CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Central Excise Appeal No. 34 of 2009
(Arising out of Order-in-Appeal No.8/2008-C.E(Commr) dt.15.10.2008 passed by Commissioner of Central Excise (Appeals) Guntur)

Madras Cements Ltd
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna Distt,
A.P.
......Appellant

VERSUS

Commissioner of Central Excise,
Guntur Commissionerate,
Revenue Building,
Kannavarithota,
Guntur
......Respondent

WITH

Central Excise Appeal No. 35 of 2009
(Arising out of Order-in-Appeal No.08/2008-C.E(Commr) dt. 15.10.2008 passed by Commissioner of Central Excise (Appeals) Guntur)

Madras Cements Ltd
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna Distt,
A.P.
......Appellant

VERSUS

Commissioner of Central Excise,
Guntur Commissionerate,
Revenue Building,
Kannavarithota,
Guntur
......Respondent

WITH

Central Excise Appeal No. 937 of 2009
(Arising out of Order-in-Appeal No.21/2009-C.E(Commr) dt.22.07.2009 passed by Commissioner of Central Excise (Appeals) Guntur)

Madras Cements Ltd
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna Distt,
A.P.
......Appellant

VERSUS

Commissioner of Central Excise,
Guntur Commissionerate,

Revenue Building,
Kannavarithota,
Guntur

......Respondent

AND

Central Excise Appeal No. 941 of 2009
(Arising out of Order-in-Appeal No.21/2009-C.E(Commr) dt.22.07.2009 passed by Commissioner of Central Excise (Appeals) Guntur)

Madras Cements Ltd
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna Distt,
A.P.

......Appellant

VERSUS

Commissioner of Central Excise,
Guntur Commissionerate,
Revenue Building,
Kannavarithota,
Guntur

......Respondent

Appearance
Mr. S. Parthasarathy, Consultant for the appellant.
Mr B. Guna Ranjan, Authorized Representative for the respondent.

Coram:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 30584-30587/2020

Date of Hearing: 18.02.2020
Date of Decision: 18.02.2020

[Order per: S.K. MOHANTY]

These appeals are directed against impugned orders dated 15.10.2008 and 22.07.2009 passed by learned Commissioner of Customs, Central Excise and Service Tax, Guntur.

2. Briefly stated, the facts of the case are that the appellant herein M/s Madras Cements Ltd is engaged *interalia,* in the manufacture of cement falling under Tariff Item Nos 2523 2910/30/40 of the schedule to the Central Excise Act, 1985. In order to expand the production facilities, the appellant had constructed clinkerisation and thermal power plant in September 2006 within the factory premises. For installation/construction of those plant

facilities, the appellant had procured various capital items and availed CENVAT credit of central excise duty paid on those goods by considering the same as inputs. The credit availed by the appellant was disputed by the department on the ground that the plant erected at site are embedded to the earth and as such, such plant facilities cannot be considered as excisable goods for the purpose of availment of CENVAT credit on such disputed items. Further, the department also alleged that the appellant should be eligible to avail 50% of CENVAT credit in respect of capital goods during the year of receipt and the balance credit in the subsequent financial years. Since the appellant had availed 100% CENVAT credit on the capital goods in the financial year of receipt, the department also initiated show-cause proceedings for recovery of such irregularly availed CENVAT credit from the appellant. The show-cause notices issued by the department were adjudicated vide the impugned orders, wherein proposals made therein including imposition of penalties were confirmed. Feeling aggrieved with the impugned orders, the appellants have filed these appeals before the Tribunal.

3. The learned consultant appearing for the appellant submits that the case of the appellant is covered under the definition of 'input' contained in Rule 2(k) of the CENVAT Credit Rules 2004. He also submits that under the un-amended definition of inputs (effective up to 07.07.2009), the appellant should be eligible for availment of credit on the disputed goods, by considering the same as inputs. In this context, he has referred to the explananiton-2 appended to the definition of 'input' to state that the clinkerisation plant and power plant installed in the factory are to be considered as capital goods and since, the disputed goods were used for installation of the said capital goods, the benefit of input credit should be available on the disputed goods used/utilised for such intended purpose. With regard to availment of 50% of CENVAT credit on the capital goods in the financial year of their receipt, he submits that the appellant had never availed the disputed credit under the Head 'capital goods' and the entire credit has been availed under the Head 'inputs'. He has relied upon the judgement of Hon'ble Madras High Court in the case of Thiru Arooran Sugars Vs CCE [2017-TIOL-1357-HC-MAD-CX) and the final order dated 28.02.2019 passed by the Chennai Bench of CESTAT in the appellant's own appeal bearing No. 40400/2019 dated 28.02.2019, to state that denial of

CENVAT credit on the disputed goods cannot be sustained for judicial scrutiny.

4. On the other hand, the learned A.R. appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. We have examined the case records including various statements submitted by the appellant, which are annexed to the appeal memorandum. We find that on receipt of the disputed goods, the appellant had availed CENVAT credit under the head 'inputs'. Those goods received in the factory were subsequently used for assembly/manufacture of capital goods, installed within the factory of manufacture of final products. The period under dispute involved in this case is from September 2006 to December 2008. The relevant definition of "input" for consideration of the present dispute as contained in Rule 2(k) *ibid* at the relevant point of time is extracted herein below.

> "(k) "input" means-
>
> (i) all goods except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final products, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purposes within the factory of production;
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> (ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;
>
> **Explanation 1**- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever,
>
> **Explanation 2**- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer; "

7. On scrutiny of the said definition, it transpires that all goods excepting the excluded items/goods itemised therein, were considered as inputs for the purpose of availment of CENVAT credit. Further, the explanation appended to the said definition clearly specifies that the goods used for manufacture of capital goods, which are further used in the factory

of the manufacturer should also be considered as inputs. The documents/records submitted by the appellant clearly demonstrate that the goods in question were used for erection/manufacture of various capital goods namely clinkerisation plant, power plant etc., installed within the factory of manufacture of cement. Thus, we are of the considered opinion that as per the definition of inputs contained in Rule 2(k) ibid, the appellant should be eligible for the CENVAT benefit on the disputed goods used for manufacture of capital goods.

8. With regard to availment of CENVAT credit on the disputed goods, the issue is no more *res integra* in view of judgement relied upon by the learned consultant for the appellant. The Hon'ble Madras High Court in the case of Thiru Arooran Sugars Ltd (supra) have held that various structural items used to erect foundations should fall under the scope and ambit of the definition of 'input' (effective up to 07.07.2009) for availing CENVAT benefit. The relevant paragraphs in the said judgement are extracted herein below:

> "31. A close reading of the definition of 'input' in Rule 2k(i) would show that it includes all goods (except light diesel oil, high speed diesel oil and motor spirit, which are commonly known as petrol), which are used in or "in relation to manufacture of final products", (whether directly or indirectly, whether contained in the final product or not), albeit, within the factory of production. Explanation 2 only states that 'input' includes goods used in the manufacture of capital goods, which are further used in the factory of the manufacturer.
>
> 31.1. A close reading of the main provision with Explanation 2 would show that 'inputs' are not only goods, which are used in the manufacture of final products, but also those which are "used in" or in relation to the manufacture of the final products, and this relationship could be either direct or indirect without being weighed down by the fact that they are not included in the final product. Their inclusion or exclusion from the final product, evidently, is not material, as long as the said exercise takes place within factory precincts, used for the purposes of production.
>
> 31.2. The scope of the word 'input' has been further clarified in Explanation 2 to include goods, which are used in the manufacture of capital goods, which, in turn, are used in the factory of the manufacturer.
>
> 31.3. In other words, any goods, which have any relationship with the manufacture of final products, whether directly or indirectly, irrespective of whether they are contained or not contained in the final product would be an 'input'.
>
> 31.4. Therefore, plant and machinery, which, even according to the Revenue, are capital goods, within the meaning of Rule 2(a)(A) of the 2004 Rules, as they fall in the Chapters referred to in sub-clause (i) of the very same Rule, would, in our view, take within its sway 'inputs', which come within the ambit and scope of Rule 2(k) read with

Explanation 2; the only limiting condition being that these inputs should be used within the factory of the manufacturer.

31.5. Therefore, according to us, structurals, cement, as also, iron and steel, which are used to erect foundations, would come within the definition of 'input' as they form part of the capital goods, which, in turn, are used in the manufacture of final product. The manner in which the Revenue seeks to read the provisions of Explanation 2 is flawed for the reason that the said Explanation cannot restrict the scope and ambit of the main provision, i.e., Rule 2k(i). Explanation 2 cannot be read in a manner that it constricts, the scope and ambit of the main provision, i.e., Rule 2k(i).

31.. To our minds, if, there was any ambiguity, the same stands clarified with the issuance of the 2009 Notification. As correctly argued on behalf of the TAS and DCBL, the Notification does not indicate that it is either declaratory or retrospective."

9. We also find that in appellant's own case, this Tribunal vide final order dated 28.02.2019 has also extended the CENVAT benefit on the disputed goods, by considering the same as inputs. The relevant paragraphs in the said decision are also extracted herein below:

"6.2 Although it is alleged in the Show Cause Notice that the goods did not fall within the definition of 'inputs', the reason for which the Credit has been disallowed is that after assembly and installation of such items, they become immovable property and therefore, are not 11 eligible for Credit. From the Show Cause Notice as well as the impugned Order, it is seen that various items were used for setting up of the cement plant. Many of these items are components or small parts which go into assembly, installation or commissioning of machines and equipment. As per Explanation-2 of the definition of inputs, as it stood during the relevant period, 'input' includes the goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. Thus, all those items which are brought into the factory and used for the manufacture of capital goods, which are further used for the manufacturing activity, would be eligible for Credit.

6.3 The Department does not have a case that the items are not used as part of the cement plant. Instead, the Credit has been disallowed observing that these items take the nature of immovable property after being fixed to earth. The Department has placed reliance on the Larger Bench decision in the case of M/s. Vandana Global Ltd. (supra) to reach such conclusion, wherein it was held that after assembly/installation/erection, the machinery and components would result in the emergence of immovable property, which is non-excisable goods. This view was considered to be no longer good law in the decision of Mundra Ports & Special Economic Zone Ltd. 12 (supra) as well as the decision of the Hon'ble High Court of Chhattisgarh in the case of M/s. Vandana Global Ltd. Vs. Commissioner of C.Ex. & Cus., Raipur – 2018 (16) G.S.T.L. 462 (Chhattisgarh). The Hon'ble jurisdictional High Court in the case of India Cements (supra) and Thiru Arooran Sugars (supra) has analysed the eligibility of Credit on the basis of user test laid down by the Hon'ble Supreme Court in the case of Commr. of C.Ex., Jaipur Vs. Rajasthan Spinning & Weaving Mills Ltd.

> – 2010 (255) E.L.T. 481 (S.C.). These cases assist the arguments of the appellant.
>
> 6.4 Thus, following the decisions stated above as well as appreciating the facts presented by the records, we are of the considered opinion that the disallowance of Credit on the impugned items under the category of 'inputs' is unjustified and requires to be set aside, which we hereby do."

10. In view of the foregoing discussions, and the well settled principle of law decided by the judicial forums, we are of the firm view that denial of CENVAT benefit on the disputed goods should not stand for judicial scrutiny, as against rules framed in the CENVAT Statute. Accordingly, by setting aside the impugned orders, we allow the appeals in favour of the appellants with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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