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

COURT-I

Date of hearing/decision: 17.01.2018

Appeal No. E/50692, 50703-50710/2017 EX (DB)
[Arising out of Order-in-Original 23-32/COMMR/JBP/CEX/2016 dated 21/12/2016 passed by Commissioner of Central Excise and Service Tax-BHOPAL]

CGST CC & CE-Jabalpur … Appellant

Vs.

Maihar Cement … Respondent

Appearance:
Present Mr M.R. Sharma, DR for the appellant
Present Mr Sanjay Grover, Advocate for the respondent

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

FINAL ORDER No. 50201-50209/2018

Per Justice Dr. Satish Chandra

1. All the appeals have been filed by the Department against the Order-in-Original 23-33/2016 dated 06/12/2016.
2. The brief facts of the case are that the appellant is engaged in the manufacture of cement. It has two units which have separate Central Excise registrations known as unit I and II. Both are owned by a common owner *M/s Century Textiles and Industries Ltd.*
3. The Original Authority has set aside the demand of reversal of Cenvat Credit. Being aggrieved, the Department has filed the present appeal.
4. With this background we heard Shri Sanjay Grover, Ld. Advocate for the appellant and Shri M.R. Sharma, Ld. DR for the Revenue.

5. After hearing both the parties and on perusal of record it appears that the Hon'ble Supreme Court in the case of ***Madras Cements Ltd. V.s CCE, Chennai 2010 (257) ELT 321 (SC)*** has observed that:-

> 3*. As regards the Modvat/Cenvat credit on capital, goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assesses, and it is found that the said goods were being used in the lime stone mines outside the factory of the assessee, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules. In order to get a clear finding on the issue, all the matters are remanded to the respective original authorities for decision only on the above issue.*

6. On the line provided by the Hon'ble Supreme Court, the claim of the appellant was allowed by the lower Authorities. The Ld. Counsel submits that the benefit was allowed earlier on the same issue but the Department has filed appeal.
7. The matter has come up before the Tribunal in the assesee's own case (Final Order No. 53065/2016 dated 11/08/2016) where the claim of the appellant was allowed by dismissing the departmental appeal.
8. During the course of arguments, Ld. Counsel submits that the mining is common for both the units.
9. Further, the Tribunal in the assesee's own case ***Maihar Cement Unit No. 2 V/s CCE, Bhopal 2013 (293) ELT 239 (Tri. Delhi)*** has observed as under:-

> *5. The dispute relates to the factual aspect as to whether the mines are captive mines of Maihar Cement Unit No. 2 or not? The lower authorities have held against the appellant*

> *on the sole ground that both the units are separately registered with the Central Excise authorities. The above criteria adopted by the lower authorities will not advance Revenue's inasmuch as registration of different units under Central Excise law cannot be held relevant for finding out the status of two units. There is no dispute about the fact that Maihar Cement as also Maihar Cement Unit No. 2 are two units of the same parent company, i.e., M/s Century Textile & Industries Ltd. and do not have the status of independent legal persons. It is also clarified by the Ld. Advocate that though accounting of the two units is separate but a common balance sheet is being prepared. As such the mines which were allotted to Maihar Cement at the time of its incorporation and subsequently allowed to be used by the second entity, i.e., Maihar Cement Unit No. 2 has to be treated as captive mines for both the units. If that be so, the law declared by the Hon'ble Supreme Court in the case of Vikram Cement referred (supra) would be applicable.*
> *6. Apart from above, I also find that Tribunal in the case of Maihar Cement vide its Final Order No. 433/2008, dated 3-7-2008 has allowed the credit in respect of cement items. The subsequent decision of Hon'ble Supreme Court in the case of Madras Cement reported as 2010 (257) ELT 321 (SC) also supports the appellant's case inasmuch as the mines in question are not supplying to factory of other assesses.*

10. By following our earlier decision (supra), we find no reason to interfere with the impugned order passed by the Commissioner (Appeals). Hence, we sustain the order passed by the Commissioner (Appeals).

11. In the result, the appeals filed by the department are dismissed

[Order Dictated and Pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

(Justice Dr Satish Chandra)
President

Rekha