CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

E/1482/2012-DB

(Arising out of Order-in-Original No. 02-2012 dated 27/02/2012 passed by Commissioner of Customs, Central Excise and Service Tax, Hyderabad)

PENNA CEMENT INDUSTRIES LTD Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax Respondent(s)
HYDERABAD-I

Appearance:
Mr. B. Venugopal, Adv the Appellant.
Mr Govindappa, A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.RAVINDRAN, MEMBER (JUDICIAL)
HON'BLE Mr. C. J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 19/02/2018
Date of Decision: 19/02/2018

Final Order No. A/ 30372 / 2018
[Order per: M.V.RAVINDRAN]

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This appeal is directed against order-in-original No. 2/2012(C.E)-commr dated 27.02.2012. The relevant facts that arise for consideration after filtering out unnecessary details are during the period January 2009 to December 2010 appellant availed CENVAT credit of the Central Excise duty paid on inputs like cement and steel and input services like site formation services, erection, commissioning and installation services and commercial and industrial construction services; availed CENVAT credit of service tax paid on GTA services for the period July 2008 to February 2010. Appellant filed requisite returns with the authorities during the period in question.

Based upon scrutiny of such monthly returns filed, jurisdictional authorities called for submission of complete data from the appellant which was complied to. After series of correspondence, show-cause notice dated 29.04.2011 was issued proposing to recover an amount of Rs. 5,86,10,899/- availed as CENVAT credit of the central excise duty paid on cement and steel; Rs 2,18,664/- of CENVAT credit availed on GTA services and Rs 4,06,92,087/- of CENVAT credit availed on input services. The show-cause notice was contested on merits stating that inputs like cement and TOR steel and structural steel was for the purpose of setting up of a new factory and all such inputs were received prior to 07.07.2009; service tax credit on GTA services were for inward transportation of the cement, TOR steel and structural steel and input services were for setting up of a new factory. The contentions raised by the appellant were not accepted by the adjudicating authority. He confirmed the demands raised with interest and also imposed penalties. Relying upon the decision of the Larger bench of the Tribunal in the case of Vandana Global [2010(253)ELT 440].

2. Learned counsel submits that the demands raised by the lower authorities needs to be set aside. It is his submission that as regards cement and steel, the CENVAT credit was availed during the period February 2009 to June 2009 and draws our attention to Annexure-A to the show-cause notice. He would submit that the law on this point is now settled as cement and steel being used for the construction activity of the factory premises, is covered by the decision of the Hon'ble High Court of Gujarat in the case of Mundra Ports and Special Economic Zone Ltd Vs CCE & Cus [2015(39)STR 726 (Guj)] and Thiru Arooran Sugars Vs CESTAT Chennai [2017-TIOL-1357-HC-Mad-CX]. He would submit that the CENVAT credit is mostly availed on TOR Steel and structural steel which are used for fabrication of supporting structures in the factory premises. It is his argument that in respect of GTA services and other input services, these services were received prior to 1.4.2011, hHence CENVAT credit needs to be

allowed as these were used for setting up of a new factory premises. He would rely upon the judgement of the Hon'ble High Court of Punjab and Haryana in the case of Bellsonica Auto Component India Pvt Ltd Vs CCE Delhi [2015(40)STR 41 (P&H)] wherein Hon'ble High Court upheld the judgement of the Tribunal as to an assessee is eligible to avail service tax paid on various input services and more specifically construction services.

3. Learned A.R. reiterates the findings of the lower authorities.

4. On a careful consideration of the submission made, we find that in the show-cause notice for the demand of CENVAT credit on inputs, the period is shown as February 2009 to June 2009 and the allegation is that the cement, TOR steel and structural steel cannot be considered as inputs as these were used for making foundation and structural support for the factory premises and the machinery which were put in place. We find that the issue is no more resintegra, as in the case of Mundra Ports and Special Economic Zone Ltd (supra), Hon'ble High Court of Gujarat had considered the situation of amendment to Rule 2k of the CENVAT Credit Rules 2004 which came into force from 07.07.2009 and held that such amendment does not indicate that it was clarificatory in nature. Coming to such a conclusion they held that the decision of the larger Bench in the case of Vandana Global Ltd is not a good law and explicitly overruled the same. The judgement of the Hon'ble High Court of Gujarat would indicate that prior to 07.07.2009, the CENVAT credit availed on cement and steel which are used in the form of construction of jetty is to be allowed as jetty is used for providing output service taxed. Applying the same ratio in the case in hand, we hold that the CENVAT credit availed on cement, TOR steel, structural steel during the period prior to 07.07.2009 is to be considered as eligible for CENVAT credit, as they were used for setting up of a factory. Further we find that Hon'ble High Court of Madras in the case of Thiru Arooran Sugars (supra) had an occasion to go into the eligibility to avail CENVAT credit on structural items used for structural support of machinery and held that such credit needs to

be allowed. Respectfully following the same we find that appellant has a case on merits of availing CENVAT credit on cement, TOR steel and structural steel. As regards the CENVAT credit on structural steel availed in March 2010 of an amount of Rs 52,09,556/- we find that there is no dispute as to the fact that appellant had filed monthly returns with the authorities indicating therein the receipt of the inputs and the credit availed by them. When it is also a fact that the entire demands raised on the appellant is on scrutiny of AR-1 returns. In our view, appellant has made out a case for setting aside the demand of Rs 52,09,536 on the ground of limitation.

5. As regards the services like GTA services and other services we find that these services were used by the appellant in relation to setting up of a factory. Prior to 01.04.2011 rule 2(l) of CENVAT Credit Rules 2004 had provision to allow CENVAT credit of services which are input services for setting up of a new factory. The following decisions held that CENVAT credit needs to be allowed in respect of input services used for setting up of a factory.

1. Maruti Suzuki India Ltd Vs CCE Delhi-III (2017(47)STR 273 (Tri-Chen)
2. Bellsonica Auto component India Pvt Ltd Vs CCE Delhi-III(2016(46)STR 377(Tri-Del)
3. Liugong India Pvt Ltd Vs CCE & ST, Indore (2015(38)STR 96 (Tri-Del)
4. Suzuki Motorcycle (I) Pvt Ltd Vs CCE Delhi-III, Gurgaon [2012(25)STR 403 (Tri-Del)]
5. Honda Motorcycle & Scooter (I) Pvt Ltd Vs CCE, Delhi-III[2016(45)STR 397(Tri-Che)]
6. Steril Gene Life Sciences Pvt Ltd Vs CCE Puducherry [2016(42)STR 355(Tri-Che)]
7. CCE Vadodara Vs Videocon Industries Ltd [2009(14)STR 692 (Tri-Ahmd)]

As already cited hereinabove, the decision of the Tribunal in the case of Bellsonica Auto Component India Pvt Ltd has already been upheld by the Hon'ble High Court of Punjab and Haryana. Since there is no dispute as to the fact that the GTA services, site formation services, erection, commissioning and installation services and commercial and industrial construction services were utilised for setting up of a new cement factory of the appellant, we find that CENVAT credit cannot be denied to them of the service tax paid on such input services.

6. Accordingly we hold that the impugned order is unsustainable on merits and as well as on limitation and liable to be set aside, we set aside the impugned order and allow the appeal.

(Order pronounced and dictated in open court)

C. J. Mathews
MEMBER (TECHNICAL)

M.V.RAVINDRAN
MEMBER (JUDICIAL)

Neela Reddy