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

COURT –II

Date of hearing/ Decision: 31.08.2018

Appeal No. E/51556/2018-SMC
[Arising out of Order-in-Appeal No. OIA-42-43/RK/CE/JPR/2017-18 dated 05/03/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-JAIPUR-I(Appeal)]

M/s Shree Cement Ltd. Appellant

Vs.

C.C.E. & S.T.-JAIPUR-I Respondent

Appearance:
Ms. Rinki Arora, Advocate for the appellant
Sh. P.R. Gupta, DR for the Respondent

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

Final Order No._52895/2018_

Per: V. Padmanabhan

1. The present appeal is against the Order-in-Appeal No. 42-43/2017 dated 05/03/2018. The brief facts of the case are that the appellant is engaged in the manufacture of cement and related products. They availed cenvat credit in respect of certain services which was transferred to the appellant from their head office which has been registered as an Input Service Distributor. The cenvat credit availed for the period September, 2011 to December, 2015 on "Club or Association Service" is the subject matter of the present dispute. Revenue was of the view that the appellant was not entitled to such cenvat credit in view of the exclusion clause in Rule 2 (l) (ii) (C) of the Cenvat Credit Rules. After conclusion of show cause proceedings, the Cenvat Credit was denied by the Original Authority and the same was sustained by the Commissioner (Appeals) vide the

impugned order. Aggrieved by the same, the present appeal has been filed.

2. With this background heard Ms. Rinki Arora, Ld. Advocate for the appellant. She submitted that the Cenvat Credit availed on the basis of ISD invoices, were in relation to Service Tax paid under the "Club and Association Service" but she pointed out that such membership fees was paid for membership of associations such as Confederation of Indian Industry, Cement Manufacturers Association, Rajasthan Chambers of Commerce and Industry, etc. Since the membership of such associations is required to further the business of the appellant, it cannot be said that such membership fees was paid for the personal benefit of any employee. Consequently, she submitted that the service will not be falling within the exclusion specified in Rule 2 (l) (ii) (C) of the Cenvat Credit Rules, 2004. She further pointed out that the Commissioner (Appeals) vide this order dated 16/02/2018 has allowed the Cenvat Credit for identical service for an earlier period. Finally she submitted that the impugned order may be set aside. She also relied on the case of ***Hinduja Foundries Ltd. V/s Commissioner Of Central Excise, Chennai-I 2016 (4) TMI 326-CESTAT Chennai.***

3. The Revenue was represented by Shri P.R. Gupta, Ld DR. He reiterated the findings of the Commissioner (Appeals) in para 9 of the Order and emphasized the fact that club membership fees is specially mentioned in the exclusion clause of the Cenvat Credit Rules. As such he submitted that the impugned order may be sustained.

4. The limited issue in the present dispute is whether the appellant is entitled to the Cenvat Credit to Service Tax paid on the membership fees paid to various associations. The lower Authorities have taken the view

that such credits will not be allowable in the light of the exclusion clause specified in the Cenvat Credit Rules. For ready reference the definition of inputs under Rule 2 (l) is reproduced below:-

Rule 2 (l) of Cenvat Credit Rules, 2004 "input service" means any service,-

(i) Used by a provider of taxable service for providing an output service; or

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

But excludes services

(A)…..

(B)…

(BA)…

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee."

5. The exclusion clause (C) has excluded certain types of services but these have been qualified with the wordings, "when such services are used primarily for personal use or consumption of any employee". The membership fees paid is for the membership of associations such as

Confederation of Indian Industry, Cement Manufacturers Associations, Rajasthan Chamber of Commerce and Industry etc. Keeping in view the fact that the appellant is engaged in the manufacture and sale of cement, it is reasonable to conclude that such services have been used for accomplishing their business activities. It cannot be said that such services are for the personal use of any employee. Consequently, there is no infirmity in the availment of the Cenvat Credit on the part of the appellant. Similar views have been expressed in the Order-in-Appeal dated 16/02/2018 as well as the Tribunal's decision in the case of ***Hinduja Foundries Ltd.*** (supra).

6. In view of above discussion, the impugned order is set aside and appeal allowed.

(Order dictated & pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

Rekha