CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

COURT HALL - I

Excise Appeal No.41472 of 2013

(Arising out of Order in Original No. 12/2013 (C) dated 30.3.2013 passed by the Commissioner of Central Excise, Puducherry)

M/s. Madras Cements Ltd. **Appellant**
(Currently known as The Ramco Cements Ltd.)
Cement Grinding Plant
Kottaputhur Village, Uthiramerur Taluk
Kancheepuram Dt. – 603 101.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate
Newry Towers, 12th Main Road
Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri R. Parthasarathy, Consultant for the Appellant
Shri R. Rajaraman, Authorized Rep. for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri Vasa Seshagiri Rao, Member (Technical)

Final Order No. 40812/2024

Date of Hearing : 11.06.2024
Date of Decision: 08.07.2024

Per P. Dinesha,

The period of dispute is from 2008–09 to 2010–11; the issue revolves around the interpretation of 'input service' as applicable to the above periods of dispute.

2. Brief facts as set out in the impugned order are that the appellant had availed CENVAT credit of duty paid on inputs and service tax on input services; such

CENVAT credit availed on input services of commercial and industrial construction, fabrication and erection, manpower supply for construction and Goods Transport Agency for construction materials etc. during the setting up of the unit in the years 2008 – 09, 2009 – 10 and 2010 – 11. It was the case of the Revenue that the above credit availed did not have any nexus with the manufacturing activity either directly or indirectly and hence, the same were not used in the activities specified under the definition of Rule 2(l) of the CENVAT Credit Rules, 2004. This prompted the Revenue to issue the Show Cause Notice dated 19.1.2012 proposing to disallow inter alia the wrong input service credit availed by the appellant and recover the same along with applicable interest and penalty. It appears that the appellant filed its reply justifying its stand of availing the above CENVAT credit, but however not satisfied with the reply the adjudicating authority proceeded to confirm the disallowance as proposed, along with interest and penalty. Aggrieved, the appellant is before this forum by this appeal.

3. Heard Shri R. Parthasarathy, learned consultant for the appellant and Shri R. Rajaraman, learned Authorized Representative for the respondent.

4. The original authority having considered the various input services, allowed the credit on some of the services, against claim of the appellant for credit on the services like fabrication, erection, commissioning and installation service, manpower supply in relation to construction and erection of cement grinding plant. He, however, records that as per the definition, the substantive part of the same covered the services used directly or indirectly in or in relation to the manufacture of final products and clearance of the same, while the inclusive part expanded the scope of the definition to cover specific activities and activities relating to business. The inclusive definition, though purported to cover services which have or have not been covered under the main definition, but however, would only cover those services relating to manufacture or clearance and sale of goods up to the place of removal. The dispute therefore relates to the determination of exact place of removal on the specific factual matrix of this case.

5. Insofar as the services in question are concerned, the first appellate authority has observed that the above services, when received, neither the manufacture nor the business of manufacturing had commenced. It is thus his case that the above services

were received in the period where there was no manufacturing activity and nor was there any clearance of goods. In this connection, he has relied on paragraph (i), (ii) and (iii) and finally has concluded that security agency, telephone, courier agency, manpower supply, and GTA service and other services referred to as above received during the period of setting up of the factory, could not be treated as input services under the definition of 'input service' as it stood during the material period and hence, the input service tax credit availed on these services was liable to be recovered under Rule 14 of CCR.

6. It is the case of the taxpayer that the total input tax credit availed which was rejected by the original authority included service tax paid on freight relating to inward transport, transportation of various goods required for the establishment of the cement grinding plant and also for procuring clinker and other inputs for the manufacture of cement. The above were clearly of the nature of input services and therefore, the inward transportation was nothing but an input service to which the appellant were legally entitled to avail credit on the service tax paid on the same.

7. It was also submitted that the authority wrongly concluded that the input service tax service credit was

permissible only for those input services used in or in relation to the manufacture and clearance of products; the lower authority has failed in understanding the broader scope and applicability of definition of input service. It is their case that in the case on hand the same is in the nature of bringing into fold of input services various services which do not have nexus to with the manufacture of goods, but however, were generally rendered at a place different from the place of manufacture, which were clearly covered under the inclusive part of the definition of input service.

8. Insofar as consultancy service is concerned, it is their case that the machineries erected in the cement grinding plant required the technical inspection and certification by specified agencies before those machineries could be put into use and therefore, such services like technical inspection and certification were clearly input services in setting up of the cement grinding plant. Consequently, the tax paid on such services would qualify for credit.

9. Insofar as other services like telephone services, courier, advertisement, consultancy fee, insurance, internet and telecommunication and authorized service station services, it is urged that the above would have to be treated as covered under the

definition in view of the wider scope of the same; and in this regard, they have relied upon the following orders:

a. Manikgrah Cement Vs. CCE, Nagpur – 2008 (9) STR 554 (Tri. Mumbai)

b. Millipore India Ltd. Vs. CCE, Bangalore – 2009 (13) STR 616 (Tri. Bang.)

c. Givaudan Flavours (India) P. Ltd. Vs. CCE, Daman – 2009 (15) STR 433 (Tri. Ahmd.)

d. CCE, Guntur vs. Hindustan Coca-Cola Beverages Pvt. Ltd. – 2009 (15) STR 248 (Tri. Bang.)

e. D.C.M. Shriram Consolidated Ltd. – 2006 (4) STR 610 (Commr. Appeal)

10. It is their case that it was wrong on the part of the authorities below to assume that CENVAT Credit Rules do not prescribe any restriction that an input CENVAT credit could be taken only up to the time of completion of setting up of a plant / factory. They further urged that even such services which were meant to be used after setting up of cement grinding plant would qualify for credit. It is thus contended that the nexus theory between the services and the activity of manufacture is never a prerequisite for the purpose of availing input service tax credit. Moreover, the credit availment could not be bifurcated into services availed for setting up and that after setting up of a factory since, here in the case on hand, the cement grinding plant was set up only for the

manufacture of excise goods viz. cement, which attracted payment of duty and CENVAT credit for both inputs as well as input services that could be availed by a manufacturer of excisable goods upon the payment of duty. In this regard, reliance is placed on CCE, Nagpur Vs. Ultratech Cement Ltd. reported in 2010 (260) ELT 369 (Bom.).

11. In a nutshell, it is their case that the credit for service tax paid on inward transportation of materials ought not to have been disallowed since the very definition of input services as it stood during the relevant period did not exclude the input services relating to the transportation of goods to the appellant's manufacturing plant. Further, the question of determination of place of removal in respect of inward transportation was not at all relevant during the material point of time and hence, the service tax paid on such inward transportation of the goods qualified for credit, regardless of the amendment brought in with effect from 01.04.2008. In this regard, they have relied upon the following orders –

a. Rathnamani Metals and Tubes Ltd. Vs. CCE, Ahmedabad – 2014 (35) STR 111 (Tri. Ahmd.)

b. Delta Energy Systems Ltd. Vs. CCE, Delhi – 2013 (31) STR 684 (Tri. De.)

c. CCE, Raipur Vs. Beekay Engg. & Castings Ltd. – 2009 (16) STR 709 (Tri. Del.)

With regard to GTA outward transportation of finished goods, the place of removal after 01.04.2008 was either their factory gate or their depots as concluded by the original authority was incorrect and contrary to the order of Larger Bench of the Tribunal in their own case dated 21.12.2003.

12. Thus, even after amendment to the definition of input services with effect from 01.04.2008, the place of removal of the goods which were sold on FOR destination basis was never their factory gate or depots and hence, the place of removal was always their customers' places.

13. In the decision of Ultratech Cement case decided by the Hon'ble Supreme Court, the Court had only held that credit would not be admissible beyond the factory gate since the very issue of what would be the place of removal in the case of goods sold on FOR destination basis did not come up for discussion in the above case.

14. In this regard, they rely on a decision of Hon'ble High Court of Karnataka in the case of Bharat Fritz Warner Ltd. Vs. CCE, Bangalore – 2022 (66) GSTL 434 (Kar.) and the judgment of the Hon'ble High Court of Himachal Pradesh in the case of Inox Air Products Pvt. Ltd. Vs. ACCE & ST Division.

15. They also rely on a Final Order No. 40201/2024 dated 22.2.2024 and conclude that insofar as GTA outward transportation credit, the same is covered by the above rulings and hence, the order of the original authority which is contrary to the above rulings, cannot stand the scrutiny of law.

16. Per contra, learned Authorized Representative relied on the findings of the lower authority.

17. After hearing both sides, we find that the only issue to be decided is, "whether the Revenue is justified in denying the availment of input service credit on the ground that the services in question did not have any nexus with the manufacturing activity?".

18. The period of dispute is from April 2008 to March 2011 and hence, the definition of "input service" as it stood prior to the amendment with effect from 1.4.2011 would apply. The same reads as below:-

> *"Input service" means any service :-*
>
> *(i) used by a provider of taxable service for providing an output service, or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal and includes service, 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 sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training. computer networking, credit rating, share registry, and security, inward*

transportation of inputs or capital goods and outward transportation upto the place of removal"

19. Quite clearly, the definition covered 'activities relating to business' but we do not see anywhere as to the revenue agitating that the other services which were disputed, were never used in the 'business' of the appellant. Further, para 20 of the impugned order makes it very clear that the denial is made on the ground that the setting up of business was not an activity related to the business. We fail to understand the logic behind this conclusion. It is not their case that the appellant having undertaken the activity of setting up of the factory did not carry any manufacturing activity in that premises and therefore, the denial of input credit was called for. It is the settled position of law that the ambit of the definition prior to 01.04.2011 was large enough to cover all such activities that are disputed here, in this case, as long as there is no denial by the revenue that after setting up of the factory, no business was carried on from that premises.

20. We also find that the orders/decisions relied upon by the appellant in this regard support their case.

21. In view of the above settled position law vis-à-vis the definition as it stood prior to 01.04.2011, we

are of the view that the denial of input credit is contrary to law and therefore, the impugned order cannot sustain. Resultantly, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

22. Ordered accordingly.

23. Resultantly, the impugned order is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 08.07.2024)

(**VASA SESHAGIRI RAO**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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