CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 11.07.2017
Date of decision: 24.07.2017

Excise Appeal No. 594 of 2012 (Registered as E/A. No. 4185/2012 in Delhi)

(Arising out of order-in-original No. CCE/ Shillong No. 07/2012 dated 01.06.2012 passed by the Commissioner of Central Excise, Shillong)

M/s Calcom Cement India Limited Appellant

Vs.

CCE, Shillong Respondent

Appearance:

Sh. Ashish Batra, Advocate for the appellant
Sh. H. C. Saini, AR for the Revenue

Coram:

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

Final Order Nos. 55724/ 2017

Per: **V. Padmanabhan**:

The appeal is against the order-in-original No. CCE/ Shillong No. 07/2012 dated 01.06.2012 passed by the Commissioner of Central Excise, Shillong. The dispute in the present appeal covers the period February, 2011 to June 2011. In the impugned order cenvat credit was disallowed to the extent of Rs. 56,02,734/- on the following grounds:

(i) Cenvat credit has been held to be inadmissible in respect of certain input services in relation to service tax paid on civil works of guest house as well as rehabilitation colony, by taking the view that such services have not been used in or in connection with the manufacture of goods in the factory.

(ii) Cenvat credit was disallowed in respect of duty paid on goods used to set up civil structures in the form of transmission line which was used for procuring of supply of electricity upto the factory premises.

(iii) Cenvat credit was disallowed in respect of service tax paid on freight upto the destination point for the goods manufactured by the appellant.

(iv) Cenvat credit on excise duty paid on items such as M.S. pipes, galvanised fabricated tower parts, welding electrodes etc. which are used for maintenance of capital goods.

2. With the above background, we heard Sh. Ashish Batra, ld. Advocate for the appellant Sh. H. C. Saini, ld. AR for the Revenue and perused the record.

3. Cenvat credit on services used in the guest house as well as rehabilitation colony has been denied. The submission of the appellant is that the guest house is situated outside the factory premises, but is utilised by its personnel for accommodation. Further, rehabilitation colony has been constructed for the people whose land have been purchased by the appellant for setting up their factory.

3.1 The definition of input service under Rule 2(l) also includes services used for setting up buildings in connection with manufacture of goods. However, we note that the guest house as well as rehabilitation colony are outside the factory premises and have been constructed only as a welfare measure and these have no nexus with the manufacture, storage or sale of the finished products. As such, we find no infirmity in denying the cenvat credit on the above services

4. The department has also denied the cenvat credit on excise duty paid on various goods used in erection of 132KV transmission line to bring electricity to the appellant's project site. The same was denied for the reason that these goods were used outside the factory premises and hence, do not qualify the definition of capital goods. The claim of the appellant is that the erection of transmission line is absolutely necessary for bringing electricity to the factory and hence the cenvat credit should be allowed.

4.1 We find that the benefit of cenvat credit on goods used in the construction of transmission line to bring electricity to the factory has been allowed by the Tribunal in the case of ***Prism Cement vs. CCE*** vide Final Order No. 52521/2017-EX(DB) dated 24.03.2017.

5. By following the decision of the Tribunal (supra), we are of the view that there is no reason to deny cenvat credit on this issue. Hence, the impugned order is set aside to this extent.

6. The department has denied the cenvat credit on service tax paid on GTA in respect of goods consigned on FOR basis upto the customer's premises. We find that the same issue was before the Hon'ble High Court of Punjab & Haryana in the case of ***Ambuja Cements – 2009 (236) ELT 431 (P&H)*** in which the Hon'ble High Court, after considering the definition of input service in detail, allowed the benefit of such cenvat credit upto the customer's premises. By following the decision of the Hon'ble High Court (supra) we allow the cenvat credit on the outward freight.

7. Cenvat credit has been denied on the excise duty paid on M.S. pipe, galvanised fabric, tower parts, welding electrodes etc. which were used for maintenance of capital goods. The adjudicating authority in the impugned order has recorded the finding that such goods have been used in the repair and maintenance of support structure for capital goods. He has taken the view that such goods do not fall within the category of capital goods as defined under Rule 2(k) of the Cenvat Credit Rules, 2004. But the contention of the appellant is that they will be entitled for cenvat credit inasmuch as these goods are parts of capital goods, falling under Chapter 84/ 85. M.S. pipes have been used to construct / maintain water line for supply of water to the factory.

7.1 We note that parts of capital goods are also entitled to the benefit of cenvat credit. The Tribunal has also been consistently allowing the cenvat credit on items such as angles, section etc. which are used in the construction of support structure for capital goods also. The M.S. pipes are used in construction of water supply pipe lines which are essential in the factory for manufacture of goods and as such will be entitled to cenvat credit.

8. In view of the above discussions, the impugned order is upheld in respect of demand of disallowing cenvat credit in respect of guest house and rehabilitation colony. In respect of all other demands the impugned order is set aside. Thus the appeal is partially allowed.

(Pronounced on 24.07.2017).

(Justice (Dr.) Satish Chandra) President	(V. Padmanabhan) Member (Technical)

Pant