CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – DB
Court – I

Appeal No. E/1027/2012

(Arising out of Order-in-Original No. 22 & 23 / 2011dated 21.12.2011, passed by Commissioner of Central Excise - Tirupati)

C.C.E. - Tirupati **....Appellant(s)**

Vs.

Bharathi Cement Corporation Pvt. Ltd., **.....Respondent(s)**

Appearance
Sh. R. Srinivasu, (Asst. Commissioner) for the Appellant.
Sh.Y. Srinivasa Reddy, Advocate for the Respondent.

Coram:
Hon'ble Mr. M. V. RAVINDRAN., MEMBER (JUDICIAL)
Hon'ble Mr. C J MATHEW, MEMBER (TECHNICAL)

Date of hearing: 20/02/2018
Date of decision: 20/02/2018

FINAL ORDER No. A/30532/2018

This appeal is filed by the revenue against Order-in-Original No. 22 & 23/2011 (C.EX.)

2. Heard both sides and perused the records.

3. On perusal of records it transpires that the issue is regarding availment of Cenvat Credit of service tax paid on input services used for setting up of factory during the period March 2010 to December 2010.

Show Cause Notice was issued for the demand of such Cenvat Credit. The Adjudicating Authority after following due process of law and considering the definition of input services during the relevant period dropped proceedings initiated by the Show Cause Notices.

4. Ld. Departmental representative after taking the bench through the records submits that the respondent has received the services under category of Commercial or industrial construction services, supply of man power services, erection or commissioning service maintenance or repair services and consultant Engineer services which were for creation of various civil facilities for manufacture of fabrication of capital goods installed within the factory premises and these capital goods being embeded to earth are immovable properties hence not liable to Central Excise Duty, consequently service tax also gets exempted. It is his submission that the impugned order be set aside and the demands raised being confirmed.

5. Ld. Counsel appearing for the respondent submits that similar issue of the respondent was contested by the revenue for the period September 2008 to June 2009 and the bench by final order No. A/30999-31000/2017 dated 20.06.2017 rejected the appeals of the revenue. He produces a copy of the same.

6. On careful consideration of the submissions made by both sides, we find that the issue is regarding eligibility to avail Cenvat Credit of the service tax paid by various service providers during the relevant period in question. We find that there is no dispute as to the fact that the service

providers have rendered the service which ultimately led to setting up of factory wherein excisable goods are manufactured.

7. We notice that same issue was contested before the bench by revenue for the earlier period, and the bench by final order No. A/30999-31000/2017 dated 20.06.2017 held in favour of respondent. The ratio of the final order dated 20.06.2017 is reproduced.

> *"5.6 As regards the services, we find that the said input services were received by the respondent during the period September 2008 to June 2009. During the relevant period, Rule 2(1) of the CENVAT Credit Rules, 2004 (before its amendment on 01/04/2011) specifically allows the CENVAT credit of the service tax paid on the input services which are used for setting up / renovation / modernisation of factory premises by a manufacturer. Identical issue came up before the Tribunal in the case of Liugong Indian Pvt. Ltd. (supra) and the Bench after considering the provisions of Rule 2(1) of the CENVAT Credit Rules, 2004 held as under:*
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> *5. We have considered the submissions from both the sides and perused the records. There is no dispute that the services, in question, in respect of which the Cenvat Credit has been taken are the services relating to setting up of the factory and have been used for this purpose only. During the period of dispute the definition of 'input service' as given in Rule 2(1) of Cenvat Credit Rules, 2004 was as under:-*
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> *"input service" means any service:-*
>
> *(i) Used by a provider of taxable service for providing an output service, or*
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> *(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 factory, premises of provider of output service or an office relating to such factory or premises, advertisement 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"*
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> *it is only with effect from 01.04.2011 by amendment to the Rule 2(1) that words 'setting up' were omitted. The period of dispute in this case is from 2008-2009 to 2009-2010 i.e. the period rior to 01.04.2011 when the definition of "input service" specifically*

> *included the services used in relation to setting up of the factory or premises of the provider of output service. Thus the services, in question, used for setting up of factory have to be treated as input service and would be eligible for Cenvat Credit, as the factory has been setup for manufacture of final products which are liable to Centra; Excise Duty. Therefore denial of Cenvat Credit, in question, is contrary to the provisions of Rule 2(1) of Cenvat Credit Rules, 2004. We find that the same view has been taken by the Tribunal in the case of Bellsonica Auto Component India Pvt. Ltd. (supra) and also in the case of Madhusudan Auto Ltd. (supra). And also in the case of Madhusudan Auto Ltd. (supra). The impugned order, therefore, is not sustainable. The same is set aside. The appeal is allowed.*
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> *5.7 In view of the foregoing and the authoritative judicial pronouncements of the issue, we hold that the impugned order as contested by the Revenue before in their appeal is correct and legal and does not suffer from any infirmity. The impugned order is upheld and the appeal is rejected."*

7. In view of the foregoing we hold that the impugned order is correct and legal and does not suffer from any infirmity. Accordingly, the impugned order is upheld and the appeal is rejected.

(Operative part of this order was pronounced in court
on conclusion of hearing)

C J MATHEW
MEMBER (TECHNICAL)

Swapna….