CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No.00453 of 2012 – DB

[arising out of Order-in-Appeal No.154/2012, dated 30.07.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

M/s. The India Cements Ltd., **: Appellant**
Dalavoi, Post: Cement Nagar,
Taluk:Sendurai, Distt:Ariyalur – 621 730.

VERSUS

Commissioner of Customs & Central Excise, **: Respondent**
No.1,Williams Road,
Cantonment, Tiruchirapalli – 620 001.

WITH

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VERSUS

Commissioner of Customs & Central Excise, **: Respondent**
No.1,Williams Road,
Cantonment,
Tiruchirapalli – 620 001.

APPEARANCE:

Shri V.S. Manoj, Advocate for the Appellant

Shri Arul C. Durairaj, Supdt. for the Respondent

Customs Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
Hon'BLE SHRI P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 42412 - 42413 / 2021

DATE OF HEARING: 30.09.2021
DATE OF PRONOUNCEMENT: 20.10.2021

Per Smt. Sulekha Beevi C.S:

The issue for consideration in these appeals is the denial of Cenvat credit on various input services. The issues in these appeals being the same both appeals are taken up together and disposed of by this common order.

2. The appellant is engaged in manufacture of cement and clinker and is registered with the Central Excise department. They availed Cenvat credit of service tax paid on various input services under the provisions of Cenvat Credit Rules, 2004. On verification of the Cenvat credit account of the appellant, it was noticed that they have taken input service credit for the service tax paid on the purchase of Fly Ash from M/s. Ash Tech India (P) Ltd., Chennai, M/s. Ash Tech Engineers, Sankar Nagar and M/s. Mani Enterprises. In the column for Item Description in the purchase of the said Flay Ash, it is seen mentioned as "charges for operation and maintenance of TTPS Dry Fly Ash collecting system from TTPS to Dalavoi for the month of ... ...".

3. The above charges are made to be part of the input services in addition to the cost of the input [Fly Ash]. That these charges incurred for operation and maintenance of Dry Fly Ash collecting system at Tuticorin Thermal Power Plant by the service providers, is not an input service for the appellant in terms of the definition of "input services" in section 2(l) of Cenvat Credit Rules, 2004. Though

service tax was paid on these charges it appeared to the department that the procedure had been devised by the seller of Fly Ash in order to camouflage the sale of Fly Ash as something related to service activity as the sale of Flay Ash is prohibited by the State Government.

4. It was also noticed that appellant has taken credit of service tax paid on services in the nature of Catering Services, Compound Wall & Canteen Construction, Labour Supply for Garden Maintenance and Colony Housekeeping, Railway Siding & Bush Cutting Work, Maintenance of Miner Vehicles etc. That there was no nexus for these input services with the manufacturing activity of the appellant and, therefore, credit is not eligible. Show-cause notice was issued proposing to disallow the Cenvat credit and for recovery of the same along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, the Commissioner (Appeals) allowed the credit in regard to Outdoor Catering Service to the extent of the amounts which are not collected from the employees.

5. Aggrieved by the disallowance of credit on the services in the nature of operation & maintenance of Dry Fly Ash collecting system, Compound Wall & Canteen Construction, Labour Supply for Garden Maintenance & Colony Housekeeping, Railway siding & Bush Cutting Work and Maintenance of Mines Vehicles, the appellant has preferred these appeals. The issue in Excise Appeal No.453 of 2012 is only with regard to disallowance of Cenvat credit on operation and maintenance of Dry Fly Ash collecting system.

6. The learned counsel Shri V.S. Manoj appeared and argued for the appellant. He adverted to the table given in Page No.2 of the show-cause notice, dated 22.03.2012. The demand in respect of the various services contested in Excise Appeal No.00454 of 2012 is given in the table as under:-

Sl. No.	Description	S. Tax (Rs.)	E. Cess (Rs.)	S&H Cess (Rs.)	Total (Rs.)
1	i) Fly Ash collection for the period from 12/2008 to 09/2009 ii) 10/2009 to to 08/2010	14,02,432 15,58,976	28,055 31,197	14,022 15,595	30,50,277
2	Compound Wall & Canteen Construction	1,43,644	2,873	1,436	1,47,953
3	Labour Supply for Garden Maintenance & Colony Housekeeping	53,706	1,072	541	55,319
4	i) Railway Siding/Bush Cutting Work for the period from 12/2008 to 09/2009 ii) 10/2009 to 08/2010	87,973 24,938	1,762 499	881 249	1,16,302
5	Maintenance of Mines Vehicles	84,055	1,682	839	86,576
	TOTAL	**40,99,270**	**82,010**	**39,682**	**42,20,962**

The period involved is before 01.04.2011. The definition of "input service" as per Rule 2(l) of Cenvat Credit Rules, 2004 during the relevant period reads as under:-

> "input service" means any service:-
>
> i) used by a provider of taxable service for providing an output service, or
>
> ii) used by a manufacturer, whether directly or indirectly, in or
>
> in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes service used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factor or premises, advertisements or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

7. The appellant used Fly Ash as an input for manufacture of cement. He submitted that the service of collection of Wet Fly Ash from the Thermal Power Stations, drying them in a place and delivering it in closed container trucks to the factory of the appellant

was being rendered. The appellant incurred cost for such services rendered to them on which service tax was also paid. When there is no dispute that Fly Ash is used as an input by the appellant for manufacture of cement, the credit of the service tax paid for collection of Dry Fly Ash ought not to have been denied. During the relevant period of dispute, the definition of "input service" covered not only the activity relating to manufacture but also activities relating to business.

8. In the case of Commissioner of Customs, Central Excise & Service Tax Vs *M/s. Ultratech Cement Ltd.*, reported in *2018 (18) G.S.T.L. 220 (M.P)*, the Hon'ble High Court held that the service tax paid on freight charges for transportation of Flay Ash in trucks from Thermal Power Plant to factory site, is eligible for credit. In the case of *Commissioner of Central Excise, Nagpur Vs M/s. Ultratech Cement Ltd.* Reported in *2012 (278) E.L.T. 523 (Tri.-Mumbai)* the issue considered was whether the services like maintenance and repairs of Thermal Power Plant situated outside the factory premises is eligible for credit. In the said case, the credit was denied alleging that the input services are not used within the factory. The Tribunal held that the credit is eligible for services utilised in relation to manufacture outside the factory also. The Tribunal in the case of *M/s. Ultratech Cement Ltd., Vs Commissioner of Central Excise, Jaipur-II* reported in *2014 (34) S.T.R. 426 (Tri.-Del.)* had occasion to consider the eligibility of credit availed of service tax paid for removal of Fly Ash emerging from captive power plant, which in turn was used in the manufacture of cement. The Hon'ble High Court held that Cenvat credit is admissible of the service tax p[aid on for removal of Fly Ash for being used in the factory for manufacture of cement. Similar view was taken by the Tribunal in the case of *M/s. Chemplast Sanmar Vs Commissioner of Central Excise & Service Tax, LTU, Chennai* reported in *2017 (52) S.T.R. 37 (Tri.-Chennai)*.

9. With regard to disallowance of credit for other services, the learned counsel submitted that the period is prior to 01.04.2011 and the services having been availed for the activities relating to the

business of the appellant, the credit is eligible. It is submitted by him that the authorities below have wrongly placed reliance on the decision of the Hon'ble Apex Court in the case of *M/s. Maruti Suzuki Ltd., Vs Commissioner of Central Excise, Delhi* reported in *2009 (240) E.L.T. 641 (S.C.)*. The said decision was in respect of the eligibility of credit of inputs and not input services. The above decision has been distinguished in the case of *M/s. Coca Cola India Pvt. Ltd., Vs Commissioner of Central Excise, Pune-III* by the Bombay High Court as reported in *2009 (15) S.T.R.657 (Bom.)*.

10. With regard to the disallowance of credit under the category of Labour Supply for Garden Maintenance & Colony Housekeeping, the learned counsel asserted that the appellant has not availed any credit on Colony Housekeeping Services. The said issue may be remanded to the adjudicating authority for verification.

11. The learned Authorised Representative Shri Arul C. Durairaj supported the findings in the impugned order.

12. Heard both sides.

13. The appellant is engaged in the manufacture of cement. Fly Ash is one of the inputs used by them for manufacture of cement. The Thermal Power Plant in the process of generating power also generates Fly Ash. In order to obtain the input, namely, Fly Ash without any hindrance, the appellant has availed services in the nature of operation and maintenance of Dry Fly Ash collecting system. They have also paid service tax for such services. When the fact that the appellant has used the Fly Ash as well as payment of service tax is not in dispute by the department, they cannot deny the credit availed on the service tax paid for these services. Such services are availed in relation to the manufacture of finished products. We hold that the credit is eligible. During the relevant period the definition of "input services" had a wide ambit as it included the words "activities relating to business". The definition has already been noticed above. All the

impugned services in these appeals are prior to 01.04.2011. The period of dispute in Excise Appeal No.00453 of 2012 is from 05/2007 to 04/2009 and period of dispute in Excise Appeal No.00454 of 2012 is from 12/2008 to 08/2010.

14. In the case of *M/s. Hindustan Zinc Ltd.Vs Commissioner of Central Excise & Service Tax, Udaipur* reported in *2017 (49) S.T.R.315 (Tri.-Del.)*, the credit availed on input services in the nature of construction of RCC wall and tube well were allowed. In the *M/s. Raymond UCO Denim Pvt. Ltd., Vs Commissioner of Central Excise, Nagpur* reported in *2017 (7) G.S.T.L.346 (Tri-Mum.)* the credit availed on the input services for construction of canteen wall and dining hall was allowed. In the case of *M/s. Heidelberg Cement India Ltd., Vs Commissioner of Central Excise, Bangalore-1* reported in *2017 (47) S.T.R.98 (Tri.-Bang.)* the credit availed of the service tax paid on input services in the nature of Consultancy Services used for green house gas emission was allowed. The Hon'ble High Court of Bombay in the case of *M/s. Coca Cola India Pvt. Ltd., Vs CCE, Pune-III* reported in *2009 (15) S.T.R.657 (Bom.)* had considered the eligibility of credit on various input services for the period prior to 01.04.2011. In para 25 to 27, the Hon'ble High Court discussed the issue as to the various activities which would fall within the ambit of "activities relating to business". It was held that the said phrase and words are of wide import. Most of the services, which are used for the business of manufacture would fall within the expression of "activities relating to business" and, therefore, we are of the considered opinion that the credit availed on these impugned services are eligible. However, with regard to the credit availed on Labour Supply for Garden maintenance & Colony Housekeeping, the appellant is not able to produce documents to show that the entire credit was not availed on Labour Supply for Garden maintenance. We are of the opinion that the said issue requires to be remanded to the adjudicating authority. So ordered.

15. In the result, the credit availed on all services in Excise Appeal No.00454 of 2012 is allowed except the credit availed on Labour

Supply for Gardening & Colony Housekeeping. The issue with regard to the credit availed on Labour Supply for Garden maintenance & Colony Housekeeping to the tune of Rs.55,319/- in Excise Appeal No.00454 of 2012 is remanded to the adjudicating authority to reconsider the same. Impugned order in Excise Appeal No.00453 of 2012 is set aside. The appeal is allowed with consequential reliefs, if any.

16. Excise Appeal No.E/00454 of 2012 is partly allowed and partly remanded with consequential reliefs, if any. Appeals disposed as above.

(Pronounced in the open court on 20/10/2021)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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Customs, Excise & Service Tax Appellate Tribunal
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