CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 52594 of 2019 (SM)

(Arising out of Order-in-Appeal No. 689 (CRM) CE/JDR/2019 dated 19.07.2019 passed by the Commissioner (Appeals), Central Goods & Service Tax, Central Excise, Jodhpur.)

M/s Ambuja Cement Limited **Appellant**
ACC Complex FICO, Teen
Haath Naka, L B S Road,
Thane (West)
Maharashtra

VERSUS

Commissioner of Customs, Excise & Service Tax, Jodhpur **Respondent**
G-105, road No. 5, New Industrial Area,
Basni, Opp. Diesel Shed,
Jodhpur,
Rajasthan-342003

APPEARANCE:

Mr. M.P. Devnath, Advocate for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER 50212 / 2022

Date of Hearing: 04/01/2022
Date of Decision: 04.03.2022

AJAY SHARMA:

This Appeal has been filed impugning the order dated 19.07.2019 passed by the Commissioner (Appeals), Central Goods & Service Tax, Central Excise, Jodhpur in Order-in-Appeal No. 689 (CRM) CE/JDR/2019, by which the learned Commissioner dismissed the Appeal filed by the Appellant and confirmed the disallowance Cenvat credit of Rs. 9,70,836/- availed by the Appellant on service tax paid on services of Technical Testing and Analysis, Consulting Engineering etc. in respect of Lime Stones deposit during the period 01/06/2008 to 31/01/2010, alongwith interest and equal penalty.

2. The issue to be decided is whether the Appellant were entitled to avail Cenvat credit of Service Tax paid on the Services of 'Technical Testing and Analysis' and 'Consulting Engineer Services'?

3. It is the case of Revenue that the Appellant are engaged in manufacturing and marketing of Cement and Clinker and are having their manufacturing plant at Unit Rabriyawas, District Pali, Rajasthan. They were availing Cenvat credit on various inputs, input services and capital goods used in the manufacture of dutiable products i.e. Cement and Clinker. During the course of audit, it came to notice that during the period 1.6.2008 to 31.01.2010 the Appellants have availed input service credit amounting to Rs. 9,70,836/- on the service which, according to the department, neither used in or in relation to manufacture of final products nor intend to use in the final product. It was further alleged that the Appellant incurred expenditure towards receipt of various input services such as Technical Testing and Analysis, Consulting Engineer Services in connection with the Limestone deposit in new mining areas intended to be used for feeding their *'upcoming plant'*. It was further alleged that the aforesaid expenditure incurred were transferred to Profit & Loss Account as the Appellant have dropped their project of new plant. In view of that, as per the department, the impugned services did not qualify as 'input

service' as defined in Rule 2(l) of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004"). The Show-Cuase Notice was issued on 27/01/2011 invoking the extended period in order to recover the amount of credit alongwith interest under Rule 14, CCR, 2004, r/w Section 11(I) of Central Excise Act, 1944 and equal penalty under Rule 15, CCR 2004 r/w Section 11AC of Central Excise Act, 1944. The Adjudicating Authority *vide* Order-in-Original dated 25/03/2019 confirmed the demand of Rs. 9,70,836/- alongwith interest and equal penalty. On Appeal filed by the department, the learned Commissioner *vide* impugned order dated 19/07/2019, confirmed the aforesaid demand with interest and penalty and dismissed the Appeal.

4. Learned Counsel for the Appellant submits that the show cause notice as well as the proceedings before the authorities below were conducted on a factually incorrect premise that the expenses were incurred for mining at a new proposed unit, whereas the correct facts are that the expenses in issue were incurred for development of new mines at existing Rabariyawas Unit only and the limestones, if extracted, were intended to be used exclusively for that existing unit at Rabariyawas. According to learned Counsel, limestone is the major raw material of the Appellant for manufacturing Cement and Clinker. To start the mining of limestones in new areas of mine and to test the quality of the limestones excavated from the Mines, the Appellant utilised the services of Technical Testing and Analysis Agency's and since the Appellant availed these services for new Mines in Rabariyawas Unit, they capitalised all the expenditure in their Books of Account. But later on, due to commercial reasons, they dropped the

proposal to establish new Mines at Rabariyawas and accounted it as Revenue expenditure in the Books of Account of Rabariaywas. Learned Counsel further submits that the auditor has wrongly concluded in the audit para that the service tax credit was used by Appellant for their new plant and both the authorities below without verifying the facts and without noticing the specific contention of the Appellants, repeated the same allegation in their respective orders despite the fact that the Appellant have produced the copies of invoices and purchase orders in order to substantiate their contention that it was utilised for existing Unit at Rabriyawas only. Learned Counsel further submits that the expenses such as Technical Testing and Analysis, Consulting Engineer Services are inevitable and are must for evaluating the limestone standard and without such services, mining of lime stones is not possible, feasible and advisable. According to learned Counsel, the services in issue are mandatory for the business related activities of the Appellant. Learned Counsel further submits that the Appellate Authority erred in relying upon the decision of the Hon'ble Supreme Court in the matter of ***Maruti Suzuki Ltd. Vs. Commissioner; 2009 (240) ELT 641 (SC)*** without taking note of the fact that the aforesaid decision of the Hon'ble Supreme Court in which the Hon'ble Supreme Court interpreted the definition of 'inputs', was doubted and was referred to a Larger Bench by another Hon'ble Bench of the Supreme Court in the matter of ***Ramala Sahkari Chini Mills Ltd. Vs. CCE- Meerut (I); 2010 (260) ELT 321 (SC)*** and the Hon'ble Larger Bench of the Supreme Court in the matter of **Ramala Sahkari Chini Mills Limited Vs. CC, Meerut-I; (2016) 7 SCC 585** while relying upon the decision of Hon'ble three Judges Bench in the matter of ***ESI***

Corporation vs. High Land Coffee Works; (1991) 3 SCC 617 held that the word 'include' in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction. *Per contra*, learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order and in particular the findings recorded in para 5.1 and 5.2 of the impugned order and also relied upon the decision of the Hon'ble Supreme Court in the matter of Maruti Suzuki Ltd (Supra) and prayed for dismissal of the Appeal filed by the Appellant.

5. I have heard learned Counsel for the Appellant and learned Authorised Representative appearing for Revenue and perused the case records including the Synopsis and the case laws filed on behalf of the Appellant. Since learned Authorised Representative has relied upon the findings recorded in para 5.2 of the impugned order therefore, I find it appropriate to extract the same here for record:

> "5.2 I find that the appellant had incurred certain expenditure towards receipt of various 'input services' such as Technical Testing & Analysis, Consulting Engineer Services in respect of lime stone deposit in their new mining areas intended to be used for feeding their upcoming plant. I find that the appellant had capitalized these expensed in their books of account. Thereafter I find that the project for new plant was dropped and the appellant decided to transfer the expenditure on the above services in their profit and loss account. Thus I find that the services cannot be treated to be in relation to business activities of the appellant as the services intended to be used to amortize the same expenditure over year. I find that when they have never started their new Plant then how they claim that credit of Technical Testing & Analysis. Consulting Engineer Services were used in connection with business activities of the appellant. It is obvious that these services have not been used directly or indirectly in the manufacture of goods because they have never started any manufacturing activities in their new plant. Thus I find that it cannot be said that these services are fulfilling the tests and conditions that are required to be fulfilled in terms of the decision of Maruti Suzuki reported in 2009 (240) ELT 641 (SC) and Sundaram Brake Linings reported in 2010 (19) STR 172(Tri.-Chennai). I find that the appellant has relied upon a series of decisions in support of their contentions. However, I find that these decisions are distinguishable in the light of the Apex Court's judgement in the Maruti Suzuki case(supra). I therefore hold that the appellant is not eligible to avail

cenvat credit of Rs. 9,70,836/- and the same credit is required to be recovered along with interest under Rule 14 of the CCR, 2004 read with Section 11A(I) of the CEA, 1944/11AB of the CEA, 1944."

6. From the aforesaid paragraph it is clear that factually the auditor as well as the authorities below started the entire matter on a wrong premise and mis-guided themselves by this fact that the Appellant availed the services in issue for the purpose of establishing new plant which was dropped later on. Whereas the correct fact is that it was used for new mines at the existing plant at Rabariyawas only. Since, the Appellants are into the business of manufacturing Cement, therefore lime stone is mandatory for that business and to check the quality of lime stone availment of input services like Technical Testing and Analysis as well as Consulting Engineer Services are must. Since, the Hon'ble Larger (Three Judges) Bench of the Supreme Court in the matter of ***Ramala Sahkari Chini Mills Limited vs. Commissioner, Central Excise, Meerut-I; (2016) 7 SCC 585*** has laid down that word 'include' in the definition of input is used to enlarge the meaning of the preceding words and it cannot restrict the meaning therefore the authorities below erred in restricting the meaning of 'inputs' and denying the benefit of the same to the Appellant. The inclusive definition in a fiscal statute is a well recognized device to enlarge the meaning of the word defined and it expands the meaning of the basic definition. The facts in these cases are not in dispute that the expenses incurred by the appellant for using the services in issue were meant for their manufacturing business. Rule 2(l) must be read in its entirety and no interpretation can be given which is contrary to the plain and literal meaning. No restrictive meaning can be given to the aforesaid definition as contained in Rule 2(l) since the services

specified in the inclusive part were only illustrative and not exhaustive. The definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, whether, prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product. Not only that, the Hon'ble High Court of Judicature at Bombay in the matter of *Commissioner of C.Ex. Nagpur v. Ultratech Cement Ltd.,* 2010 (260) E.L.T. 369 (Bom.) has gone to the extent of holding that use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable. Since the Legislature did not have any intention to restrict the definition of 'input service' to any particular class or category of services used in the business, therefore it is not proper to restrict the meaning of input or input service as given in Rule 2(l) ibid. Whatever inputs are necessary/unavoidable for the manufacturing activity of the Appellant can very well be said to be included in the definition of 'input service' as defined in Rule 2(l), CCR, 2004 and since Cement can be manufactured through limestone, therefore, limestone is an essential ingredient/input for the business of the Appellant and it's quality has a huge bearing on the quality of the final product i.e. Cement and therefore the requirement of services in issue are must for them. I also find from the record that the demand is for the period from June, 2008 to 31/01/2010, whereas the show cause notice was issued only on 27/01/2011, i.e. after almost beyond one year, by invoking the extended period on the ground of wilful suppression on the part of the Appellant. Whereas from the records, I have not found anything which can substantiate the allegation of the department about wilful suppression. Learned Counsel have taken me through various invoices during the period in issue, which have been placed on record. From the perusal of the said invoices also it is clear that the services were availed for the existing plant at Rajariyawas and not for any new or proposed plant. Therefore in my considered view Revenue is not justified in denying the benefit of Credit to the Appellant.

8. Accordingly, the issue involved herein is answered in favour of the Appellant and the Appeal filed by the Appellant deserves to be allowed with consequential relief, if any.

(Order pronounced in the open court on 04.03.2022)

(Ajay Sharma)
Member(Judicial)

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