CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Rectification of Mistake Application No. 50240 of 2020
(on behalf of the appellant) and
Excise Appeal No. 51903 of 2019-SM

(Arising out of Final Order Nos. 50667 – 50669/2020 dated 06.03.2020 passed by the Tribunal, New Delhi). & (Arising out of Order-in-Appeal No. 146-148(CRM) ST/JDR/2019 dated 15.02.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

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

VERSUS

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

WITH

Excise Rectification of Mistake Application No. 50241 of 2020
(on behalf of the appellant) and
Excise Appeal No. 51904 of 2019-SM

(Arising out of Final Order Nos. 50667 – 50669/2020 dated 06.03.2020 passed by the Tribunal, New Delhi). & (Arising out of Order-in-Appeal No. 146-148(CRM) ST/JDR/2019 dated 15.02.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

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

VERSUS

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

AND

Excise Rectification of Mistake Application No. 50242 of 2020
(on behalf of the appellant) and
Excise Appeal No. 51905 of 2019-SM

(Arising out of Final Order Nos. 50667 – 50669/2020 dated 06.03.2020 passed by the Tribunal, New Delhi) & (Arising out of Order-in-Appeal No. 146-148(CRM) ST/JDR/2019 dated 15.02.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

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

VERSUS

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

APPEARANCE:

Shri Puneet Bansal, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51884-51886/2021

DATE OF HEARING/DECISION: 11.10.2021

ANIL CHOUDHARY:

Heard the parties on the rectification of mistake applications.

2. The appellant-assessee have filed the present rectification of mistake applications for modification of the Final Nos. 50667 – 50669/2020 dated 06.03.2020, whereby a single Member of this Tribunal had dismissed the appeals.

3. The grievance of the appellant is that they had raised the following specific grounds, which were not decided by this Tribunal and hence there is mistake apparent on record. The grounds are-

(i) The impugned order in appeal, learned Commissioner has travelled beyond the show cause notice and hence the order is bad.

(ii) The Adjudication order have been passed beyond the period of limitation as permissible under Section 11A (11) of Central Excise Act, which was brought on statute w.e.f. 08.04.2011, wherein the prescribed limitation is six months where the show cause notice is issued under sub-section (1) of Section 11A and the limitation is two years if the show cause notice issued under sub-section (4) of Section 11A (extended period of limitation).

The aforementioned grounds had been taken at ground No. 1 and 2 in the grounds of appeal, which has not been decided by this Tribunal leading to mis-carriage of justice. It is further urged that such grounds were not withdrawn by the appellant, which is evident from the appeal record and also plane reading of the final order.

4. Learned Counsel appearing for the appellant submits that three successive show cause notices were adjudicated by common order-in-original for denying the cenvat credit availed by the appellant on outdoor catering services, received for maintenance of canteen in the factory premises. The total period involved in the three show cause notices was from October, 2009 to March, 2011. The last show cause notice was issued on 13.09.2011. Although it is not alleged that

there is fraud or collusion on the part of the appellant, however, even if the limitation of two years is taken under Section 11A (11), still the order-in-original is beyond the period of limitation prescribed, and hence such order is *abinitio void* and *non est* in the eyes of law. However, the Adjudicating Authority was pleased to drop the demand notice finding the cenvat credit is allowable. The Commissioner (Appeals) have travelled beyond the scope of show cause notice, while upholding the eligibility of cenvat credit, on merits, he has been pleased to observe that the appellant is not entitled to credit on the part of the cost of food recovered from the employees, which was never the allegation in the show cause notice. He further remanded the matter on this issue to the Adjudicating Authority to verify this aspect and if there is any recovery, to reduce the proportionate credit on such amount of recovery, if any.

5. Learned Authorised Representative appearing for the Revenue relies on the findings in the final order.

6. Having considered the rival contentions, I find that the aforementioned two grounds had been taken by the appellant, and the same have not been adjudicated by this Tribunal in the Final Order. Thus, there is a mistake apparent on the face of record. Further, I find merit in the grounds not decided in the final order Nos. 50667 – 50669/2020 dated 06.03.2020. Thus, the final order is hereby recalled and modified as follows:-

(i) It is held that the adjudicating proceedings were time barred in terms of Section 11A (11) and accordingly the impugned order is set-aside on this ground.

(ii) I also find that the Commissioner (Appeals) has travelled beyond the scope of show cause notice, hence the order-in-appeal is bad in law. Accordingly, the appeals are allowed on this ground also.

7. Consequently, the impugned order is set aside and appeals are allowed, and this order shall be treated as Final Order. Thus, the order-in-appeal is set aside and order-in-original is restored. Miscellaneous applications are also disposed of accordingly.

8. All the three appeals are allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant