IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH AT CHENNAI

Appeal Nos. E/483,484/2012
(Arising out of Order-in-Original No. LTUC/ 292 & 293/2012-(C) dated 06.09.2012 passed by the Commissioner, Chennai)

M/s. Chettinad Cement Corporation Ltd. : Appellant

Vs.

Commissioner of Central Excise – LTU Chennai : Respondent

Appearance:-

Shri R. Parthasarathy, Consultant
for the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent

CORAM:

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision: **18.05.2018**

Date of Pronouncement: **20.06.2018**

Final Order No. ***41844-41845 / 2018***

The assessee has filed these appeals being aggrieved by the order of Commissioner (Appeals).

2. The appellant is a Public Limited Company incorporated under the Companies Act, 1956 and they are engaged in the manufacture of Cement and Clinker falling under the heading 2523 29 10 and 25231000 of the Central Excise Tariff Act, 1985. The appellants availed Cenvat Credit for inputs, capital goods and input services and used the same for payment of duty on the final products viz. clinker and

cement. They appellants have a Captive Power Plant (CPP) inside their cement plant and during April 2011 to March 2012 they procured various items falling under 38, 40, 73, 83, 84 and 90 which were used in their CPP either as replacement or for carrying out repair of CPP and the total credit availed was to the tune of Rs. 95,74,461/-. The Revenue issued a Show Cause Notice dated 04.01.2012 with several propositions and the adjudicating authority, after considering the explanation of the appellant, vide order dated 06.09.2012, passed the following:

> *(a) confirmed an amount of Rs. 1,55,843/- (Rupees one lakh fifty five thousand eight hundred and forty three only), being the wrongly availed Cenvat credit on capital goods for the period Dec-2010 to Mar-2011 (as per Annexure-A) out of Rs. 74,96,656/- proposed in the show cause notice no. LTUC/5/2012- dt. 4.1.2012, and order of recovery of the same from the taxpayer under Rule 14 of the CCR, 2004 read with Sec. 11A of the CEA, 1944.*
>
> *(b) confirmed an amount of Rs. 5,28,898/- (Rupees five lakhs twenty eight thousand eight hundred and ninety eight only), being the wrongly availed cenvat credit on capital goods for the period Apr-2011 to Mar-2012 (as per Annexure-B) out of Rs. 95,74,461/- proposed in the show cause notice no.LTUC/159/2012- dt. 30.4.2012, and order recovery of the same from the taxpayer under Rule 14 of the CCR, 2004 read with Sec. 11A of the CEA, 1944.*

(c) ordered recovery of interest on the above amounts from the taxpayer under Rule 14 of the CCR, 2004 read with Sec. 11AB of the CEA, 1944.

(d) imposed a penalty of Rs. 50,000/- in respect of SCN No. LTUC/5/2012- dt. 4.1.2012 and Rs. 2,00,000/- in respect of SCN No. LTUC/159/2012- dt. 30.4.2012 on the appellant under Rule 15(1) of CCR, 2004.

3. In effect, the adjudicating authority allowed Cenvat Credit on the items falling under Chapter 84, 85 or 90 and for certain goods falling under Chapter 73; but disallowed the same in respect of the goods falling under Chapter 38, 40, 73, 83 and 84 on the ground that these goods used in the erection of CPP ceased to be excisable goods. Aggrieved by the same, the appellant is before this forum.

4. During the course of hearing, the Ld. Consultant, Shri R. Parthasarathy appearing for the appellant, pointed out that for the earlier periods involving identical issue, this very Bench in its Final Order No. 40948-40953/2016 dated 13.06.2016 has remanded the cases back to the file of the adjudicating authority to decide afresh in the light of various judgments recorded in the order after affording fair opportunity to the appellant. It was also brought to my notice by the Ld. Consultant for the appellant that in the case of Madras Cements Ltd. Vs. Commissioner of Central Excise-Trichy, in Final Order No. 40033/2017 dated 03.01.2017 involving an identical issue this Bench has also remanded the matter back to the file of the adjudicating authority to decide afresh.

5. The learned Department Representative, K. Veerabhadra Reddy, per contra, relies on the decisions of the High Court of Judicature at Bombay in the cases of Bharti Airtel Ltd. Vs. Commissioner of Central Excise, Pune-III; reported in 2014 (35) S.T.R. 865 (Bom.) and Vodafone India Ltd. Vs. Commissioner of Central Excise, Mumbai-II; reported in 2015 (40) S.T.R. 422 (Bom.) to support the findings of the adjudicating authority.

6. I find that a proper adjudication is required on facts, following the guidelines laid down by various higher forums which are referred to in the above orders in appellant's own cases passed by this Bench (supra) including judgments relied on by the learned Department Representative. In the light of the above, I am also of the view that the matter requires reconsideration in the same lines as in the final order in the appellant's own case in Final Order No. 40948-40953/2016 (supra).

7. As a result, the appeals are partly allowed to the extent indicated above. There shall, however, be no levy of penalty in the circumstances of the case since interpretation of law is involved.

(Pronounced in open court on 20.06.2018)

(P Dinesha)
Member (Judicial)

Sdd