CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70105 of 2022

(Arising out of Order-In-Appeal-380-CE-Alld-2021, dated-17/12/2021 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Grasim Industries Limited **.....Appellant**
((Earlier known as M/s Aditya Birla Chemical (India) Ltd.)
Renukut, District-Sonebhadra
Uttar Pradesh-231217)

VERSUS

Commissioner, CGST, Varanasi **....Respondent**
(09 Maqbool Alam Road, Near Zila Kutchehari,
Varansi-221002)

APPEARANCE:

Ms. Ushmeet Kaur Monga, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70432/2025

DATE OF HEARING : 07.03.2025
DATE OF DECISION : 30.06.2025

P. K. CHOUDHARY:

Grasim Industries Limited (earlier known as Aditya Birla Chemical (India) Ltd.) has filed the present appeal against Order-In-Appeal No. 380/CE/Alld/2021 dated 17.12.2021 passed by the Ld. Commissioner (Appeals), CGST, Allahabad.

2. The facts of the case in brief are that the Appellant is engaged in the manufacture of Caustic Soda lay & Products, CP, HM HDPE, Metal Container and Fly Ash Bricks falling under Chapter Heading 28, 29, 39, 68 and 73 of the Central Excise Tariff Act, 1985 and was availing Cenvat credit on inputs, capital goods and input services under provisions of the Credit Rules.

3. The factory of the Appellant is located at a remote place, significantly away from any established locality and is running on continuous (24 x 7) basis. These facts are not in dispute. Thus, in order to have prompt availability of the workers, employees and office staff, the Appellant is required to extend proper residential accommodation.

4. In order to safeguard the factory alongwith adjoining residential area from any theft, damage or destruction, the Appellant engaged M/s Fitcomb Secure Service for provision of security staff. The staff extends security to the factory and the employees residing with their families in the adjoining colony. Considering the isolated nature of the location of the factory, such security is not only imperative for the property of the Appellant but also for its employees/ staff as without such safety measures, the members of the staff would not be interested in joining the organization. Therefore, providing of proper security in the factory as well as colony area is sine qua non for running the factory.

5. In lieu of security services, M/s. Fitcomb Secure Service, raised invoices on the Appellant with applicable Service Tax. Upon receipt of such invoices, the Appellant paid the total consideration amount, including the service tax, to M/s, Fitcomb Secure Service and availed Cenvat credit of the Service Tax paid on such invoices. Cenvat credit was availed by the Appellant under a bona fide belief that the said services had a direct nexus with the manufacturing activity of the Appellant, thereby qualifying as an eligible input service defined under Rule 2 (1) of the Credit Rules.

6. The Appellant was regularly filing ER-1 Returns and had duly disclosed the fact of availing the credit of Service Tax on input services in the monthly ER-1 returns filed by the Appellant.

7. An audit of records of the Appellant for the period November 2014 to October 2015 was carried out by the Central Excise & Service Tax Audit Commissionerate, Lucknow on

10.12.2015 to 12.12.2015, wherein certain objections with respect to payment of service tax and availment of credit were raised.

8. Based on the audit observations, the Show Cause Notice [1]was issued to the Appellant which proposed to demand Cenvat Credit amounting to Rs. 6,21,904 under Rule 14 of the Credit Rules read with Section 11A(4) of the Central Excise Act and Service Tax amounting to Rs. 7,43,296 under Section 73 (1) of the Finance Act.

9. The SCN also alleged that the Appellant had willfully suppressed facts and had contravened the provision of Credit Rules & Central Excise Act. The Appellant filed a detailed reply on 27.3.2018, wherein it contested the demand on merits as well as on limitation and explained that Cenvat credit was rightly availed on security services and that the differential Service Tax was not payable.

10. The Appellant was accorded a personal hearing on 27.9.2019 and again on 4.11.2020 for adjudication of the SCN. Thereafter, the Original Order was passed, whereby the demand of Service Tax of Rs.7,43,296 alongwith interest & penalty, was dropped. However, demand of Cenvat credit of Rs.6,21,904 was confirmed alongwith interest & penalty.

11. Being aggrieved by the Order-in-Original to the extent it was prejudicial to its interest, the Appellant preferred an appeal before the Appellate Authority. The finding in the Appellate Order are summarized as under:-

> a) That the definition of input service envisaged under Rule 2 (1) of the Credit Rules is wide enough to include the services used for as well as in relation to manufacture of the final product. However, the provision of impugned security services for safeguarding/security of residential/township area which is maintained for workers is a voluntary and

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[1] SCN

benevolent act and not a statutory requirement. Further, the said security services provided in residential quarter of the workers cannot be considered to have any direct or indirect relation to the activity of manufacture of the final product by the Appellant, and therefore, not covered by the definition of input services as envisaged under Rule 2 (1) of the Credit Rules. Thus, credit of the same is inadmissible. In this regard reliance was placed on the decision in the case of CCE Vs. Manikgarh Cement 2010 (20) STR 456 (Bom.) and Commissioner of Central Excise & Customs Vs. Gujarat Heavy Chemicals Ltd. 2011 (22) STR 610 (Guj.):

b) That the Appellant has relied upon plethora of case laws, however, failed to explain how can same be applied to the impugned case. Reliance in this regard has been placed on the decision in the case of Punjab National Bank Vs. RL Vaid 2004 (172) ELT 24 (SC) and CCE, Bangalore Vs. Srikumar Agencies 2008 (232) ELT 577 (SC); and

c) That under the self- assessment scheme, the Appellant was required to avail and utilize the credit correctly, whereas the Department detected the wrongful availment of Cenvat Credit only during the course of Audit of records of the Appellant. Accordingly, there was mala fide on the part of the Appellant, which warranted invocation of extended period of limitation and imposition of penalty under Rule 15 (2) of the Credit Rules read with Section 11 AC of the Excise Act. Further, interest is recoverable under Rule 14 of the Credit Rules read with Section 11 AA of the Excise Act.

12. Aggrieved Appellant has filed the present appeal before the Tribunal.

13. Heard both the sides and perused the appeal records.

The issue involved herein is admissibility of input credit in respect of security services deployed at the residential colony situated outside/adjacent to the factory under Rule 2(l) of the CENVAT Credit Rules, 2004.

14. I find that the dispute in the present appeal is no more *res integra* and is covered by the various decisions of the Tribunal. In the case of Northern Coal Fields Ltd. V/s Commissioner of GST, Customs & Central Excise [2020 (2) TMI 1004-CESTAT, New Delhi] following has been held:-

> *"36. The factual position in **ITC Limited** is very similar to the factual position emerging in the present caseAppeal. In **ITC Limited** the factory was located in a remote scheduled area and the nearest town with arailway station was at a distance of 35 kms. In the present Appeal, the nearest towns are situated at adistance of 250 kms and 350 kms. The Andhra Pradesh High Court observed that in such circumstances itwas necessary for the operation of the factory to have a residential colony in the close vicinity and theresidential colony had to be maintained as well. The Tribunal had observed that if accommodation was notprovided by the Company to its employees at such a remote location, it would not be feasible for themanufacturer to carry out the manufacturing activity. The High Court, therefore, observed that in suchcircumstances the finding of the Tribunal that staff colony provided by the Respondent Company, beingdirectly and intrinsically linked to its manufacturing activity, could not be excluded was correct andconsequently the services which were crucial for maintaining the staff colony had necessarily to beconsidered as "input service" falling within the ambit of Rule 2(l) of the 2004 Rules.*
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> *37. In **Manikgarh Cement,** a general observation was made by the Bombay High Court that establishinga residential colony for the employees and providing services may be a welfare activity undertaken, butsuch service would not qualify as "input service" since the activity should have some nexus with thebusiness. This decision of the Bombay High Court in **Manikgarh Cement** was followed by the GujaratHigh Court in **Gujarat Heavy Chemicals Limited.** There is no observation in these two judgments thatthe factory was situated in a remote area at a good distance from the main city. In such a situation, we aretempted to take the view taken by the Andhra Pradesh High Court in **ITC Limited**.*
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> *38. A learned Member of the Tribunal in **Ultratech Cement Limited** also distinguished the decisions of the Bombay High Court and the Gujarat High Court and relied upon the decision rendered by the Andhra Pradesh High Court in **ITC Limited.** The learned Member of the Tribunal observed that providing security services is an essential aspect for maintenance of the residential/industrial colony and, therefore, the Appellant would be entitled to Cenvat Credit.*

*39. The decision of the Bombay High Court in **Manikgarh Cement** has been followed in the two**Hindustan Zinc Limited** decisions. In **DCW Limited**, only a general observation has been made that maintenance of the main road, residential colony, electrical maintenance and the residential telephone have no nexus with the manufacturing operation and, therefore, the Appellant would not be entitled to Cenvat Credit. Likewise, in **IFB Industries Limited** a general observation has been made that maintenance of a guest house will not fall within the definition of "input service".*

40. It is not the case of the Department that the employees/workers are living in private residential houses where security has been provided by the factory. It is an admitted fact that the residential colony is provided by the factory and it is situated within the premises owned by the Appellant and close to the mining area and offices. The residential colony has been built by the Appellant for the benefit of its employees/workers and has been maintained by the Appellant. It is necessary for the Appellant to maintain the residential colony close to the mines area for better business results. Therefore, the services, so provided, do have a nexus with the business undertaken by the Appellant. The Joint Commissioner had examined all these aspects and had arrived at a conclusion that such services had a nexus with the business of the Appellant, but the Commissioner (Appeals) without giving any reason, much less a cogentreason, has made an observation that providing such services has no nexus with the business of the Appellant.

*41. At this stage, it would be necessary to refer to the decision of the Tribunal rendered in the Appellant"sown case in **Northern Coalfield Limited vs Commissioner of Central Excise, Bhopal 2017 (5) GSTL217 (Tri.-Del)** that has been placed before us by the learned Authorized Representative of theDepartment. The contention of the learned Authorized Representative is that in the said case the Appellant had reversed the credit taken for security service provided at the residential colony on its own even beforethe issuance of the show cause notice and, therefore, it is not open to the Appellant to now contend inthese proceedings relating to a subsequent year, that the Appellant is entitled to claim Cenvat Credit.*

42. A perusal of the aforesaid decision indicates that the period involved in the said appeal was fromMarch, 2011 to March, 2012 and April, 2012 to June, 2012. In paragraph 9 of the decision, it has beenclearly stated that the Appellant on its own had reversed the credit and not disputed it even before theissuance of the show cause notice. The only issue that was raised by the Appellant was with regard to theimposition of penalty and that was decided in favour of the Appellant. It cannot, therefore, be urged by theDepartment that the Appellant cannot take a stand, in proceedings relating to a subsequent year, thatCenvat Credit on security services had been correctly availed by it. The

> *aforesaid decision cannot,therefore, come to the aid of the Department."*

15. I find that the facts of the present case are squarely covered by the abovementioned decision of the Tribunal. Further, it is an admitted fact that the residential colony/township is located at a remote place, where no municipal services are available. Further, it is an admitted fact that an industrial township is set up by the Appellant/Assessee so that trained manpower is available to run their plant for production of dutiable output. Accordingly, I find that the security services qualify as input service under Rule 2(l) of CENVAT Credit Rules, 2004 being the service utilized by the manufacturer in relation to manufacture of dutiable final products. Accordingly, there is no impropriety in the claim of the Appellant.

16. Further, there is a mistake of fact in the order of the Lower Authority in observing that the colony is located away from the manufacturing area. In this view of the matter, I hold that the Appellant/Assessee requires the residential colony for workers for manufacturing dutiable goods. Security service is essential in order to maintain the residential/industrial colony of the Appellant.

17. Accordingly, I hold that the Appellant is entitled to CENVAT credit under dispute. The impugned order is set aside and the Appeal filed by the Appellant is allowed with consequential relief, in accordance with law.

(Pronounced in open court on 30.06.2025)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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