**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH – COURT NO. II

Excise Appeal No.50258 of 2021 (SM)

(Arising out of Order-in-Appeal No.250(CRM)CE/JDR/2020 dated 21.07.2020 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.

Versus

Commissioner of Central Goods & Service Tax and Central Excise, **Respondent**
G-105, Road No.5, New Industrial Area,
Basni, Opp. Diesel Shed,
Jodhpur (Rajasthan) 342 003.

APPEARANCE:

Ms.Sukriti Das and Ms. Mehak Mehra, Advocates for the appellant.
Ms. Tamanna Alam, Authorised Representative for the respondent.

CORAM:

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

FINAL ORDER NO.50706/2023

DATE OF HEARING/DECISION: 19.05.2023

ANIL CHOUDHARY:

Heard the parties.

2. The appellant is a manufacturer of cement and clinker, which are dutiable under the Central Excise Tariff Act. The appellant avails cenvat credit of various inputs and input services and capital goods, in accordance with law.

3. The appellant has three captive power plants. Two of the plants used coal as fuel and the third plant used waste heat for generation of electricity. The electricity, so generated by the three captive power plants is accumulated in the transmitter, from where it is distributed to the plant for captive use and also a small part is used by the residential colony occupied by the staff and workmen of the appellant. The appellant wheels out and sales the surplus power to Rajasthan State Electricity Board (RSEB). The admitted fact is that the appellant have reversed the proportionate amount attributable to inputs and input services with respect to the proportion of power wheeled out to RSEB or used in the residential colony.

4. In the course of audit by the Department, it appeared to Revenue that the electricity generated is exempted from levy of central excise duty, therefore, power sold to RSEB and power transferred for use of the residential colony falls under the category of 'exempted goods' and hence, the appellant is required to reverse proportionate amount of cenvat credit on common input services like security service, telecommunication service, input services distributed by the ISD office, manpower services, legal service, insurance services, which are only indirectly related to captive power plant. Accordingly, show cause notice dated 26.04.2019 was issued for the period April, 2014 to June, 2017 demanding reversal of an amount of Rs.6,00,023/-, being proportionate reversal for electricity used in the residential colony and wheeled out to RSEB, as calculated in para 7.1 of the show cause notice. Out of the gross

amount of Rs.14,39,69,589 reversible amount has been worked out in the ratio of turnover, amounting to Rs.6,00,023/-. The show cause notice also proposed to impose penalty under Rule 15(2) read with Rule 11 AC of the Act, invoking the extended period of limitation.

5. The show cause was adjudicated on contest vide order-in-original dated 02.12.2019 and the proposed demand was confirmed along with interest and further equal amount of penalty was imposed under Rule 15(2) of the Cenvat Credit Rules read with Section 11 AC of the Act.

6. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), *inter alia,* on the grounds *inter alia* that the demand for the extended period of limitation is not invokable as the appellant have maintained proper books of accounts and records and the issue is wholly interpretational in nature. Admittedly, the appellant have already reversed the proportionate amount towards the electricity supplied to the residential colony as well as wheeled out to RSEB.

7. It is further urged that the residential colony is an 'industrial township', which has been created and/or constructed by the appellant as the appellant requires presence of the competent personnel and workmen round the clock, adjacent to the plant. The plant of the appellant works round the clock and the same cannot be run efficiently without availability of the competent technicians and workmen. All the municipal services in the colony like lighting, cleaning, water supply, etc. are maintained by the appellant. The

residential colony is in the nature of industrial township and the appellant is responsible under law to maintain the same. Ld. Counsel further points out that this Tribunal has repeatedly held in several cases that when an assessee supplies powers from captive power plant to the industrial township required for the industry of the appellant, is attributable to manufacturing activity and no proportionate reversal of cenvat credit is required. Ld. Counsel relied on the ruling of **Simbhaoli Sugar Ltd. – 2018 (4) TMI 893 – CESTAT – Allahabad.**

8. Ld. Counsel further urges that the services in question like security service, telecommunication services are general in nature and not directly attributable to the captive power plant. Further, insurance service and manpower services can be segregated and are not in the nature of common input services.

9. It is further urged that the impugned order is a non-speaking order as the contentions of the appellant has not been considered. It is further urged that the expenditure incurred by the appellant on the aforementioned common services forms part of the cost of the final product and as such, no reversal is called for. It is also urged that the issue being wholly interpretational in nature, no penalty is imposable.

10. Ld. Commissioner (Appeals) was pleased to reject the appeal upholding the order-in-original. As regards the ground of limitation taken by the appellant, it was observed that the appellant have availed cenvat credit of common input service and the amount attributable to the supply of the residential colony and wheeled out

to the RSEB works out to Rs.6,00,023/- for the period under dispute. The appellant never disclosed before the department at any point of time through the periodical returns or in any other manner. This fact came to knowledge only during audit. Further, relied on Rule 9 (6) of CCR, which stipulates that burden of proof regarding admissibility of cenvat credit lies on the manufacturer/assessee taking credit.

11. Being aggrieved, the appellant is before this Tribunal. Ld. Counsel for the appellant urges the same grounds taken before the Court below.

12. It is further urged that the Revenue have mis-conceived the facts and have issued a vague show cause notice in spite of the admitted fact that the assessee has already reversed the proportionate credit for the power wheeled out to the RSEB and supply to the residential colony. Further, admittedly, the amount of cenvat credit disputed by the Revenue, has not been directly used in the captive power plant. It is further urged that the electricity is non-excisable product (nil rated) and not an exempted product. Hence, Rule 6 of CCR is not attracted in the facts of the present case.

13. Ld. Counsel also relies on the Division Bench Ruling of this Tribunal in **HEG Ltd. -2019 (11) TMI 1617 – CESTAT - New Delhi** and also relied on the ruling in the case of **Principal Commissioner of CGST & CE, Howrah Vs. Himadri Speciality Chemical Pvt. Ltd. – 2022 (7) TMI 1177 – Calcutta High Court,** wherein the facts were that electricity was also wheeled out

and sold from the captive power plant, and Revenue have demanded 6% on the value of the power wheeled out. Under the admitted facts, the assessee had reversed the proportionate credit of input and input services attributable to the power sold. The Calcutta High Court followed the ruling in **Gularia Chini Mills and Others – 2013 (7) EMI 159 –Allahabad High Court,** which has been affirmed by the Hon'ble Supreme Court in **Union of India Vs. DSCL Sugar Ltd. – 2015 (10) TMI 566,** wherein it was held that bagasse which emerges as waste, hence it is not manufacture of exempted goods. Electrical energy was neither excisable under Section 2 (d) of Central Excise Act, 1944 nor exempted goods under Rule 2 (d) of Cenvat Credit Rules, 2004 and hence Rule 6 of Cenvat Credit Rules is not applicable.

14. Ld. Authorised Representative for Revenue relies on the impugned order.

15. Having considered the rival contentions, I find that the issue is wholly interpretational in nature and also it is undisputed fact that the appellant have maintained proper records of the transactions and they were subject to regular inspection and audit by the Department. In this view of the matter, I hold that the extended period of limitation is not available to the Revenue. Accordingly, demand will survive only for the normal period.

16. Secondly, I hold that the appellant is not liable for reversal of duty on the power used in the residential township, which is situated closed to the factory of the appellant and it is an 'industrial township' maintained by the appellant, which requires necessary

technicians and workmen on short call and as and when required for running the factory. Accordingly, the appellant is not required to reverse the proportionate cenvat credit for common input and input services towards the power used in the residential colony.

17. Thirdly, I hold that the appellant is liable to reverse the proportionate cenvat credit attributable to power wheeled out to RSEB.

18. In view of my aforementioned observations and findings, I remand the matter to the Original Adjudicating Authority to re-calculate the amount to be reversed only towards the power wheeled out to RSEB. The appellant shall be entitled to consequential benefit in accordance with law. Thus, the appeal is allowed with consequential benefits. The penalty imposed is set aside. The appeal is allowed.

[Order dictated & pronounced in open court].

(Anil Choudhary)
Member (Judicial)

Ckp.