IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 30/11/2017.
DATE OF DECISION : 30/11/2017.

Excise Appeal No. 4079 of 2012 (SM)

[Arising out of the Order-in-Appeal No. 36 (RDN) CE/JPR-II/2012 dated 25/09/2012 passed by The Commissioner of Central Excise (Appeals – II), Jaipur.]

M/s Ultratech Cement Ltd.] Appellant
(Unit Birla White)

Versus

CCE & ST, Jaipur – II Respondent

Appearance

Ms. Sukriti Das, Advocate – for the appellant.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

Final Order No. 58792/2017 Dated : 30/11/2017

Per. Anil Choudhary :-

The issue involved herein is the admissibility of input service credit in respect of security services deploy at the residential colony situated outside/adjacent to the factory under Rule 2 (l) of the Cenvat Credit Rules, 2004.

2. The brief facts as per show cause notice dated 13/12/2010 for the period December 2009 to August 2010 it appeared by the Revenue that the appellant had taken and utilized Cenvat credit of Rs. 74,170/- of service tax paid on security services used at residential colony (search places far away and other manufacturing area) it appears to be not covered under the definition of input services in contravention of the Cenvat Credit Rules, 2004. As it appear from the Revenue that with the lack of efforts with the manufacturing/business activity of the appellant, the said Cenvat credit is not allowable under Rule 2 (l) of Cenvat Credit Rules, 2004 and accordingly it proposed to disallow the same under Rule 14 readwith Section 11A (1) and 11AB of the Act. Further, penalty was also imposed.

3. In reply to the show cause notice, the appellant stated that they have entered into contract with APEC security service for protection and safeguard of the colony as such by providing security as persons as residence therein. It was categorically associated that the factory located at the remote place, way away from any established locality, and therefore they have to provide proper residential accommodation for the housing of their staff as well as their officers working in the factory block. It was also submitted that the employees and staff of the company have been purposefully given a residence in their colony, near the factory, so that uninterrupted working of the factory is carried out round the clock. It was further argued that providing of proper security to the colony, property as well as persons

residing in the colony is absolutely essential, especially in a remote area, if such security is not provided, the property may get damaged and no person/employee would be interested in joining and working for them. Therefore, providing of proper security in the colony area is *sine qua non* for working of their factory. Reliance was also placed on the ruling of this Tribunal in **CCE, Nagpur vs. Ultratech Cements Ltd. – 2008 – TIOL – 1583 – CESTAT – MUM.** (appellant's own case) and also on the **GHCL Limited vs. CCE, Bhavnagar – 2009 – TIOL – 1208 – CESTAT – AHM.** and also on **ITC Limited vs. CCE, Hyderabad – 2009 – TIOL – 1199 – CESTAT – BANG.** It was also asserted that the transaction is properly recorded in the books of account maintained on order to course of business and as such there is no basis for allegation of Revenue as records concealment, mis-statement, suppression of facts etc.

4. The show cause notice was adjudicated with order-in-original dated 17th January 2011 and the proposed demand was confirmed by disallowing the Cenvat credit and availed alongwith penalty of Rs. 5,000/- under Rule 15 (2) readwith Section 11AC of the Act observing that service tax paid on security provided to plant is admissible the security service provided to residential colony is still admissible is arguable. The security of residential colony is only obligatory and no way concerned directly or indirectly with the manufacture of final product. Further observed, as this plea is away from manufacturing area and has no relationship with the manufacture of goods, so under Rule 2

(l) of Cenvat Credit Rules, 2004, the credit was held to be inadmissible.

5. Appellant preferred appeal before learned Commissioner (Appeals) who was pleased to reject the appeal upholding the order-in-original. Placing reliance relying on **CCE, Nagpur vs. Manikgarh Cement – 2010 (20) S.T.R. 456 (Bom.)** and also on the ruling of Hon'ble Gujarat High Court in **CCE & CUS vs. Gujarat Heavy Chemicals Ltd. – 2011 (22) S.T.R. 610 (Guj.)**. The appellant has directed that the earlier orders of this Tribunal in other appeal has filed the certificate of cost accounting, NL bill and company stating that the value of security sought expenses incurred on security services deployed at the residential colony for the period, in question, is forming part of cost of the final product manufacturing by the appellant and consequently parts their assessable value for these of discharging of excise duty under the Central Excise Act.

6. The learned Counsel for the appellant submits that the residential colony is situated outside the factory area but the ______ is located near to the factory. It is further submitted that the factory is located at a remote area and the residential colony constructed and maintained by them is for the use of employees of the appellant for their residential purposes who are engaged and required for manufacture of dutiable final product. It is further avoid that the factory rounds and round the clock and shall be changed odd hours unless the person is available near to

the factory the final dutiable goods cannot be manufactured. Accordingly, there is a indirect nexus for manufacture of dutiable final products and, as such, as defined under the provision of Rule 4 (l) of Cenvat Credit Rules, 2004 the Cenvat credit is available. The learned Counsel also placed to reliance on the ruling of Hon'ble Andhra Pradesh High Court in **CCE, Hyderabad – III vs. ITC Limited – 2013 (32) S.T.R. 288 (A.P.)**. The learned Counsel also points out that the ruling of Hon'ble Andhra Pradesh High Court was followed and their appeal allowed with respect to similar dispute being final order No. 50344/2015 – EX (SM) dated 06/02/2015 reported at **2015 (2) TMI 1185 – CESTAT NEW DELHI**.

7. The learned AR for Revenue relying on the impugned order and placing reliance in the case of **CCE & CUS vs. Gujarat Heavy Chemicals Ltd. – 2011 (22) S.T.R. 610 (Guj.)**, wherein the question before the Hon'ble High Court was whether in the circumstances this Tribunal is correct in holding that service tax credit on security services utilized the residential colony of the assessee is admissible when such services are not related manufacture directly or indirectly in or in relation to the manufacture of final products and especially when service standards in colony of the factory are not covered in the definition of input service defined under Rule 2 (l). Hon'ble High Court held that there is no connection between such service directly or indirectly of such manufacture following the issue of Hon'ble Apex court in **Maruti Suzuki Ltd. vs. Commissioner –**

2009 (240) E.L.T. 641 (S.C.). Further reliance is placed on the ruling of Hon'ble Bombay Hihg court in the case of **CCE, Nagpur vs. Manikgarh Cement – 2010 (20) S.T.R. 456 (Bom.)**, wherein the assessee is engaged in the manufacture of cement and the credit of services paid on account of repairs, maintenance civil construction etc. used in the residential colony of the assessee was disallowed on the ground that such services is not covered under the definition of input service. The Hon'ble High Court observing that residential colony established for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such an expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in rule 2 (l) of Cenvat Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

8. Having concrete rival submissions and case laws and the facts on record, I find that the finding of the Adjudicating Authority that the colony is located away from manufacturing area and has no relationship with the manufacture of goods is vague and not based on any facts on record. The appellant had categorically stated that the colony is located outside the manufacturing area but near to the factory to ensure validity of competent workers/personnel to run their factory round the clock

which fact have not found to be untrue. It was further categorically stated that the factory is located at the remote place thus eventually there is no township in the sense of municipality or municipal corporation available to provide the municipal services where residential colony situated. Thus, as defined in the Constitution of India under Article ________. In such industrial township it is the onus of the concerned industry to maintain the civil/municipal services. I find that from the ruling relied upon by the Revenue as recommend in the Constitution of India was not considered. Further, there is mistake of fact in the order of court below in observing that the colony is located away from the manufacturing area. In this view of the matter, I hold that the assessee/appellant require the residential colony and availability of the workers for manufacture of dutiable goods and, as such, security services is essential part in order to maintain the residential/industrial colony of the appellant. Accordingly, I hold that the appellant is entitled to the Cenvat credit under dispute. The appeal is allowed with consequential relief in accordance with law. The impugned order is set aside.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

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