CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 19.04.2017

Appeal No. E/57605-57606, 59810-59811/2013-EX[DB]
[Arising out of the Order-in-Appeal No. 27-28(RDN)/CE/JPR-II/2013 dated 21.02.2013 & order-in-original no. 45-51-2013-CE-JPR-II-COMMR dated 22/07/2013, passed by the Commissioner of Central Excise, Jaipur]

M/s. Shree Cement Ltd. … Appellant

Vs.

C.C.E. Jaipur-II ... Respondent

Appearance:

Present Shri Hemant Bajaj, Advocate for the appellant
Present Shri H.C. Saini, DR for the respondent

Coram: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No.53340-53343/2017

Per V. Padmanabhan:

M/s. Shree Cement (assessee) is a manufacturer of cement and clinker classifiable under chapter heading 25 of the Central Excise Tariff Act 1985. They are availing Cenvat credit on inputs, capital goods and input services in ter ms of Cenvat Credit Rules 2004. The assessee has several units located at Kushkhera, Alwar, Suratgarh and other places. The assessee has captive power plant (CPP) in some of their units. The power generated in these captive power plants are not only used for running the plants where the CPPs are located, but a part of the power is also transferred to some of their other units. For this purpose the power generated by CPP are fed into the Central electric grid from where it is supplied at the respective sister units. The dispute in all these appeals is that the Department was of the view that the Cenvat Credit availed on inputs and input services proportionate to the electricity wheeled out to the sister units is required to be reversed by the units where CPPs are located. Through several show cause notices, Revenue proposed to recover proportionate Cenvat Credits along with interest and penalties. Such demands pertaining to certain periods came to be confirmed against the assessee. However, in respect of certain other periods, the benefit was allowed to the assessee. Against these impugned orders, wherever the benefit has been allowed to the assessee, the Revenue has filed appeals and in respect of these cases where the benefit stands disallowed, the assessee has filed the appeals. Since the issue involved is common, all these appeals are being disposed through this common order.

2. With the above background, we have heard Shri Hemant Bajaj, Advocate for the appellant and Shri H.C. Saini, DR for the respondent.

3. The Ld. Counsel submits that the Cenvat Credit in respect of inputs and input services used in the power generated in CPP and transferred to sister concerns is admissible to the assessee as the input and input services were ultimately used in the manufacture of dutiable final products either by the assessee or by their sister concerns. He also submits that the issue is already decided by the Tribunal in favour of the assessee in the case of

Hindustan Zinc Ltd. Vs. CCE Jaipur-II Vide final order no. A/52132-33/2017-EX(DB) dated 02.03.2017 and other cases. The assessee already has a decision in their favour from the single member bench in the case of ***Shree Cement Ltd. Vs. CCE Jaipur vide final order no. A/52280/2016-SM(BR) dated 30.06.2016.***

4. The Ld. DR submits that the issue may be decided in favour of the Revenue.

5. On careful consideration of the submissions made by both sides and perusal of records we find that the issue is regarding reversal of Cenvat Credit attributable to the power generated but transferred to their sister concerns. It is the case of the Revenue that the inputs and input services are not used in respect of power which is generated and captively consumed. We find no merits in the arguments put forth by the adjudicating authority in denying the cenvat credit to the appellant as in an identical issue, in respect of very same assessee, but situated at Chittorgarh, Rajasthan, this bench vide Final Order No. A/51895-51899/2016 held as under:

> *"Heard both the sides and examined the appeal records. The short point for decision is whether or not the appellant is eligible to avail the credit on input services used in the generation of electricity which is partly cleared to their sister units who are also engaged in the manufacture of dutiable final products. The admitted fact is that the Cenvat credit on input services used in the generation of power is eligible to the appellant as long as the electricity is used in the manufacture of dutiable final product. The only dispute is relating to the usage of electricity captively within the plant of generation or also outside the generation unit by the same manufacturer. Considering that the electricity has been used in the manufacture of dutiable final products and also the fact that all units belong to the appellant the denial of credit is*

not justifiable in the present case. Further, it is a fact that if the appellant were to follow the procedure for input service distribution the credit eligibility on part of the electricity cleared to sister unit could not have been questioned and the credit could have been passed on to the unit which is actually using the electricity or retained fully by the appellant himself without proportionate distribution. Such being the factual position, I find that the impugned orders are not sustainable. Further, the reliance placed in the impugned order on the ratio of Hon'ble Supreme Court in Maruti Suzuki Ltd. vs. CCE, Delhi – III (supra) is not appropriate. In fact the appellate Authority records that the facts are different in both the cases but still goes ahead and applies the ratio. As mentioned earlier in this order, the Hon'ble Supreme Court was dealing withthe sale of electricity to outside parties and not to clearance of electricity to another manufacturing unit of the appellant. The input service credits attributable to the electricity sold to utility companies are not available to the appellants as held by the Hon'ble Supreme Court. This, the appellants are not contesting and have already reversed the amount towards such input service credits."

6. Since the issue is no more res integra we follow the decision of the Tribunal in the earlier case in an identical issue and hold that Cenvat Credit on inputs and input services proportionate to the power transferred to sister concerns through the Central electricity grid, need not be reversed.

7. In view of the above, the appeals filed by the Revenue are rejected and the appeals filed by the assessee are allowed.

[Order Pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu