IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –III

Excise Appeal No. E/3906-3908/2012 - EX [DB]

[Arising out of Order-in-Appeal No.49-51/2012 (CE) - Commr. dated 31/08/2012 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s. Mangalam Cement Ltd. …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Ms.Rinki Arora, Advocate.
Present for the Respondent: Mr.H.C. Saini, D.R.

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

Date of Hearing/Decision: 25/04/2017

FINAL ORDER NO. 54577-54579/2017

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 13.09.2012 passed by the ld. Commissioner, Central Excise and Customs, Jaipur.

2. Brief facts of the case are that the appellant is engaged *inter alia,* in the manufacture of cement and clinker falling

under Chapter 25 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant avails cenvat credit of central excise duty paid on the inputs and capital goods and service tax on the input services. During the disputed period, the appellant availed cenvat credit of service tax paid on the input services namely, erection and installation, repair and maintenance and also other similar services utilized/used in its Wind Mill site at Jaisalmir. Taking of cenvat credit on the disputed services was denied by the Department on the ground that the wind mill is a distinct unit and situated at a place away from the factory of manufacture of final product and thus, should not be considered as the factory of the manufacture of the appellant for the purpose of availment of cenvat credit. It has further been observed that the electricity generated in the wind mill were not exclusively used by the appellant for manufacture of the final product.

3. The ld. Advocate appearing for the appellant submits that in case of cenvat credit of service tax is concerned, the requirement of Rule 3 of the Cenvat Credit Rules, 2004 is that the services should be received by the manufacturer of final product. Thus, she submits that since the appellant in this case has received the services provided by the service provider, the requirement of Rule 3 *ibid* has been duly complied with for availment of cenvat credit on the disputed services. She also submits that the definition of input service

provided in rule 2 (l) ibid is broad enough to take within its ambit the services used directly or indirectly, in or in relation to the manufacture of final product for the purpose of consideration as input service. To support her stand that the disputed services merit consideration as input service, the ld. Advocate has relied on the following decision:-

1. CCE vs. Endurance Technology Pvt. Ltd. 2015 TIOL 1371 (Bom. H.C.)
2. ACCE Ltd. vs. CCE – 2016 –TIOL- 2839 (CESTAT- Mum.)
3. Bajaj Auto ltd. vs. CCE – 2016- TIOL-686 (CESTAT.Mum.)
4. Parry Engineering & Electronics Pvt. Ltd. – 2016- TIOL-48 (CESTAT-Ahmd.)
5. Maharashtra Seamless Ltd. vs. CCE – 2012-TIOL-1225 (CESTAT- Mum.)
6. ZF Steering Gear (India) Ltd. vs. CCE, Pune-III – 2014 – TIOL- 2598 – CESTAT- Mum.

4. On the other hand, the ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order and further relied on the judgment of Hon'ble Supreme Court in the case of Maruti Suzuki vs. CCE, Delhi –III - 2009 (240) E.L.T. 641 and also decision of the Tribunal in the case of Ellora Times Ltd. vs. CCE, Rajkot - 2009 (235) ELT 661 (Tri.- Admd.) to state that since the disputed services were availed by the appellant outside the factory, the same should

not be considered as input service for the purpose of availment of cenvat benefit.

5. Heard both sides and perused the records.

6. The ld. Adjudicating authority has not disputed the fact that the electricity generated from the wind mill… were used by the appellant in its factory for manufacture of the excisable goods, which were removed on payment of central excise duty. Credit on the disputed services was denied on the sole ground that wind mills were not located within the registered factory premises. Rule 2 (l) ibid read with Rule 3 *ibid* provides that the input services should be received by the manufacturer of final product for use either directly or indirectly, or in relation to manufacture of final product. In case of inputs and capital goods, Rule 3 ibid mandates that the receipt of the goods should be within the factory of the manufacture of final product. Since there is no stipulation contained in either Rule 2 or Rule 3 ibid providing for use of the services exclusively within the factory, the disputed services used in the wind mill for generation of electricity, which in turn, were used for manufacture of the final product in the factory of the appellant, should be considered as input service for the purpose of availment of cenvat credit of service tax paid thereon. We find that in identical set of facts, this Tribunal in the case of Bajaj Auto Ltd. (supra), ACC Ltd. (supra), Parry Engineering and Electronic Pvt. Ltd. and others (supra) allowed the cenvat

credit of services tax paid on various services used in the wind mill for generation of electricity. The judgment of Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. (Supra) relied on by the ld. DR for Revenue is distinguishable from the issues involved in the present case inasmuch as taking of cenvat credit on 'input' was the subject matter of dispute in the case of Maruti Suzuki Ltd; whereas, the issue in hand relates to 'input service', which is permitted for cenvat benefit if received by the manufacturer of final product.

7. In view of above, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeals in favour of the appellant.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita