IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/56343/2013 SM]

[Arising out of Order-in-Appeal NO. LTU/CE/Appeal/76/2012 dated 18.12.2012 passed by the Commissioner (Appeals), Customs & Central Excise, New Delhi]

M/s.Dalmia Chini Mills …Appellant

Vs.

C.C.E ., LTU, Delhi … Respondent

Present for the Appellant : Mr. Shekhar Vyash, Advocate
Present for the Respondent: Mr. G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 16.06.2017

FINAL ORDER NO. __54399/2017___

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 18.12.2012 passed by the Commissioner (Appeals), Central Excise, New Delhi. In this case, cenvat credit of serviced tax paid on commercial construction service was denied by the Department on the ground that such service cannot be treated as input service being not used directly or indirectly, in or in relation to manufacture of the final products.

2. Heard both sides and perused the records.

3. The inclusive part of the definition contained in Rule 2 (l) of the Cenvat Credit Rules, 2004 considers the services used in

relation to setting up, modernization, renovation or repair of the factory as input service. Since the appellant had used the commercial construction service for construction of the factory building, the same should be qualified as input service for the purpose of availment of cenvat credit.

4. I find that this Tribunal in the case of appellant itself vide final order No. 50565/2015 dated 23.02.2015 has allowed cenvat credit on the disputed service holding that the said service is specifically mentioned in the definition of input service for the purpose of cenvat credit.

5. In view of above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita