CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51017 of 2020-SM

(Arising out of order-in-appeal No. 147(CRM) CE/JDR/2020 dated 13.03.2020 passed by the Commissioner (Appeals), Central Excise & Central Goods, Service Tax, Jodhpur).

M/s Ambuja Cements Limited **Appellant**
(Unit – Rabriyawas)
P.O. Rabriyawas, Tehsil Jaitaran
District – Pali, Rajasthan-306709.

VERSUS

Commissioner, Central Goods & Service Tax, Central Excise **Respondent**
G-105, Road No. 5, New Industrial Area
Basni, Opp. Diesel Shed, Jodhpur
Rajasthan—342003.

APPEARANCE:

Ms. Sukriti Das, Advocate for the appellant
Sh. Gopi Raman, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER No. 50096/2023

DATE OF HEARING/DECISION: 23.01.2023

ANIL CHOUDHARY:

Heard the parties.

2. The dispute in this appeal is disallowance of cenvat credit in respect of certain input services in the nature of construction services, used for erection, construction of storage/ sylo, for storage of cement/ clinker attached to the clinker plant and also various other construction services received by the appellant, admittedly prior to

01.04.2011. All the invoices under dispute are prior to 01.04.2011 and admittedly the services have been received prior to 01.04.2011. It was only w.e.f. 01.04.2011 exclusion clause was introduced in Rule 2(l) of Cenvat Credit Rules which expressly disallowed with certain input services in the nature of construction services for new construction etc. Out of the proposed disallowance (as per show cause notice) Rs.27,36,604/- the Court below has allowed in part and have confirmed Rs.26,96,994/- and also confirmed penalty of Rs.13,49,820/- under Section 11AC(1)(C). The show cause notice was issued on 27.04.2016 for the period April, 2011 to August, 2011 invoking the extended period of limitation. Further, it was also mentioned in the show cause notice, that in the course of audit of the Sankrail plant of the appellant, it was observed that they have availed cenvat credit on certain ineligible services relating to construction of administrative building, storage tank, etc., which falls under the exclusion clause in Rule 2(l) of the Cenvat Credit Rules. The appellant is LTU and accordingly a common show cause notice was issued with respect to different units situated in different States.

3. The show cause notice was adjudicated on contest by the Assistant Commissioner, LTU with respect to the cenvat credit dispute of Ravariyawas unit, located at Pali, Rajasthan, whereby the amount in dispute Rs.27,36,604/- was disallowed on contest. Further, interest was also confirmed and penalty of Rs. 13,68,302/- was imposed under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC(1)(C) of the Act. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order-in-appeal has

been pleased to grant relief in part and have confirmed the disallowance of Rs.26,99,640/-. Further, the penalty imposed was modified to Rs.13,49,820/-.

4. Being aggrieved, the appellant is before this Tribunal.

5. Learned Counsel for the appellant inter-alia urges that admittedly the input service in question has been received prior to 01.04.2011. Admittedly, the invoices are dated 01.04.2011 and the payment has also been paid prior to 01.04.2011. She further points out that the Board has issued clarificatory Circular No.943/4/2011-CX dated 29.04.2011 with respect to issue & scope of Notification No. 13/2011-CE (NT) dt. 31.03.2011. In reply to issue at Sl. No. 12:-

> "is the credit available on services received before 01.04.2011 on which credit is not allowed now? e.g. rent-a-cab service?
>
> Clarification –
>
> The credit on such service shall be available if its provision had been completed before 01.04.2011".

6. It is further urged that admittedly under the clarification given by the Board as aforementioned, it is a fact that invoices are also prior to 01.04.2011. Learned Counsel further urges that the similar issue was dealt by the Division Bench of this Tribunal in the case of **Regency Park Property Management Services Pvt. Ltd., vs. CST, Delhi -2020 (41) GSTL 372 (Tri. Delhi),** wherein similar services of construction of immovable property-mall, it was held that credit cannot be denied as services under dispute were received prior to 01.04.2011, in view of the clarification provided by the Board vide clarificatory Circular No.943/4/2011-CX dated 29.04.2011.

7. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

8. Having considered the rival contentions, I find that the issue is squarely covered by the aforementioned decision of the Division Bench of this Tribunal in the case of **Regency Park Property Management Services Pvt. Ltd.,** (supra). Accordingly, the impugned order is set aside and allow the appeal. The appellant is entitled to consequential benefit, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant