IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. E/53054/2015-Ex(DB)
[Arising out of Order-in-Appeal No.UDZ-EXCUS-000-COM-0013-15-16 dated 09.07.2015, passed by the Commissioner of Central Excise, Udaipur]

M/s Mangalam Cement Ltd **....Appellant**

Vs.

CCE, Udaipur **....Respondent**

Appearance:
Sh. B.L. Narsimhan and Sh. H. Bajaj, Advocate for the Appellant
G.R. Singh, DR for the Respondent

CORAM:
Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 23.02.2017

Final ORDER NO. 53004/2017-EX[DB]

Per V. Padmanabhan

The present appeal is directed against the Order-in-Original no. 13-16 dated 09.07.2005 passed by the Commissioner (Central Excise), Udaipur. The appellant is engaged in the manufacture of Cement falling under Chapter 25 of the Central Excise Tariff. The appellant set up a second unit that is Mangalam Grinding Unit (MGU) within a distance of two Km from the Original Unit. When the MGU was nearly completed the appellant approached the department for including the MGU in the registration already granted to the Cement Manufacturing unit. Accordingly, the Original Registration Certificate was amended to include the MGU. However, subsequently the department changed its stand and challenged the order of the lower authority granting the common registration. The issue was finally decided in favour of the appellant by the Tribunal vide final order No. A/53424/2015 dated 06.11.2015. The appeal filed by the department against the Tribunal order to the Hon'ble Rajasthan High Court was dismissed through, its order dated 25.5.2016. Consequently, the common registration granted on 31.01.2014 was also approved by the Hon'ble High Court.

2. Show Cause Notice dated 04.12.2014 was issued to the appellant proposing to deny the Cenvat credit availed by the appellant in the existing factory in respect of capital goods and input services availed totaling to about Rs 13.73 Crore for installing and setting up their new MGU. It was further denied the Cenvat credit in respect of inputs used in the power supplied to MGU. Further, demand of Central Excise duty amounting to about Rs 4.2 lakhs was also raised on clearance of clinker from the original unit to the new MGU without payment of duty. In the impugned order all the above proposals were confirmed. Aggrieved by the same, the appellant is in appeal presently before the Tribunal.

3. With the above background, we heard Shri B.L. Narsimhan, H. Bajaj, ld. Advocates for the appellant as well as Shri G.R. Singh, ld. DR for the respondent.

4. The appellant has challenged the impugned order mainly on the following grounds:

i. The impugned order has proceeded to deny the Cenvat credit on the ground that both the units obtained a common registration on 31.01.2014 and prior to that both units had separate existence for the purpose of Central Excise Law.

ii. The demand of excise duty on clinker cleared from the original unit to MGU considering the two as separate units is without basis since the common registration has been granted and the two units are within the same premises. Such clearances will be entitled to the benefit of captive consumption under Notification No. 67/95, dated 16.03.1995.

iii. The Cenvat credits are have been denied also for the reason that the credits have been availed prior to registration of the MGU. It is settled law that Cenvat credit availed prior to registration of the unit in respect of inputs/services used for setting up can be availed even though the registration will be issued only after the unit becomes operative.

iv. The credit availed on input services has been denied citing the amendment to the term "input services" made w.e.f. 01.04.2011. It has been considered that all the input services have been used for construction of a building or civil structure or for laying of foundation for support of capital goods, which have been excluded w.e.f. 01.04.2011. However, by taking such a view the Adjudicating authority has travelled beyond the Show Cause Notice wherein only a proposal has been made to deny the Cenvat credit availed in the existing unit prior to common registration. Cenvat credit denied in respect of inputs used in power supplied to MGU is without basis, since, the common registration makes the two units into one single factory.

They have also relied upon various case laws in support of their arguments.

5. The ld. Counsel for the appellant reiterated all the above grounds. The ld. DR supported the impugned order.

6. The dispute resulting in the demand of Excise duty and order for reversal of Cenvat credit has arisen, consequent upon the appellant setting up a second unit, i.e. Mangalam Grinding Unit (MGU). MGU is located at a distance of about 2 Kms of the original cement manufacturing plant. The appellant approached the department for a common registration for both the units. This issue stands settled at the level of the Hon'ble High Court resulting in approval of single registration comprising both the units. Even though the issue attained finality with the order of Hon'ble High Court on 25.05.2016, in the result the appellant's have been granted the common registration w.e.f. 31.01.2014. The appellant availed Cenvat credit on capital goods as well as input services utilized in setting up of MGU. This has been denied through the

impugned order to the extent of about Rs 13.72 crores. The main ground cited in the Show Cause Notice for such denial is that both the units obtained common registration only on 31.1.2014 and for the period prior to this date, both the units had separate existence for the purpose of Central Excise law and hence the credit which might have been allowable to setting up of MGU cannot be allowed to be taken in the original unit, since the inputs were procured and inputs services were utilized prior to 31.01.2014.

7. The procurement of capital goods as well as utilization of input services for setting up the MGU happened prior to setting it up. The question of registration of the completed unit comes up after the unit is set up and is ready to start manufacturing. It would be incorrect to deny the Cenvat credit on such capital goods and input services by taking the view that it has been availed prior to the date of registration. This position is too well settled for taking a contra view. It is on record that the appellant has approached the department on 30.08.2013 for formally amending the registration certificate for the original unit to include MGU. Further, since the MGU has been commonly registered as part of the main unit by issue of a common registration, any credit which would have been in the books of MGU would stand merged with that of the combined unit. There is no requirement in the Cenvat Credit Rules that prohibits a common Cenvat account for all the units comprised in one registration. We note that the Hon’ble Madras High Court in the case of Rajshree Sugars & Chemicals Ltd. 2014(299) E.L.T. 277

(Mad.) (Supra) has considered a case where the facts are similar to the present case stands decided in favour of the assessee. The Madras High court considered a case where a sugar unit and distiller unit had separate registration certificates, but situated within the same premises under the same management. The dispute in that case is also with reference to issue of a single registration and merger of credits in the two units. The Hon'ble Madras High Court decided the issue as follows:

> *"We agree with the contentions made by the ld. Counsel appearing for the assessee. As already seen in the preceding paragraph, the sugar unit and the distillery unit belonged to the self-same management and they are in the same premises. Although there are two units functioning, it is not denied by the Revenue that the resultant Molasses from the manufacture of sugar was used by the assessee in the manufacture of denatured Ethyl Alcohol. Although in respect of two activities, it had maintained two accounts, yet, it related to the business of the same assessee in respect of two activities, which are interconnected too. In the circumstances, the assessee decided to go for one registration alone as against two registrations originally taken. This decision was in tune with the management, administration and control of two units under the same head. In the above circumstances, we do not find any logical reason to accept the plea of the Revenue that on the mere taking of a single registration as against the two registrations, there was merger or amalgamation or transfer to hold that the assessee would not be entitled to any credit adjustment on the duty payable on sugar manufactured".*

We are of the view that the decision of the Hon'ble Madras High Court is squarely applicable to the facts of the present case.

8. In view of the above, we find no reason to deny the credit on capital goods availed for installing and setting up of MGU prior to grant of single registration.

9. In the impugned order, the adjudicating authority has denied the Cenvat credit availed on input services by taking the view that

w.e.f. 01.04.2011, the definition of the term "Input Services", of the Cenvat Credit Rules 2004 has been amended. The amendment has made the Cenvat credit inadmissible on input services used in relation to setting up new unit. More particularly it has denied Cenvat credit on certain activities such as construction services used in the construction of factory building or civil structure or a part thereof or for laying of foundation for support of capital goods. The adjudicating authority has proceeded to deny the credit on input services with the reasoning that the said input services were used by the assessee for the activities which stand denied after the amendment in 2011.

10. When we consider the grounds proposed for denial of Cenvat credit, in the Show Cause Notice dated 04.12.2014, we find that the only reason is that the credits pertain to the period prior to the issue of a common registration on 31.01.2014. The stand taken by the adjudicating authority for denying the Cenvat credit on input services was not taken in the relevant Show Cause Notice and to this extent the Order-in-Original has travelled beyond the scope of Show Cause Notice, which is illegal. In any case the adjudicating authority has not given specific findings as to which are the input services for which credit has been availed and which get hit by the amendment in the definition of "Input Services" w.e.f. 01.04.2011. Without any such detailed findings, we find that the denial of Cenvat credit on input services is not justified.

11. Next, we turn to denial of Cenvat credit amounting to about Rs 1.3 lakhs in respect of inputs used in the generation of power supplied to MGU. As held in the above paras, we find no reasons to deny the Cenvat credit by taking the view that the two units were separate prior to the date of common registration. In this view of things, we find no justification for denial of such Cenvat credit.

12. Lastly, we consider the demand of duty on clinker cleared to MGU amounting to about Rs 4.20 lakh. The two units have to be considered as a single factory with common registration, clearances of clinker from the main unit to MGU will be entitled to the Notification No. 67/95 available to captive consumption. Consequently, the demand on this ground also merits to be set aside.

13. In view of the above discussions, the impugned order is set aside and appeal allowed.

[Dictated and Pronounced in the open court]

(Ashok Jindal)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

Ritu S.