CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI.

COURT NO. II

Excise Appeal No. 51903 of 2019-SM

(Arising out of Order-in-Appeal No. 146-148 (CRM) ST/JDR/2019 Dated 15.02.2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur)

M/s. Shree Cement Limited **Appellant**
Bangur Nagar, Andheri Deori, Beawar
(Rajasthan)

Versus

Commissioner of Central Excise and Central Goods and Service Tax, **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed,
Basni, Jodhpur (Rajasthan)

WITH

Excise Appeal No. 51904 of 2019-SM

(Arising out of Order-in-Appeal No. 146-148 (CRM) ST/JDR/2019 Dated 15.02.2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur)

M/s. Shree Cement Limited **Appellant**
Bangur Nagar, Andheri Deori, Beawar
(Rajasthan)

Versus

Commissioner of Central Excise and Central Goods and Service Tax, **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed,
Basni, Jodhpur (Rajasthan)

AND

Excise Appeal No. 51905 of 2019-SM

(Arising out of Order-in-Appeal No. 146-148 (CRM) ST/JDR/2019 Dated 15.02.2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur)

M/s. Shree Cement Limited **Appellant**
Bangur Nagar, Andheri Deori, Beawar
(Rajasthan)

Versus

Commissioner of Central Excise and Central Goods and Service Tax, **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed,
Basni, Jodhpur (Rajasthan)

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant
Shri K. Poddar & Shri N. Chandra, Authorised Representatives for the respondent.

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NOs. 50667- 50669/2020

DATE OF HEARING/DECISION: 06.03.2020

ASHOK JINDAL:

The appellants are in appeal against the impugned orders, wherein the learned Commissioner (Appeals) while allowing cenvat credit on outdoor catering services has directed the appellant to reverse the cenvat credit. The adjudicating authority has not examined the issue to the effect that they will produce the record before the adjudicating authority for adjustment thereof. The appellant is an appeal against the impugned orders only on the ground that as the period pertains to 2009 to March, 2011 and now it is not possible for the appellant to produce those records as those records are not available with the appellant. It is submitted by the ld. Counsel that as appellant was required to maintain the record of five years and it is more than nine years, therefore it is not possible for them to produce the record. In view of this, the observation made by the Commissioner (Appeals) the appellant shall produce the record is not possible. To support the case, she relied on the decision of the Hon'ble Bombay High Court in **Reliance Industries Ltd. vs. Union of India - 2020 (1) TMI 283- Bom. High Court**.

2. Heard the ld. Authorised Representative for the Revenue and perused the record.

3. Reliance is placed by the ld. Counsel in the decision of **Reliance Industries** (supra) is not applicable to the facts of this case as in the said case the decision is with regard to adjudication to be done within one year from the amendment in Section 28 of the Customs Act, 1962 w.e.f. 29.03.2018. There is no such amendment in the Central Excise Act. Therefore, the said reliance is not applicable to the facts of the case. Further, in normal course of business, an assessee is required to maintain their record for five years normally, but in case litigation is going on, the litigants are required to keep the records of the said period till litigation ends. In that circumstances, the plea taken by the appellant that the records pertains to more than five years, therefore, they are not able to produce the record. The said contention of the Ld. Counsel is not acceptable.

4. In the result, I do not find any infirmity in the impugned orders, the same are upheld. In the result, appeals filed by the appellants are dismissed.

[Dictated and pronounced in open court]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

JB