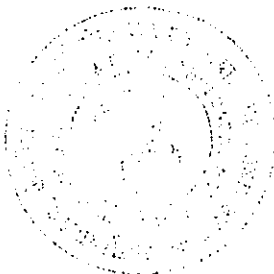
*"4. As correctly pointed out by the learned Counsel, I find that the work order which is issued to the service provider indicates that the work order pertains to the factory outlets for the services of dismantling cement & bricks work, excavation for foundation, plastering, providing dry trap/rubble stone soling etc. at the retail outlet. In my view, by no stretch of imagination, it can be stated that this activity undertaken by the service provider would fall under the ambit of exclusion clauses of Rule 2(l) of Cenvat Credit Rules, 2004. In view of the foregoing, the impugned order is set aside and the appeal is allowed."*

(iii) Carrier Air-conditioning & Refrigeration Vs. CCE - 2016 (41) STR 824 (T), the Hon'ble CESTAT has allowed the credit in respect of the services received by the assessee in relation to repair of the factory premises.

24.10. Thus applying the ratio of the above decisions, relying on the definition of "Input Service" and the Circular issued by the Board, there is no doubt that for the relevant period, subsequent to amendment in definition of input service, the activity of Maintenance and Repair of Construction service undertaken by the assessee in relation to repair of factory/office premises, clearly falls within the ambit of the definition of Input Service, as amended. Therefore, I hereby allow the Cenvat Credit amounting to Rs.14,84,522/- availed by the assessee, as detailed above.

### 3. CONSTRUCTION SERVICE:

SR.NO.	Show Cause Notice No. & Date-->	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
3	Construction service	0	2566894



25.1 The definition of input service w.e.f. 1.7.2012, clearly excludes Construction Services, as under:

.....[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) in so far 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

25.2. In view of the above definition, I find that there is no ambiguity or doubt regarding the fact that Construction services are not to be considered as "input services". The definition has explicitly excluded the service portion in the execution of a works contract and construction services involving construction or execution of works contract of a building or a civil structure from the definition of Input Service w.e.f. from 1.7.2012. Thus, I disallow the Cenvat Credit amounting to Rs. 25,66,894/- availed by the assessee on Construction Service, as detailed above.

#### 4. ERECTION COMMISSIONING AND INSTALLATION:

SR.NO.	Show Cause Notice No. & Date→	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
12	Erection Commissioning and Installation Service	9382090	0

26.1 The assessee, with respect to the Cenvat credit availed on Erection, Commissioning or installation service, has submitted that the services pertaining to erection, commissioning or installation have been availed with respect installation & commissioning of compressed air pipeline, fire hydrant, electrical items, pumping & piping facility, electrical work at powertrain shop & it is inclusive in the definition of input services. The erection, commissioning or installation services is integrally associated with the manufacturing activity since it is impossible to carry out the manufacturing activity without erection, commissioning or installation of plant & machinery. Therefore the Cenvat credit of Rs.93,82,090/- was correctly availed by them as the same constitutes input services which are integrally connected with manufacture of their final product.

26.2. It has been pointed out by the assessee that in the 1st SCN dated 27.02.2014, dispute was raised only w.r.t. fencing work as erection & installation services, but in the subsequent periodical Show Cause Notices, while submitting the information, details of Cenvat credit availed on other installation & commissioning services were also submitted by the assessee and demand was raised on such Cenvat credit availed in respect of installation & commissioning services, which were not related to fencing work.

26.3. I find that during the period from Dec 2014 to Oct 2015, the assessee had taken the Cenvat credit of Rs.93,82,090/- on the strength of total number of 168 invoices issued by the service providers. A detailed statement showing invoice no., invoice dates, vendor name, nature of services or purpose for which services were received and amount of service tax availed for all the 168 invoices was submitted by them.

26.4. From the perusal of nature of the work as per above statement and scrutiny of copies of the sample invoices, it comes out clear that all these services had been availed by the assessee for the purpose of installation & commissioning of paint shop, machines, commissioning of tools & fixtures, development & modification of machines, relocation of machines etc. which is an integral part of their manufacturing activity.

26.5. On scrutiny of the 3 illustrative copies of invoices on the strength of which Cenvat credit of Rs. 28,57,236/- was distributed to the assessee under Input Service Distributor Service, I find that there is no doubt that the assessee has taken credit only in respect of those services, which have been used only for the purpose of installation & commissioning weld equipment, paint shop etc. The aforesaid 3 invoices covers almost 30% of the aforesaid credit taken with respect to erection, commissioning & installation service.

26.6. I hereby rely on the judgment passed by Hon'ble High Court of Gujarat in the case of CADILA HEALTHCARE LTD., reported in 2013 (30) S.T.R. 3 (Guj.), wherein, it has been held as under:

*Cenvat - Input service - Definition - Rule 2(l) of Cenvat Credit Rules, 2004 - In inclusive part, since "activities relating to business" is followed by "such as", the later expression has to be given some meaning - "Such as" indicates that what is mentioned thereafter are only illustrative and not exhaustive of activities relating to business included in definition of input service - In that view, such activities could also be other than those mentioned in the Rule 2(l) ibid - However, this does not mean that every activity related to business of assessee would fall within the inclusive part of definition - Activity related to business has to be analogous to activities mentioned after words "such as". [para 5.2(ix)]*

26.7. I also rely on the decision of CESTAT, Hyderabad, in the case of M/s. Orient Cement Ltd., reported in 2017 (51) S.T.R. 459 (Tri. - Hyd.), wherein it has been held as under:

*Cenvat credit - Input service - Erection, Commissioning or Installation services - Work done for erection, installation of machinery and equipment - Nothing expressly stated in definition of input services under Rule 2(l) of Cenvat Credit Rules, 2004, before or after amendment brought about such services - Denial of credit not in order, hence, set aside. [para 4]*

26.8. I find that the services of Erection Commissioning and Installation Service have been availed by the assessee for the purpose of installation & commissioning of paint shop, machines, commissioning of tools & fixtures, development & modification of machines, relocation of machines etc. which is integral part of the manufacturing activity. Further from the definition of the term of 'input service', it is apparent the such services are aptly covered in the main part of the definition which clarifies that any service which are used directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal is to be considered as input service. Moreover, the services availed by the assessee also are clearly includible in the inclusive part of the meaning of the 'input service'.

26.9. In view of the above, I hereby hold that the said services of Erection Commissioning and Installation Service can be considered as "Input Service" and the Cenvat Credit on such service has been rightly availed by the assessee. I hereby allow the Cenvat Credit amounting to Rs. 93,82,090/-, availed by the assessee.

##### 5. EVENT MANAGEMENT SERVICE:

SR.NO OF TABLE A	Show Cause Notice No. & Date—>	Centralised SCN No. 48/COMMR/GLT-4/TML- AMD/STD/Non-CERA/15- 16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15- 24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
8	Event Management Service provided by Clubs and Hotels	14211	279314





27.1 From the contention of the assessee and on going through the copies of the invoices submitted by the assessee with respect to Cenvat credit availed on 'Event management service', it is revealed that expenditure had been incurred for sales promotion, review meet, conference etc. From the sample invoices, I find that the services have been availed for events like Car Display events, event for placement etc. I find that such activities are intrinsically linked with the activity of manufacture & clearance of finished products. Further, the services availed by the assessee are clearly includible in the inclusive part of the meaning of the 'input service', which clarifies that any service which are used directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal is to be considered as input service.

27.2. The assessee has relied on the decision of Hon'ble CESTAT in the case of Castrol India limited vs CCE, Vapi as reported in 2013 (291) ELT 469 (Tri-Ahmd) wherein Cenvat credit on event management service was held to be admissible. Para 11 of the said decision, which is relevant to this issue, is as under:

*"11. As regards event management service, event management firms provide services to companies to undertake promotional activities for their products in various places. In the absence of any evidence to show that the said event management services were received for other purposes, the services have to be held as relatable to business of manufacturing only since the services are directly relatable to promotion of goods. Technical inspection services are availed in respect of quality verification etc. and such services are definitely relatable to manufacture. Therefore, credit is admissible in respect of such services also."*

27.3 The Hon'ble High Court of Bombay, in the case of M/s. AXIS BANK LTD, in its decision reported in 2019 (369) E.L.T. 583 (Bom.), has held as under:

*Cenvat credit - Input services - Event management services - Finding of fact that such services obtained to organize events to target people with high net worth so as to attract or retain them as their constituents - Services in nature of sales promotion service and fell within inclusive part of definition of "input service" - Revenue not able to point out that finding of Tribunal perverse - Order of Tribunal allowing credit not interfered with - Rule 2(1) of Cenvat Credit Rules, 2004. [para 6(iii), (iv)]*

*We find that the Tribunal has rendered a finding of fact that the services of Event Managements are obtained to organize the events. These events are held/organized by the Respondent to target people with high net worth so as to attract/retain them as their constituents. Thus, these services are in the nature of sales promotion service and would eonomine fall within the inclusive part of definition of input service provided in Rule 2(1) of Cenvat Rules.*

27.8 In view of the above and relying on the above decisions of Tribunal and the judgment passed by the Hon'ble Court, I hereby decide that the said services of 'Event management service' can be considered as "Input Service" and the Cenvat Credit on such service, has been rightly availed by the assessee. I hereby allow the Cenvat Credit amounting to Rs.14211/- (From December 2014 to October 2015) and Rs. 279314/- (From Nov-2015 to June-2017)availed by the assessee.

## 6. Management Maintenance and Repair Service

SR.NO. OF TABLE A	Show Cause Notice No. & Date-->	Centralised SCN No. 48/COMMR/GLT- 4/TML-AMD/STD/Non- CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15- 24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June- 2017
5	Management and Maintenance Service	4203358	9139454

28.1. The definition of 'input service' in Rule 2(l) of the Cenvat Credit Rules, 2004 is as follows:

*Rule 2(l) : "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;*

28.2. From the scrutiny of the sample invoices provided by the assessee and the letter dated 19.3.2021, I find that the such services are related to maintenance and housekeeping services, provided in their administrative building, data centre, security cabins, Central Building, Central Maintenance services, Compressor House, Coil storage, De boxing Area, DG House, Fire and Safety Building, Dispatch cell etc., which are located inside the factory premises. Therefore, the service is aptly covered under the definition of Input Services and is included in the inclusive clause of the definition.

28.3 I rely on the decision of CESTAT, Mumbai, in the case of M/s. Balkrishna Industries Ltd., reported in 2010 (254) E.L.T. 301 (Tri. - Mumbai), wherein it was held as under:

*Cenvat credit of Service tax - Input service - Plant housekeeping - Toilet and water are basic requirements to run factory and not providing such facilities affect production - Housekeeping service essential and related to manufacture - Adjudicating authority in appellant's own case held credit as admissible on impugned service - No plant can run without proper maintenance of plant housekeeping services - Credit admissible - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 1, 6, 7, 8]*

28.4 I also rely on the decision of CESTAT, Pr. Bench, New Delhi, in the case of M/s. SATYAM AUTO COMPONENTS LTD., reported in 2014 (34) S.T.R. 68 (Tri. - Del.), wherein, it was held as under:

*Stay/Dispensation of pre-deposit - Demand and penalty - Denial of Cenvat credit on Construction service and Housekeeping service - Maintenance of factory required for carrying on manufacturing operation without interruption - Nexus between housekeeping service and final products makes a prima facie case - Waiver of pre-deposit granted and recovery thereof stayed - Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. [para 3]*

28.5 In view of the above, I hold that the Management Maintenance and Repair Service can be considered as "Input Service" and the assessee has rightly availed the Cenvat Credit on such service. I hereby allow the Cenvat Credit amounting to Rs.42,03,358 (From December 2014 to October 2015) and Rs.91,39,454 (From Nov-2015 to June-2017) availed by the assessee, on Management Maintenance and Repair Service.

**7. Maintenance & House Keeping of Guest House:**

SR.NO.	Show Cause Notice No. & Date—>	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
4	Maintenance & House Keeping of Guest House	337700	1061107



29.1 With respect to availment of Cenvat credit on maintenance & housekeeping of guesthouse, the assessee has submitted that, the guesthouse is used primarily for lodging of employees for official purpose and thus maintenance & housekeeping of the guesthouse has direct nexus with the manufacture & clearance of excisable goods and therefore credit has been rightly availed by them. The assessee has relied upon the decision of Hon'ble CESTAT, Mumbai in the case of M/s ISMT Ltd vs Commissioner of Customs & Central Excise, Aurangabad as reported in 2015-TIOL-1842-CESTAT-MUM, wherein it was held as under:

*"5. I find that service in question is security services provided to the guest house of the appellant. The guest house is used for lodging of the employees, outside auditors which performing their service to the appellant's factory. Nothing is available on record to show that guest house is used for any other purpose. In view of this fact, since guest house used for the stay of employee, auditors which has direct nexus with factory which produces excisable goods therefore Cenvat credit is admissible to the appellant. On going through judgments relied upon by the rivals, I find that in the case of L'Oreal India Pvt. Ltd. house keeping service of guest house has been held admissible and in the case of Hindustan Zinc Ltd. (supra) maintenance service of guest house was allowed as input service. Since the similar service involved in the present case, the ratio of both the judgments are squarely applicable in the appellant's case also. As regard reliance placed by the Ld. A.R. on various judgments,..... In view of my above discussion and careful consideration of the judgments relied upon by the both sides, I am of the view that in facts and circumstances of the case, security service provided to the guest house in the factory is admissible input service, therefore I set aside the impugned order and allow the appeal."*

29.2 CESTAT, WZU, MUMBAI, in its decision in the case of M/s. L'OREAL INDIA PVT. LTD. reported in 2011 (22) S.T.R. 89 (Tri. - Mumbai), has held as under:

*Cenvat credit of Service tax - Input service - House keeping of guest house, factory, and garden maintenance - HELD : These services were availed by assessee in course of their business activity, except for amount recovered from guest staying at guest house - Assessee was entitled to credit of Service tax paid on such services - Rule 2(l) of Cenvat Credit Rules, 2004. [para 5]*

29.3. Further, I also find that on similar issue, Joint Commissioner, LTU (Audit), Mumbai vide its OIO no. 46/Joint Commissioner (SK)/ LTU-A/CX/2016-17 dated 27.03.2017, has *inter-alia* allowed the Cenvat credit on maintenance & housekeeping of guesthouse. Para 25.4 & 25.5 of the order as would be relevant in the instant proceedings is reproduced below:

*"25.4 On perusal of these decisions of various authorities, I am convinced by the decision referred by the assessee reported in 2015-TIOL-1842-CESTAT-MUM, wherein while allowing the Cenvat credit on security service provided at guest house. I also rely on judgement of MRF Ltd (2013 (31) STR 689 (T)) wherein it has been held that, credit of Cenvat of service tax paid on the security agency services on the security personnel posted at job-worker premises is admissible to principal manufacturer.*

*25.5 Therefore I allow the credit of Cenvat of service tax amounting to Rs. 3,53,463/- in respect of landscaping and gardening services and Rs. 2,91,764/- in respect of maintenance and housekeeping of guest house."*

29.4. The Hon'ble High Court of Madras, in its judgment in the case of RANE TRW STEERING SYSTEMS LTD., reported in 2015 (39) S.T.R. 13 (Mad.), has held as under:

*Cenvat - Input service - Housekeeping and gardening services where an employer spends money to maintain their factory premises in an eco-friendly manner, tax paid on such services would form part of the cost of final products and the same would fall within the ambit of "input services" and therefore assessee is entitled to claim the benefit - Thus, Housekeeping and landscaping services included in the scope of term "input services" defined in Rule 2(l) of Cenvat Credit Rules, 2004. [paras 8, 9]*

29.5. Therefore, I hold that the Maintenance & House Keeping of Guest House services can be considered as "Input Services" and the assessee has rightly availed the Cenvat Credit on such service. I hereby allow the Cenvat Credit amounting to Rs. 337700/- (From December 2014 to October 2015) and Rs. 1061107/- (From Nov-2015 to June-2017) availed by the assessee.

8. Management Consultant Service:

SR.NO.	Show Cause Notice No. & Date-->	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
10	Management Consultancy Service	78601	182000

30.1. With respect to management consultant service, the assessee has submitted that management of any organization needs a lot of technical knowledge on various laws, procedure, and process of development in the field of business. The services have been availed by the assessee from management consultants who are experienced in handling the matters used for government permissions, drawing preparation, stability certification etc. & the same is necessary to ensure statutory procedural compliances.

30.2. CESTAT, AHMEDABAD, in its decision in the case of M/s. SAI LIFE SCIENCES LTD., reported in 2017 (51) S.T.R. 55 (Tri. - Hyd.), has held as under:

*Cenvat credit - Input service - Management Consultancy services - Said services used in relation to business processes and operation - Credit admissible - Rule 2(l) of Cenvat Credit Rules, 2004. [para 4]*

30.3. In view of the above, I find that the assessee had availed the Management Consultant Service in relation to their business activities., which implies that the service is aptly covered under the definition of "Input services". Accordingly I hold that the appellant are entitled for availing the Cenvat credit of Rs. 78601/- (December 2014 to October 2015) and Rs. 182000/- (Nov-2015 to June-2017).

9. Mandap Keeper and Banquet Services:

SR.NO.	Show Cause Notice No. & Date-->	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
2	Mandap Keeper & Banquet	0	17385

31.1 It is submitted by the assessee that such services are required in relation to purchase, manufacture & sale of final product. Thus the same is related to manufacturing activity. The main part of the definition of "Input Service" specifies the meaning of 'input service' and clarifies that any services which are used directly or indirectly, in or in relation to the manufacture of final products. Further, Cenvat credit is admissible on these services as such services do not appear in the exclusion list of the definition of 'input service'.

31.2. The Hon'ble High Court of Punjab and Haryana, in its decision in the case of M/s. Maruti Suzuki India Ltd, reported at 2017 (49) S.T.R. 261 (P & H), has held as under:

*Cenvat credit - Availment of - Mandap Keeper Services used to organize meetings and events for new vehicle launch, sales promotion events, business dealer meets, conferences, executive meetings, etc. - HELD : These activities promoted sale of vehicles - They were connected with business of assessee of manufacture of motor vehicles and parts thereof - Hence, assessee was entitled to avail Cenvat credit of Service Tax paid thereon - It was more so as expense was part of cost on which Excise duty paid on final product - Rule 3 of Cenvat Credit Rules, 2004. [paras 23, 25]*

31.3 In view of the above, I hold that the Mandap Keeper & Banquet Service is aptly covered in the inclusive clause of "Input Services" and the assessee has rightly availed the Cenvat Credit on such service. I hereby allow the Cenvat Credit amounting to Rs.17385/- (From Nov-2015 to June-2017) availed by the assessee.

**10. Services provided by Confederation of Indian Industry(CII)**

**11. Travel Agent Service:**

**12. Hotel Accomodation Service:**

SR.NO.	Show Cause Notice No. & Date-->	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
6	Services provided by Confederation of Indian Industry(CII)	24505	84782
7	Travel Agent Service	131021	73905
9	Hotel Accommodation	9080	274585

32.1 I have carefully gone through the submission made by the assessee in respect to Travel Agent Service, Hotel Accomodation Service. I rely on the case of M/s. Maruti Suzuki Ltd. v/s. Commissioner of Central Excise, Delhi-II, reported 2009 (240) ELT 641 (S.C.). It has been held in Para 16 of the judgment that :

*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....*

*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.

32.2. From the above judgment of the Apex Court, it is substantiated that to check whether a service qualifies as an input service, it has to be established in each case that the input service mentioned in the inclusive part of the definition is 'used in or in relation to the manufacture of final product'. It is the functional utility of the said service which would constitute the relevant consideration. However, the specified service would become eligible for credit only when used in or in relation to the manufacture of final product.

32.3. Since the services mentioned above have not been used in or in relation to the manufacture and clearance of final products, in as much as they are not essential to the manufacturing process, they fail to fulfil the condition laid down by the Hon'ble Supreme Court in the above case, Thus I hold that the said services cannot be termed as 'Input Services' and thus hold the assessee is not eligible for availing the Cenvat Credit paid on the such services. Thus I disallow the Cenvat Credit amounting to Rs.131021/- (December 2014 to October 2015) and Rs.73905/- (Nov-2015 to June-2017) availed on Travel Agent Service; Rs. 9080/- (December 2014 to October 2015) and Rs.274585/- (Nov-2015 to June-2017) availed on Hotel Accommodation Service; and Cenvat credit amounting to Rs.24505/- (December 2014 to October 2015) and Rs.84782/- (Nov-2015 to June-2017) availed on Services provided by Confederation of Indian Industry(CII)

### 13. Goods Transport Agency Service:

SR.NO.	Show Cause Notice No. & Date—>	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North, dated 07.11.2017
	Period of SCN	December 2014 to October 2015	Nov-2015 to June-2017
11	Goods Transport Agency Service	23100	8349575

33.1. It is the contention of the assessee that they have used the said services for inward transportation of inputs etc & therefore it has direct nexus with the manufacture & clearance of excisable goods. Further, they have also claimed that the expenses incurred for transportation of goods upto the place of removal is also covered under main part of the definition of 'input service'. As such they have rightly availed the Cenvat Credit of such services.

33.2. However, on going through the samples invoices, I find that many invoices have been raised for transportation of goods from Sanand to Pune. Further, the invoices of purely Man power services, used during the course of provision of this service, have also been included in the GTA services. The assessee has paid Service Tax on the entire value of such invoices and not on the abated value, as required under GTA services. I am of the opinion that the assessee is only eligible for availing the credit on Inward Transportation to their Sanand factory and they are not eligible for availing the credit of outward transportation, as claimed by them. Further the main thrust of the Show Cause Notice is the eligibility of the services vis-a-vis Input Services. The Cenvat Credit on such services has been denied primarily on the ground that they do not qualify as Input Services as per the definition of 'Input Services' as amended. As such the issue to be examined is whether the services qualify as Input Services or otherwise.

33.3. Now, going through the data of invoices submitted by the assessee, I find that the details of invoices pertaining to Inward transportation have not been submitted by the assessee

separately. Further, vide letter/mail dated 5.3.2021, the assessee was repeatedly asked to submit the copies of invoices pertaining to Inward transportation and provide the detailed bifurcation of Inward and outward transportation, indicating the total value of the invoices and the abated value on which Service Tax has been paid. The assessee submitted a few scanned copies of sample invoices vide their mail dated 19.3.2021, however, the same pertained to Outward transportation from Sanand to Pune. The assessee was again requested to provide the separate list of inward transportation along with copies of all the invoices. However, till the issuance of this order, the same was not provided by them in spite of providing ample time. In view of this, I am not in a position to work out the details of Cenvat Credit pertaining to Inward transportation, which can be considered as Input Services and it might be likely that the assessee is eligible for availing the Cenvat Credit on the same.

33.4. I hereby rely on the on the case of M/s. Maruti Suzuki Ltd. v/s. Commissioner of Central Excise, Delhi-II, reported 2009 (240) ELT 641 (S.C.), as discussed above. In view of the above, I am left with no alternative but to deny the entire Cenvat Credit availed on GTA Services, because of insufficient proof that the services have direct nexus to the manufacture and that they purportedly qualify as "Input Service". Thus I disallow the Cenvat Credit amounting to Rs. 23100/- (December 2014 to October 2015) and Rs. 8349575/- (Nov-2015 to June-2017) availed on Goods Transport Agency Service.

34. I understand that Rule 9(6) of the Cenvat Credit Rules, 2004, stipulates that the burden of proof regarding the admissibility of Cenvat Credit shall lie upon the manufacturer or provider of output services taking such credit. In other words, it is the responsibility of the assessee to avail Cenvat Credit only if the same is admissible. As discussed herein above, in the instant case, the credit taken in respect of many services was inadmissible, in as much as these services were not falling within the ambit of definition of "input services" as specified under Rule 2 (l) of the Cenvat Credit Rules, 2004. Therefore, I find that the assessee has failed to discharge the obligation under Rule 9(6) of the Cenvat Credit Rules, 2004, and have subsequently availed the Cenvat Credit of such ineligible services and utilized the same for payment of duty on the excisable goods cleared by them, with an intention of evade payment of Central Excise duty to that extent. Therefore I hold that the inadmissible Cenvat Credit availed by the assessee is liable to be recovered from the assessee under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11 A of the Central Excise Act, 1944, along with interest at the applicable rate under Section 11 AA of the Central Excise Act, 1994 and penalty is also imposable on the assessee under the provision of Rule 15 of the Cenvat Credit Rules, 2004, read with Section 11 AC of the Central Excise Act, 1944.

35. I, hereby summarise the admissibility of availment of Cenvat Credit, as under:

TABLE B

SR.NO	Show Cause Notice No. & Date-->	Centralised SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16 issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016	ALLOWED	DISALLOWED
	Period of SCN	December 2014 to October 2015		
1	Landscaping and Gardening	0	0	0
2	Mandap Keeper & Banquet	0	0	0
3	Construction service	0	0	0
4	Maintenance & House Keeping of Guest House	337700	337700	0



5	Management & Maintenance	4203358	4203358	0
6	Services provided by Confederation of Indian Industry(CII)	24505	0	24505
7	Travel Agent Service	131021	0	131021
8	Event Management Service provided by Clubs and Hotels	14211	14211	0
9	Hotel Accommodation	9080	0	9080
10	Management Consultant	78601	78601	0
11	Goods Transport Agency	23100	0	23100
12	Erection Commissioning of Installation	9382090	9382090	0
13	Repair and Maintenance of Construction Service	1484522	1484522	0
	TOTAL	15688188	15500482	187706

TABLE C

SR.NO	Show Cause Notice No. & Date-->	SCN no. V.87/15-24/OA/2017 issued by the Commissioner, CGST, Ahmedabad North,dated 07.11.2017	ALLOWED	DISALLOWED
	Period of SCN	Nov-2015 to June-2017		
1	Landscaping and Gardening	768740	768740	0
2	Mandap Keeper & Banquet	17385	17385	0
3	Construction service	2566894	0	2566894
4	Maintenance & House Keeping of Guest House	1061107	1061107	0



5	Management & Maintenance	9139454	9139454	0
6	Services provided by Confederation of Indian Industry(CII)	84782	0	84782
7	Travel Agent Service	73905	0	73905
8	Event Management Service provided by Clubs and Hotels	279314	279314	0
9	Hotel Accommodation	274585	0	274585
10	Management Consultant	182000	182000	0
11	Goods Transport Agency	8349575	0	8349575
12	Erection Commissioning of Installation	0	0	0
13	Repair and Maintenance of Construction Service	0	0	0
	TOTAL	22797741	11448000	11349741

37. I hereby pass the following order.

### ORDER

**I: SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16, dated 04.01.2016, issued by the Commissioner, Central Excise and Service Tax, LTU, Mumbai, dated 04.01.2016**

- (i) I hereby allow the Cenvat Credit amounting to Rs.1,55,00,482/- (Rupees One Crore fifty five Lakhs Four Hundred and Eighty two only) as detailed in Table B above.
- (ii) I hereby disallow the Cenvat Credit amounting to Rs.1,87,706/- (Rupees One Lakh Eighty Seven thousand Seven Hundred and six only) and order for the recovery of the same under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11 A(1) of the Central Excise Act, 1944, as detailed in Table B above.
- (iii) I order that interest at the appropriate rate should be recovered from the assessee on the amount confirmed at (ii) above under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11 AA of the Central Excise Act, 1944.
- (iv) I impose penalty amounting Rs.1,87,706/- (Rupees One Lakh Eighty Seven thousand Seven Hundred and six only) under the provisions of Rule 15(1) of Cenvat Credit Rules, 2004, read with Section 11 AC of the Central Excise Act, 1944,

**II. SCN No. V.87/15-24/OA/2017, ,dated 07.11.2017 issued by the Commissioner, CGST, Ahmedabad North.**

- (v) I hereby allow the Cenvat Credit amounting to Rs. 1,14,48,000/- (Rupees One Crore Fourteen Lakhs Forty Eight thousand only) as detailed in Table C above.
- (vi) I hereby disallow the Cenvat Credit amounting to Rs.1,13,49,741/- (Rupees One Crore Thirteen Lakhs Forty nine Thousand Seven Hundred Forty one only) and order for the recovery of the same under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11 A(1) of the Central Excise Act, 1944, as detailed in Table B above.

- (vii) I order that interest at the appropriate rate should be recovered from the assessee on the amount confirmed at (vi) above under the provisions of Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11 AA of the Central Excise Act, 1944.
- (viii) I impose penalty amounting Rs. 1,13,49,741/- (Rupees One Crore Thirteen Lakhs Forty nine Thousand Seven Hundred Forty one only) under the provisions of Rule 15(1) of Cenvat Credit Rules, 2004, read with Section 11 AC of the Central Excise Act, 1944,

38. Accordingly, the SCN No. 48/COMMR/GLT-4/TML-AMD/STD/Non-CERA/15-16, dated 04.01.2016 and SCN No. V.87/15-24/OA/2017, dated 07.11.2017 are hereby disposed off on the above terms.

(Amarjeet Singh)  
Commissioner,  
CGST,  
Ahmedabad North

F.NO:STC/15-42/OA/2020

DATE: 07.05.2021

✓ To  
Tata Motors Ltd.,  
Survey no. 1,  
Village North Kotpura,  
Ta. Sanand,  
Ahmedabad 382170

Copy to:

- 1 The Chief Commissioner, C.G.S.T., Ahmedabad Zone.
- 2 The Assistant/Deputy Commissioner C.G.ST., Division-III, Ahmedabad North
- 3 The Superintendent, C.G.S.T., AR-IV, Division-III, Ahmedabad North
- 4 Guard File.

