IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 42486 of 2015

(Arising out of Order in Original No. TCP/EXCUS/011/2015 (ST) dated 28.09.2015 passed by the Commissioner of Central Excise and Service Tax, Trichy)

Ultra Tech Cement Ltd. **Appellant**
Reddipalayam
Ariyalur – 621 704.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Williams Road
Cantonment, Trichy – 620 001.

And

Service Tax Appeal Nos. 42745 & 42746 of 2018

(Arising out of Order in Appeal No. 159 & 160/2018-TRY (ST) dated 25.9.2018 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore & Trichy)

Ultra Tech Cement Ltd. **Appellant**
Reddipalayam
Ariyalur – 621 704.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Williams Road
Cantonment, Trichy – 620 001.

APPEARANCE:

Shri Raghavan Ramabhadran, Advocate and
Ms. Nimrah Ali, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 41338-41340/2025

Date of Hearing: 14.10.2025
Date of Decision: 18.11.2025

Per M. Ajit Kumar,

All these three appeals arise out of two different orders i.e. Order in Original No. TCP/EXCUS/011/2015 (ST) dated 28.09.2015 passed

by the Commissioner of Central Excise and Service Tax, Trichy against which appellant has filed Service Tax Appeal No. 42486/2015 and Order in Appeal No. 159 & 160/2018-TRY (ST) dated 25.9.2018 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore & Trichy against which the appellant has filed Service Tax Appeal Nos. 42745 and 42746/2018. Since a common issue is involved in all these three appeals, they were heard together and are disposed by this common order.

2. Brief facts of the case as appearing in ST/42486/2015 which is taken as the lead appeal, are that the appellant, Ultra Tech Cement Ltd. [**formerly M/s. Grasim Industries Ltd.**], are manufacturers of cement and clinkers. On verification of the accounts of the appellant by the department, it was noticed that from 2008–09 onwards certain amount has been paid by them to one service provider by name Shri R. Saravanan, Mettur towards the services provided by the said sub-contractor under the category 'Management, Maintenance or Repair Service' in the 'Fly Ash Collection System' at Mettur Thermal Power Station, Mettur Dam (**MTPS**). It was further noticed that they were also collecting an amount as 'operation and maintenance charges' from M/s. The India Cements Ltd, Ariyalur towards the supply of fly ash from MTPS for which they have discharged service tax on the said amount only under the category 'Business Auxiliary Service'. It appeared that they should have discharged duty on value of the entire service rendered to MTPS for 100% of the fly ash generated. It appeared that the services of operation and maintenance rendered by the service provider Shri Saravanan at MTPS at Mettur, did not have any nexus with the manufacturing process of the appellant and hence availing

input service credit on the said service is not in order. After conclusion of investigation, Show Cause Notice dated 17.2.2015 was issued to the appellant for demanding Service Tax not paid during the period from October 2009 to October 2014 on the consideration involved in the maintenance of fly ash system at MTPS along with interest. It also sought to recover the wrongly availed input service credit during the period from February 2010 to November 2014 based on the invoices raised by Shri R. Saravanan, along with interest and for imposing penalty. After due process of law, the Ld. Commissioner confirmed the proposals in the Show Cause Notice. Subsequently, Statements of Demand (**SOD**) dated 01.12.2015, 24.11.2017 and 27.11.2017 were issued for the periods November 2014 to October 2015, November 2015 to July 2016 and August 2016 to June 2017 respectively for demanding service tax on the above services provided and were confirmed in due course. The orders passed based on the SODs were also confirmed by the First Appellate Authority. Hence appellant has filed these three appeals challenging the impugned orders.

3. The Ld. Advocate Shri Raghavan Ramabhadran appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent-revenue.

3.1 Shri Raghavan Ramabhadran the Ld. Counsel for the appellant gave a summary of the issues involved in the form of a Table which is reproduced below:

Appeal No.	**ST/42486/2015**	**ST/42745/2018**	**ST/42746/2018**
Issue	Demand of Service tax on the activity of installation, operation and maintenance of fly ash collection system at MTPS.		
Impugned Period	October 2009 to October 2014	November 2014 to October 2015	November 2015 to June 2017
Impugned Order	Order-in-Original No. TCP/ EXCUS/011/2015 (ST) dated 28.09.2015	Order-in-Appeal No. 159-160/2018-TRY (ST) dated 25.9.2018	

Show Cause Notice	Show Cause Notice No. 06/2015- ST dated 17.02.2015	Statement of Demand No. 29/2015 dated 01.12.2015	Statement of Demand No. 03/2017 dated 24.11.2017 & Statement of Demand No. 04/2017 dated 27.11.2017.
Demand	Rs. 2,29,13,048/- (Tax) Rs. 10,60,743/- (Credit)	Rs. 38,48,785/- (Tax)	Rs. 71,11,150/- (Tax)
Interest	Not quantified	Not quantified	Not quantified
Penalty	1) Rs. 2,29,13,048/- under Section 78 of the Finance Act, 1994. 2) Penalty under Section 77(1) and 77(2) of the Finance Act, 1994. 3) Rs.10,60,743/- under Rule 15(2) of the Cenvat Credit Rules, 2004 r/w. Section 11AC of Central Excise Act, 1944.	Rs. 3,84,878/- under Section 76 of the Finance Act, 1994.	Rs. 7,11,115/- under Section 76 of the Finance Act, 1994.

He stated that the appellant is a manufacturer of cement and clinkers and is registered with the Central Excise as well as the Service Tax Department. Since fly ash is an essential raw material for the manufacture of cement, the appellant entered into a Memorandum of Understanding (**MOU**) with Tamil Nadu Electricity Board (**TNEB**) dated 15.05.2002 for procuring 80% of the fly ash generated at the MTPS. As per the MOU, the appellant had to install a "Pressurised Dense Fly Ash Collection System - PDFACS" (also referred to as "**fly ash collection system**" in this order), at MTPS at their own cost. The fly ash collection system was to become the property of TNEB, and the appellant would have no right over all electrical, mechanical and civil structure and equipments installed by them at their own cost. Thereafter, certain events led to the appellant to approach the Hon'ble Madras High Court to adjudicate on the relationship between the parties. Subsequent to the order of the Hon'ble Court, in June 2007, a revised tripartite agreement was entered between the appellant, TNEB and India Cements. As per the revised agreement, 60% of fly ash was allotted to the appellant. 20% of fly ash was allotted to India Cements and 20% of fly ash was retained with TNEB. The Ld. Counsel submitted

that both the appellant and India Cements are obligated to pay a service charge at the rate of Rs. 60 per MT to TNEB for procurement of fly ash. India Cements reimbursed the appellant towards the cost incurred towards installation, operation and maintenance of the fly ash collection system etc. (**overhead charges**) at the rate of Rs.206/- per MT. The appellant had discharged Service tax on the same under 'Business Auxiliary Service'. The appellant sub-contracted the entire work of operation and maintenance of the fly ash collection system and collection of the 100% fly ash generated at MTPS to Shri R. Saravanan. The sub-contractor raised invoices on the appellant for the said activity at the rate of Rs. 6.05/- to Rs. 7.05/- per MT of fly ash. The appellant discharged the Service tax on the same under 'repair and maintenance'. Since the fly ash collected is used as a raw material for manufacture of cement, the appellant availed Cenvat Credit of the Service tax paid to the sub-contractor. The Ld. Counsel further stated that;

i. There is no provision of service by the appellants to MTPS during both the period i.e. prior to and after 01.07.2012. Contractual supply of service is essence of levy of Service Tax. There is no supply of service in the present case.

ii. The appellant is not providing any service to MTPS. The installation, maintenance, operation etc. are done to further its own interest. The present case is one of self-supply.

iii. Without prejudice, the consideration, if any, received by the Appellants from TNEB is towards sale of immoveable property. Thus, the same would stand excluded from the purview of Service tax.

iv. Without prejudice, the service, if any, provided by the Appellants to TNEB is exempt under Notification No.25/2012-ST dated 20.06.2012 (as amended). Hence, the impugned order confirming demand of tax is liable to be set aside.

v. The alleged service is not classifiable under "business support service". Hence, the demand of Service tax is unsustainable.

vi. The Appellant is eligible to avail Cenvat Credit on the Service tax paid by the sub-contractor. The issue is no longer res integra and the demand for subsequent period has been dropped in Appellant's own case.

vii. The extended period of limitation cannot be invoked. Thus, demand of Service tax of Rs.1,62,29,766/- and Cenvat Credit of Rs.6,79,945/- up to the period of March 2013 is barred by limitation.

viii. Imposition of interest and penalty is not sustainable.

He hence prayed that the impugned order may be set aside.

3.2 Shri M. Selvakumar Ld. A.R. appearing on behalf of revenue stated that, TNEB had outsourced the work of collection of fly ash generated at MTPS to the appellant. Prior to 01.07.2012, this Service is taxable under the category "Business Support Service". Post this period, this activity will qualify as Service in terms of Section 66B(44) of the Act. The consideration for this was received in kind in the form of quantity of fly ash allotted to them. Since, the consideration has been received in kind, the value is to be determined under Section 67(1)(iii) of the Finance Act, 1994 ('the Act') read with Rule 3(b) of the Service Tax (Determination of Value) Rules, 2006 ('Valuation Rules'). Moreover the appellant was charging an amount of Rs.206/- per MT of fly ash from India Cements Ltd., hence that value needs to be adopted

for the services rendered by the Appellant to MTPS. Further, the department has denied Cenvat credit for period between February 2010 to November 2014 on ground that the service is rendered by the Contractor for 100% of fly ash generated whereas the appellant has received only 60% of the fly ash generated. Therefore, credit must be restricted only on such quantity of service which are used by the manufacturer for manufacturing dutiable final products. He hence prayed that the appeal may be rejected.

4. We have perused the appeals and heard the parties to the dispute. We find that the dispute pertains to a MOU between the appellant and TNEB. Revenue is of the opinion that the agreement pertains to the supply of service while the appellant has submitted that the agreement is for procurement of fly ash and does not involve any service.

5. An agreement that is enforceable by law is a contract. It comprises the joint intent of the parties and is in the realm of private law. The MOU also clarifies that it is not a statutory contract. It has hence to be understood by the intent of the parties to the contract. The Apex Court in **Bangalore Electricity Supply Company Limited (BESCOM) Vs E.S. Solar Power Pvt. Ltd. & Ors.** [Civil Appeal No. 9273 of 2019 / dated 03/05/2021], has summarized the broad principles Authorities should follow while interpreting contracts. Referring to various judgments, the Court held:

> 15. Before embarking on the exercise of interpretation of the agreement it is necessary to take stock of the well-settled canons of construction of contracts. Lord Hoffmann in **Investors Compensation Scheme Limited vs. West Bromwich Building Society** [1998 (1) AIR 98] summarized the broad principles of interpretation of contract as follows:

(1) **Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge** which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) **The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean.** The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (See : **Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd** [1997] 2 WLR 945.

(5) **The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents.** On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which

> they plainly could not have had. Lord Diplock made this point more vigorously when he said in **The Antaios Compania Neviera SA v Salen Rederierna AB** [1985] 1 AC 191, 201:
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> > "... if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."
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> 16. The duty of the Court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions (**Smt. Kamala Devi vs. Seth Takhatmal & Anr** - 1964 (2) SCR 152). In seeking to construe a clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the Court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the Court considers to the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose former or rather than the later. **Ashville Investment v. Elmer Contractors.** [1988 (2) All ER 577]. **The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract**. **Bank of India and Anr. V. K. MohanDas and Ors** [2009 5 SCC 313]. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. **Bihar State Electricity Board, Patna and Ors. v. M/s. Green Rubber Industries and Ors** [1990 (1) SCC 731].
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> (emphasis added)

Further the Hon'ble Supreme Court in **Great Eastern Shipping Company Ltd. Vs State Of Karnataka** [2020 (32) G.S.T.L. 3 (S.C.)] held;

> ***Interpretation of contract***
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> 13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises the joint

> intent of the parties. **Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed.** It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.
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> (emphasis added)

6. As stated by revenue in their para wise comments, consequent to the notification issued by the Ministry of Environment and Forest for disposal of dry fly ash, by way of supply to user agencies viz. cement manufacturers and fly ash bricks manufacturers, the TNEB entered into an agreement with Cement Companies for the collection, storage and disposal of fly ash. The appellant [formerly M/s. Grasim Industries Ltd.] had signed a MoU with TNEB on 15.05.2002 for setting up a fly ash collection system at MTPS at their cost in return for allocation of 80% of the fly ash generated in the said power plant to them, leaving the balance 20% to TNEB. Main Terms and Conditions of the MOU are extracted below:

> MEMORANDUM OF UNDERSTANDING BETWEEN TNEB AND M/s GRASIM INDUSTRIES LIMITED (CEMENT COMPANY) ON INSTALLATION OF FLY ASH COLLECTION SYSTEM AT METTUR THERMAL POWER STATION.
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> 1. **Collection of fly ash system** of Unit. No-I is allotted to M/s. Grasim Industries Limited.
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> 2. Fly ash collection system to be installed by the allotted cement company at Mettur Thermal Power Station at their cost will become the property of the Board and company will have no right over all electrical, mechanical and civil structure and equipments installed.
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> 3. The cement company has to pay the service charges of fly ash at the rate charged by the Board from time to time

(present rate is Rs.60/- per tonne). Power and water required during the installation of the system will be on chargeable basis on prevalent appropriate tariff.

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6. **100% of the fly ash generated should be collected by the company from the allotted unit.** Out of the above 20% of fly ash should be spared to TNEB for allotting the same to other Industries. The cement company has to pay 80% of the charges towards water and current consumption since they are allotted only 80% collection. This will come in to effect from the date of commissioning of the complete system.

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12. **Manpower should be provided round the clock for attending the problems in the systems. Trained person shall be deployed for operating PLC in the control room.** Maintenance/repairs of the system installed will be company cost and responsibility. The Area utilised by the company should be properly maintained day to day in neat and tidy condition. Otherwise the same will be cleaned by TNEB by engaging private agency and the cost will be recovered from the advance payment.

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17. Company should take group insurance policy for the workmen intended for this work under Workman Compensation Act.

18. **Company will be permitted to install fly ash collection system at their cost.** The proposed system should not interfere with the other routine activities of the plant. In the existing system, only transmitters with inlet connecting pipes (airlines) can be utilised by the allottee company to evacuate fly ash. In case any modification is required in operation of the transmitters it can be done after getting prior approval of TNEB. **Till the commissioning of the proposed system the existing system should be maintained by the allottee company.**

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20. 6.6 KV supply alone will be provided by Board at 6.6 KV switch gear end. Necessary required 6.6 KV breakers, 6.6 KV/433 V transformers with stand by arrangements, HT/LT UG cables have to be supplied, erected and commissioned by the cement company at their cost.

21. All allotted system should be constructed within a period of 9 months from the date of approval and in any

case the proposed system should be commissioned on or before 31.3.2003.

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23. **Validity of the Memorandum of Understanding is limited to 9 years (NINE YEARS) after which TNEB shall the discretion to award the disposal of fly ash afresh.**

(emphasis added)

7. Thereafter, as stated by the appellant, certain events led them to approach the Hon'ble Madras High Court to adjudicate on the relationship between the parties. The Hon'ble High Court at paras 26 and 28 of its Order in W.P. Nos 23422, 23734 & 24322 of 2006 dated 19.04.2007, has recorded the activities of the appellant company as under:

"26. In the present case, no such promise had been held out by the respondent [***TNEB**], for granting the benefit for the purpose of putting up some industry or some developmental activities. **All that the respondent had done was that it permitted the petitioner** [***appellant**], **to clear the fly ash generated by the thermal power plant free of cost. In order to prevent pollution in such clearing, the petitioners were directed to provide clearing system of their own, with the condition that after the period of time, the clearing system would become the property of the respondent.** The clearing system provided by the petitioners cannot be regarded as an advantage in favour of the respondent. It is just like the lorry hire charges incurred by the petitioner for clearing. **As already stated, the fly ash had been supplied to the petitioner free of cost.** The petitioner has not contributed anything for industrial development for the State or contributed to the labour and employment or benefit of the State exchequer by their act of installation of clearing system. Further, the permission granted in favour of the petitioners is not made by general offer or a tender floated by the respondent. If justice and fair play are to be put against the respondent in their present action, the same would stare at the petitioners as to how the petitioners alone were selected for clearance of the fly ash when there are number of persons equally placed as that of the petitioners are standing in queue for clearing the fly ash.

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> 28. In the facts of the present case, the one and only public interest is prevention of environment hazard, which is likely to be caused due to the short collection by the petitioner. It is the specific case of the respondent by giving data that consistently, there is short collection of fly ash by the petitioner, which has been intimated to them periodically and the respondent has made several arrangements to clear the uncleared fly ash by themselves. Further, the respondent has also offered reimbursement of the operational maintenance cost, which the petitioner loses by virtue of reduction of the percentage of collection under the impugned order. In addition to that, materials were made available that the petitioner is making profit out of the collection of fly ash by selling to others in higher rate. **Incidentally, it must also be noticed that the respondent is not collecting any amount from any of the petitioners for parting with the dry fly ash. The service charges are explained to be collected for the expenses incurred by the respondents' personnel.** Condition No. 10 of the MOU extracted in paragraph No. 2 of this judgment provides for imposition of penalty for short collection of fly ash. The respondent by their letters dated 13.12.2005, 9.1.2004, 6.6.2005, 23.6.2005 and 31.12.2005 informed about the short collection and ultimately passed the order impugned. When the petitioner agreed and signed the MOU with its eyes wide open agreeing for the imposition of penalty cannot now wriggle out and say there is no provision in the MOU to reduce the percentage of fly ash."
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> (emphasis added)
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> * - added for contextual clarity

8. Consequent to Hon'ble High Court Order dated 19.04.2007 in WP No. 23422/2006 (batch cases), they entered into another Tripartite agreement in Jun'2007 (in consequence to the earlier said MOU dated 15.05.2002), with other two parties viz. (i) TNEB; & (ii) M/s. The India Cements Ltd., Dalavoi for exclusive allotment of Fly Ash generated at MTPS. In terms of the said revised Tri-partite agreement, Fly Ash was distributed among the parties in the order of 60:20:20 to (i) M/s. Ultratech Cement Ltd., (formerly M/s.Grasim Industries Ltd.); (ii) M/s.The India Cements Ltd., and (iii) TNEB respectively. The said Agreement is reproduced below for easy reference:

TRI-PARTITE MEMORANDUM OF UNDERSTANDING IN RESPECT OF ALLOCATION OF FLY ASH IN UNIT-I OF METTUR THERMAL POWER STATION BETWEEN TAMIL NADU ELECTRICITY BOARD, M/S.GRASIM INDUSTRIES LIMITED AND M/S.THE INDIA CEMENTS LIMITED.

THIS TRI-PARTITE MEMORANDUM OF UNDERSTANDING is entered into at Chennai on this the day of JUNE 2007 BETWEEN (1) TAMILNADU ELECTRICITY BOARD, having its office at New. No.144, Old No.800, Anna Salai, Chennai 600 002, represented herein by its Chief Engineer, Civil Designs, (hereinafter called "TNEB"); (2) M/S. GRASIM INDUSTRIES LIMITED, (Cement Division - South), a Public Limited Company incorporated under the provisions of the Indian Companies Act, 1956 and having its plant at Reddipalayam, Ariyalur 621 704 represented herein by its Joint Executive President and Unit Head, (hereinafter called "GRASIM INDUSTRIES LIMITED", which term shall mean and include its successors and assigns) and THE INDIA CEMENTS LIMITED, Company incorporated under the Indian Companies Act, 1913 and having its Registered Office at 'Dhun Building', 827, Anna Salai, Chennai represented herein by its Senior President (hereinafter called CEMENTS LIMITED", which term shall mean and include its successors and assigns)

WHEREAS M/S.GRASIM INDUSTRIES LIMITED had been permitted by an order dated 15.05.2002 for installation of Pressurised Dense Fly Ash Collection System (PDFACS) in Unit – I of Mettur Thermal Power Station and **permitted to remove 80% of the fly ash generated therein;**

AND WHEREAS, as the demand for the fly ash by needy industries is more, TNEB is compelled to honour the requirement of all the needy entrepreneurs in a judicious manner, the allotment already issued to M/s. GRASIM INDUSTRIES LIMITED was revised and reduced to 40% from 80% and M/s. THE INDIA CEMENTS LIMITED was allotted 25% with TNEB retaining the balance of 15% with themselves and a MoU was entered into with M/s. THE INDIA CEMENTS LIMITED

AND WHEREAS on a challenge of the said order by M/s. GRASIM INDUSTRIES LIMITED before the High Court, the High Court in its order dated 19.04.2007 in WP No. 23422/2006 and etc., (batch cases) has held that **the MoU entered into between M/s. GRASIM INDUSTRIES LIMITED and TNEB is not a statutory contract and TNEB has the authority to vary the terms**;

AND WHEREAS M/S. GRASIM INDUSTRIES LIMITED represented to TNEB of their investments and the huge projected loss if the allotment is reduced and undertook not to litigate the issue any further and requested for higher allotment;

AND WHEREAS TNEB taking into account of the various factors have agreed to allot 60% of the fly ash from unit-I of Mettur Thermal Power Station to M/S. GRASIM INDUSTRIES LIMITED and 20% of the fly ash to M/s THE INDIA CEMENTS LIMITED., and retaining 20% with TNEB on the terms and conditions agreed hereunder.

NOW THIS Memorandum of Understanding WITNESSESETH :-

1. THAT an exclusive allotment of 60% share in Unit I of Mettur Thermal Power Station shall be made to M/s. GRASIM INDUSTRIES LIMITED.

2. THAT an exclusive allotment of 20% share in Unit - I of Mettur Thermal Power Station shall be made to M/s. THE INDIA CEMENTS LIMITED.

3. THAT the remaining terms of the MoU dated 15.05.2002 with M/s. GRASIM INDUSTRIES LIMITED and the MoU dated 28.06.2006 with M/S.THE INDIA CEMENTS LIMITED shall remain un-altered and binding upon the parties.

4. THAT the arrangement under these presents shall be subject to the terms and conditions agreed under the terms of the Memorandum of Understanding referred herein above and shall not be altered or varied during the terms of these presents.

IN WITNESS WEREOF the parties hereto have executed these presents the day, month and year first above written.

The appellant entrusted the work of Operation and Maintenance of Fly Ash Collection to Shri R. Saravanan, Mettur.

9. We find from the MOU's that the whole intention of the Agreements is that initially two legal entities (appellant and TNEB) entered into a mutually beneficial arrangement, in which the appellant agreed to set up and operate a Fly Ash Collection System, in return for which they were allocated 80% of the fly ash which is an essential input in the manufacture of cement. By this arrangement, while the appellant got a steady supply of raw material, TNEB's Mettur Thermal Power Station, could adhere to the Ministry of Environment and Forest norms for disposal of dry fly ash in a controlled manner. TNEB being a public utility company could also retain 20% of the fly ash for allotting it to other Industries. The issue later came to be litigated before the Hon'ble Madras High Court and a sharing formula, as stated at para 8 above, was devised. Since the appellant had set up the fly ash collection system, they were allowed to re-coup a part of the overhead

costs involved from the other Cement Co. sharing the fly ash, at the rate of Rs 206/- per M.T..

10. It is submitted by revenue that this charge of Rs 206/- per M.T., collected by the appellant from India Cements towards overhead costs is the rate to be uniformly applied to the entire quantity of the fly ash generated at MTPS to arrive at the cost of operation and maintenance of Fly ash Collection system, including for the quantity of 20% of the fly ash retained by TNEB.

11. As stated above, the MOU has to be understood to reflect the joint intent and expectations between the parties. The explicit terms of a contract denotes the intention of the parties. Nothing can be added to the understanding of the contract unless it is shown that contrive and camouflage was adopted in drafting the MOU, to conceal the actual intention of the parties. No such allegation has been made in this case. Hence the rate of Rs 206/- per MT, as collected from India Cements, cannot be extrapolated to serve as the value for the entire quantity of the fly ash generated at MTPS so as to arrive at the cost of operation and maintenance of fly ash Collection system, for tax purposes. Moreso when revenue admits that the rate of Rs 206/- per MT, represented the proportionate share of India Cements Ltd. on the overhead expenses incurred for installation of fly ash system, by the appellant. Hence such expenses cannot be applied to the entire quantity of the fly ash generated at MTPS to arrive at the cost of operation and maintenance of fly ash Collection system and this part of the order merits to be set aside.

12. Further the appellant and India Cements are obligated to pay a service charge at the rate of Rs. 60 per MT to TNEB for procurement of

fly ash. Just because the appellant has undertaken the work relating to collection and storage of fly ash at MTPS by installing infrastructure facilities, that would subsequently become property of TNEB, the share of fly ash generated at MTPS and allotted to the appellant cannot be presumed to become the consideration for undertaking the above work. As noted in the Judgment of the Madras High Court dated 19.04.2007 extracted above, all that TNEB had done was that it permitted the appellant, to clear the fly ash generated by the thermal power plant free of cost. It was further noted that TNEB is not collecting any amount from the cement companies for parting with the dry fly ash and that the service charges collected by TNEB from the cement companies were explained to be collected for the expenses incurred by TNEB's personnel. Hence, we find that service charges were being collected by TNEB from the cement companies as mutually agreed. The amount of consideration in an agreement to which the consent of the parties is freely given has to be honoured and cannot be enhanced or substituted merely because the consideration is presumed to be inadequate or for any other reason, without any allegation of fraud being involved. The appellant has also drawn attention to the Larger Bench decision in **Bhayana Builders Vs CST** [2013 (32) STR 49 (T-LB)], which stated that, clearly Section 67 of the Act deals with valuation of taxable services and intends to define what constitutes the value received by the service provider as "consideration" from the service recipient for the service provided. Implicit in this legislative architecture is the concept that any consideration whether monetary or otherwise should have flown or should flow from the service recipient to the service provider and should accrue to the benefit of the later and

that the value of "free supplies" by a construction services recipient, for incorporation in the construction would not constitute a non-monetary consideration to the service provider nor form part of the gross amount charge for the services provided.

13. Revenue states that contractor Shri R. Saravanan's work involves managing the fly ash collection system at MTPS, which serves only the Thermal Power Station, not the appellant unit. Therefore, any credit of Service Tax paid to the sub-contractor in relation to fly ash handling system will be available only to the thermal power plant subject to the fulfilment of conditions under Rule 2(1) of the CCR. Moreover, since the thermal power station does not pay Excise duty on cleared fly ash, input service credit is not available to the plant nor to the appellant. This view does not find favour with us. As per the terms of the MOU it is the appellant who is required to maintain the fly ash collection system, provide manpower etc. The fly ash which is an input for cement factories, is meant for allocation to the appellant, among others, for use in their cement factory. The appellant has in turn entrusted the work to the contractor Shri R. Saravanan, who has raised invoices on the Appellant for the said services rendered towards maintaining the fly ash collection system. The appellant has discharged the Service tax on the value of the service under the category 'repair and maintenance'. There is no contractual relationship between the contractor Shri R. Saravanan and TNEB, hence the credit of tax paid, under the head 'repair and maintenance' is rightly an eligible input credit for the appellant.

14. Further as submitted by the appellant it is seen that OIO No. 24/2017 dated 12.12.2017 and OIO No 02&03/2018 ST dated:

20.02.2018, examined the question whether by taking entire credit for the services rendered by the sub-contractor Shri Sarvanan in respect to the fly ash collection system, the assessee has contravened the provisions of Rule 6(1) of the CENVAT Credit Rules 2004, since credit could be allowed only on such quantity of input service used by the manufacturer for manufacturing dutiable final products and thereby contravened the provisions of Rule 3 of the CENVAT Credit Rules 2004 read with Rule 2(l) ibid. The Ld. Adjudicating Authority after examining the matter concluded that the service of the contractor is in connection with the procurement of inputs for the appellant and went on to hold that the credit taken was admissible. This issue was not appealed against by revenue and has attained finality.

15. As the issue on merits is decided in favour of the appellant, the findings relating to extended period, interest, penalty etc do not survive.

16. Based on the discussions above we set aside the impugned orders and allow the appeals. The appellant is eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 18.11.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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