CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing: 03.07.2017

Appeal No. E/2599/2011-EX[SM]

[Arising out of the Order-in-Appeal No. 343(DKV)ST/JPR-I/2011 dated 11.08.2011, passed by the Commissioner of Central Excise, Jaipur]

M/s. Mangalam Cement Ltd. … Appellant

Vs.

CCE & ST Jaipur-I … Respondent

Appearance:

Present Ms. Rinki Arora, Advocate for the appellant
Present Shri G.R. Singh, DR for the respondent

Coram: Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 54544/2017

Per V. Padmanabhan:

The appeal is against order in original no. 343/11 dated 11.08.2011.

2. The appellant is a manufacturer of cement and the dispute is with reference to the eligibility of Cenvat Credit on service tax paid on freight charges from the depot to the customer's premises. The claim of the appellant is that they are eligible for such Cenvat credit as their sales are on FOR Destination Basis. The department was of the view that such Cenvat Credit will not

be allowable after the amendment of the definition of input services under Rule 2(l) of the Cenvat Credit Rules 2004 wherein after the amendment of the definition on 01.04.2008, the credit for the input services will be allowable only upto the place of removal. Further, the Revenue was of the view that such claims cannot be allowed in the case where goods were assessed under section 4 A on MRP basis. By taking the above view, the Cenvat Credit amounting to Rs.18,37,544/- was disallowed by the original authority. Since the same was also upheld by the Commissioner (A) in the impugned order, the present appeal has been filed.

3. On behalf of the appellant, heard Ms. Rinki Arora. She submitted that the issue stands decided in favour of the appellant in numerous decisions of the High Court as well as the Tribunal. Since the supply of goods in the present case has been made on FOR basis and the appellant was required to cover the risk of loss or damage of the goods upto the premises of the customer, the Cenvat Credit will be leviable. She also relied upon the following decisions:

i) Ultra Tech Cements Ltd. Vs. CCE Rohtak 2015 (37) STR 364 (Tri-Del.)

ii) CCE Bangalore Vs. ABB Ltd. 2011 (23) STR 97 (Kar.)

iii) CCE Vs. Parth Poly Wooven Pvt. Ltd. 2015 (25) STR 4 (Guj.)

iv) Ambuja Cements Ltd. Vs. UOI 2009 (236) ELT 431 (P&H).

v) CCE Belgaum Vs. Vasavadatta Cements Ltd. 2011 (24) STR 542 (Kar.)

vi) Ultratech Cement Ltd. Vs. CCE Raipur 2014 (307) ELT 3 (Chhattisgarh)

vii) Madras Cement Ltd. Vs. CCE Bangalore 2015 (40) STR 645 (Kar.)

4. Ld. DR supported the impugned order. He argued that from the copies of the documents in the records it is not evident that the goods are being supplied on FOR Destination Basis. The copies of invoices available for perusal are only those issued upto the depot. Hence he argued that the impugned order may be sustained.

5. The dispute is with reference to eligibility for Cenvat credit on the service tax paid on freight charges from the depot to the customer's premises. The final product i.e. cement is cleared on payment of duty from the appellant's factory to the depot from where it is sold to various customers. On perusal of the purchase orders submitted as part of the appeal, it is seen that the goods are delivered on FOR basis by the appellant. I also find that the adjudicating authority in his order in original dated 12.05.2011 has also recorded the finding in para 5.3.3 that delivery of goods is on FOR basis. The amended definition on input services w.e.f 01.04.2008 allows Cenvat Credit on input services only upto the place of removal. In the present case since the delivery is on FOR basis, the place of removal is to be considered as the customer's premises. Consequently, the service tax paid on

freight will be available if freight has been paid upto the customer's premises.

6. This issue has been well settled by the various decisions of the Hon'ble High Court and Tribunal and in the case of ***Madras Cements Ltd. (Supra)*** the Hon'ble High court decided the issue as follows:

> *"From the facts of the present case, it is clear from the invoices that title of the goods had passed on from seller to buyer only at the place of destination, which is the address of the buyer. As such, the buyer had no right over the goods till delivered to it. The Tribunal has not considered this aspect and has only relied on the amendment made to the definition of "input service" with effect from 01.04.2008 and rejected the claim of the appellant-assessee after the date. No further reason has been given by the Tribunal nor any finding has been recorded with regard to place of completion of sale of the goods.*
>
> *Since we are of the opinion that the sale had concluded only after the delivery of the goods was made at the address of the buyer, in the facts of the present case the appellant-assessee would be entitled to the benefit of Cenvat Credit on service tax paid on outward transportation of goods by the assesee even after 01.04.2008. The appellant-assessee would thus be entitled to such benefit for the period 01.04.2008 to 31.07.2008 which has been denied to it by the authorities below."*

7. By following the settled position of law I set aside the impugned order and allow the appeal.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

Bhanu