

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50462 of 2021 (SM)

(Arising out of Order-in-Appeal No. 357-CRM-CE-JDR-2020 dated 15.12.2020 passed by the Commissioner of Central Excise & Central Goods and Service Tax, Jodhpur.)

M/s Mangalam Cement Ltd

Appellant

Aditya Nagar, Morak, Distt. Kota
Rajasthan-324006

VERSUS

**Commissioner, Central Excise
& CGST-Udaipur**

Respondent

142B, Sector 11m Hiran Magri,
Udaipur
Rajasthan 313002

APPEARANCE:

Ms. Sukriti Das, Advocate for the Appellant

Mr. Ravi Kapoor, Authorised Representative for the Respondent

CORAM:

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

ORDER NO. 50211 / 2022

Date of Hearing: 09/02/2022

Date of Decision: 09/02/2022

ANIL CHOUDHARY:

This Appeal is directed against the impugned order dated 15.12.2020 passed by the Commissioner of Central Excise & Central Goods and Service Tax, Jodhpur, wherein cenvat credit of service tax taken by the appellant on maintenance and repair work of their

residential colony has been denied on the ground that the said service has no nexus with the manufacture of final product.

2. Ms. Sukriti Das, the Ld. Advocate appearing for the appellant submits that the residential facilities have been developed near by the factory which is situated in a remote area approximately 60KM away from the district headquarter, Kota. She further submits that if such facilities are not developed and not properly maintained, there would be no availability of proper staff and labour required for continuous manufacturing activities. Thus, submits that residential colony constructed adjacent to the factory is in relation to the manufacture of the final product, and as such, the cenvat credit taken on the disputed service shall be eligible for cenvat credit. The Ld. Advocate has relied on the judgment of Hon'ble Andhra Pradesh High Court in the case of **CCE Hyderabad-III vs ITC Ltd. reported in 2012 (32) STR 288 (A.P.) & [Mangalam Cement Ltd. v. CCE & ST, Jaipur-I, 2016 (44) STR 422(Tri.-Del)]**

3. On the other hand, Sh. Ravi Kapoor, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order and also relies on the judgment of Honble Bombay High Court in the case of **Commissioner of Central Excise Nagpur vs Manikgarh Cement reported in 2010 (20) STR 456 Bombay and Hindalco Industries Ltd. v. CCE, Allahabad, 2019 (3) TMI 1085-CESTAT ALLAHABAD** to justify the stand of Revenue that unless the input service has a nexus with the manufacture of the final product, cenvat credit cannot be available.

4. I have heard the Ld. Counsel for both the sides and perused the records.

5. I find that admittedly, the residential colony was constructed adjacent to the factory because of the reason that the factory manufacturing cement, which runs round the clock, is located at a remote place which is away from the city. Unless the residential colony is constructed near the factory, the appellant will not be in a position to get the proper/ adequate manpower for running its plant/ activities.

6. Considering the aforementioned activities and the legislature intent behind the cenvat scheme, the Hon'ble Andhra Pradesh High Court in the case of ITC Ltd (supra) has held that cenvat credit of service tax paid on the taxable services used in the residential complex shall be available to the manufacturer. The relevant paragraph of the said judgment is extracted herein below.

“9.The Commissioner's Order-in-Appeal dated 27-5-2008 reflects that he accepted that the efficiency of the employees of an organization would be dependent on various factors, one such being the provision of a housing colony. He further conceded that these facilities would contribute to the enhancement of the productivity of the organization. Having stated so, the appellate authority surprisingly took the view that maintenance of the residential colony by the respondent-Company was only an obligatory activity owing to situational exigencies and was not connected either directly or indirectly to the manufacture of its final products This inherent contradiction in the Order-in-Appeal was noted by the CESTAT, which opined that if accommodation was not provided by the respondent-Company to its employees at this remote location, it would not be feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the manufacturing activity of the respondent-Company was therefore not borne out on facts. The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc., necessarily had to be considered as 'input services' falling within the ambit of Rule 2(l) of the Cenvat Rules, 2004.”

7. The judgments cited by the Ld. DR is distinguishable from the facts of the present case inasmuch as the issue decided in the said cited judgment is with regard to the nexus between the input service

and the finished product manufactured by the appellant. In the case of ITC Ltd. (Supra) since the Hon'ble Andhra Pradesh High Court has categorically held that construction of residential colony adjacent to the factory has the nexus with the ultimate manufacture of the goods, the judgment cited by the Ld. AR is not applicable to the facts of this case.

8. In view of above, I do not find any merits in the impugned order passed by the Ld. Commissioner (Appeals) and thus, the same is set aside and the appeal is allowed in favour of the appellant.

9. In the Ruling in the case of Manikgarh Cement of Hon'ble Bombay High Court have considered the eligibility of Cenvat credit of Service Tax on account of repairs, maintenance, civil construction etc. used in the residential colony, was disallowed on the ground that such service is not covered under the definition of input service. The Hon'ble High Court also observed that the extension of residential colony may be a welfare activity while carrying on business. Such explanation may be available under the Income Tax Act, however to qualify as an input service, it should have nexus with the business of the assessee.

10. With respect to Hon'ble Bombay High Court, I find that the aforementioned observations are not in tune with the language and spirit of Rule 2(I) of Cenvat Credit Rules. The rules specifically provides for allowing Cenvat credit of any service used by manufacturer, whether directly or indirectly in or in relation to the manufacturer of final products, and clearance of the final product up to the place of removal. I find that in facts and circumstances hereunder, the assessee provides and maintains the facility of residential colony adjacent to the factory. It cannot get the service of

competent staff and personnel for running the factory, which is run round the clock, and the employees have to work in shifts. Certain technical and administrative staff are also required to be available in the vicinity of the factory for any administrative or emergency situation for the smooth running of the business. Further, such residential colony is in the nature of an industrial township and the same has to be maintained by the concerned industry only being situated in the remote place away from the limits of a municipal body.

11. Appeal is allowed.

(Order dictated in the open court)

(ANIL CHOUDHARY)
Member (Judicial)

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