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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 468 of 2012
(Arising out of OIA-247/2012/COMMR-A-/RBT/RAJ Dated- 14/05/2012 passed by Commissioner of Central Excise-RAJKOT)

Messrs Mahalaxmi Warehouse & Allied Industries ....Appellant
Survey No. 210/211, Post Box No. 198,
Opp. Ambica Transport Nagar, Mithirohar, Gandhidham,
Kutch, Gujarat

VERSUS

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

WITH

Service Tax Appeal No. 469 of 2012
(Arising out of OIA-249/2012/COMMR-A-/RBT/RAJ Dated- 15/05/2012 passed by Commissioner of Central Excise-RAJKOT)

Messrs Mahalaxmi Warehouse & Allied Industries ....Appellant
Survey No. 210/211, Post Box No. 198,
Opp. Ambica Transport Nagar, Mithirohar, Gandhidham,
Kutch, Gujarat

VERSUS

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

APPEARANCE:
Shri. Amal Dave, Advocate for the Appellant
Shri. Rajesh K Agarwal, Authorised Representative for the Respondent

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

Final Order No. A/ 11254-11255 /2022

DATE OF HEARING:13.10.2022
DATE OF DECISION:13.10.2022

RAMESH NAIR

The issue involved is that whether the appellant is entitled for Cenvat Credit in respect of Steel and Cement inputs service namely Commercial and Industrial Construction Service used for construction of warehouse. The warehouse was used for renting on which Service Tax was paid.

02. Shri. Amal Paresh Dave, Learned Counsel appearing on behalf of the appellant submits that the period involved is 2008-2009 during that period the Cenvat credit on the inputs and output service in question was

available in terms of various judgments. He placed reliance on the following judgments:-

- Mundra Ports & Special Economic Zone Ltd. V/s. CCE Cus.-2015(39) STR 726 (Guj.)
- CCE.Visakhapatnam-ll V/s. Sai Sahmita Storages (P) Ltd..-2011(270) ELT 33(A.P.)
- CCE. Lucknow V/s. Manakpur Chini Mills.-2019(367) ELT 889(All.)
- Thiru Arooran Sugars V/s. Cestat, Chennai-2017(335) ELT 373(Mad.)
- Navratna S.G. Highway Prop .Pvt. Ltd. V/s. CST. Ahd-2012(28) STR166 (Tri.-Ahmd.)
- Ruchi Malls Pvt.Ltd. V/s. CST, Delhi-ll-2020(34) GSTL 426 (Tri.-Del.)

03 Shri. Rajesh K Agarwal, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

04 I have carefully considered the submission made by both the sides and perused the records. I find that prior to period 2011 amended Cenvat Credit Rules, 2002 the credit is admissible to the goods used for construction of the building which is used for providing taxable output service. This issue has been decided in various judgments as cited by the appellant particular by the Hon'ble Jurisdictional High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Ltd (Supra) and also in the case of . Sai Sahmita Storages (P) Ltd by the Hon'ble Andhra.

05 In view of this settled legal position, I am of the view that for the period prior to 2011, the appellant is entitled for Cenvat Credit in respect of Steel and Cement and inputs service namely Commercial And Industrial Construction Service. Accordingly, the impugned order is set aside, appeals are allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

PRACHI