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

REGIONAL BENCH- COURT NO.3
Excise Appeal No.12083 of 2018
(Arising out of OIA-BHV-EXCUS-000-APP-049-2018-19 dated 27/04/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Ultratech Cement Ltd ………**Appellant**
Unit: Narmada Cement Jafrabad Works, Babarkot, Jafrabad,
Amreli, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ………**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri. Jigar Shah, Advocate for the Appellant
Shri. G Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12614 /2021

DATE OF HEARING: 09.12.2021
DATE OF DECISION:09.12.2021

RAMESH NAIR

The brief facts of the case are that the appellant for their employee either provided accommodation in their residential colony and in some cases where the employees are residing outside the factory, house rent allowance given. The case of the department is that since the appellant have provided residential quarters free of rent to their employee, therefore, the renting of residential quarter is exempted service and accordingly on the value of such service which department calculated by taking a deemed rent demanded 6%/7% of the value of such service as deemed consideration under Rule 6 (3) of Cenvat Credit Rules, 2004.

2. Shri. Jigar Shah, Learned Counsel appearing on behalf of the appellant submits that the appellant are not recovering any amount towards rent of residential houses provided free of rent to their employees, therefore, the activity is not falling under the exempted category. Moreover, since no amount is collected there is no value of exempted service exist for charging

6%/7% in terms of Rule 6, therefore, the demand is not sustainable. He placed reliance on the following judgments:-

- Biochem Pharmaceuticals Industries Ltd Vs CCE A/12456/2021 Date 25.10.2021 Passed by the Hon'ble CESTAT, Ahmedabad
- CCE Vs Himmat Glazed Tiles-2018 (15) GSTL 486 (Guj.)
- CCE Vs Ashima Dyecot Ltd-2008 (232) ELT 580 (Guj.)
  Affirmed by the Hon'ble Supreme Court of India-2009 (240) ELT A-41(S.C)
- Tiara Advertising Vs UOI 2019 (10) TMI 27- Telangana & A.P. High Court
- Shree Rama MultiTech Ltd Vs UOI -2011 (267) ELT 153 (Guj.)
- Welspun Corp Ltd Vs CCE -2019 (368) ELT 179 (T)
- Bhel-Ge Gas Turbine Services Pvt. Ltd Vs CCE -2021 (44) GSTL 399 (T)
- Bombay Minerals Ltd Vs CCE- 2019 (29) GSTL 361 (T)
- Punjab National Bank Vs CCE-2018 (7) TMI 1131- CESTAT, New Delhi
- Mercedes Benz India (P) Ltd Vs CCE-2015 (40) STR 381 (T)
- Bajaj Allianz General Insurance Co. Ltd Vs CCE-2014 (8) TMI 787- CESTAT, Mumbai
- CCE Vs Larsen & Toubro Ltd 2015 (39) STR 913 (S.C)

3. Shri. G Kirupanandan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that since the house rent is paid to their employee who are staying outside the company’s residential quarters, therefore the same rent should be considered as the gross value of the renting service in respect of the residential quarters provided by the appellant to their employee within the factory premises. Therefore the demand was correctly raised.

4. I have carefully considered the submissions made by both the sides and perused the records. As per Rule 6 for demanding 6%/7% it can be charged only on the value of exempted services. In the present case the appellant are not receiving any value by providing the rental house to their employee within the premises. Since no value is flowing from employee to the appellant there is no question of calculating 6%/7% on the value which does not exist. Moreover, I find that the contention of the Revenue is that providing residential house to their employees is exempted service. However, in my considered view, since the house was provided to the employee which are engaged in the manufacture of the final product hence ultimately all the activities get absorbed in the manufacture of the final product i.e Cement which is cleared of payment of duty. Shri. G Kirupanandan pointed out that the demand under Rule 6 is not only on the renting of the houses but also on the removable of waste and scrap. In this regard, I find that as of now it is a settled law that in respect of removable of waste and scrap, refuse or by-product Rule 6 is not applicable as held by the Hon'ble Bombay High Court in the case of Hindalco Industries Limited and the said judgment has been upheld by the Hon'ble Supreme Court. In view of this settled position even on scrap the demand of 6% /7% in terms of Rule 6 (3) is not sustainable.

5. As per my above discussion and finding the demand raised under Rule 6(3) is not sustainable, accordingly, the impugned order is set aside, the appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi