CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench - Court No. – I

Excise Appeal No. 322 of 2012
(Arising out of Order-in-Original No. 14/2011 (C.Ex) dated 03/11/2011 passed by the Commissioner of Customs, Central Excise & Service Tax, Tirupati)

Bharathi Cement Corporation Pvt Ltd., .. APPELLANT
No.8-2-696, Carmel Point,
Road No. 12, Banjara Hills,
Hyderabad-500034

VERSUS

Commissioner of Central Tax, .. RESPONDENT
Tirupati – GST
No. 9/86, West Church Complex,
Amaravathi Nagar, MR Palli Road,
Thirupathi, Chittor,
Andhra Pradesh – 517 502.

Appearance
Shri Y. Srinivasa Reddy, Advocate for the Appellant.
Shri Mir Anwar Mohiuddin, Authorised Representative for the Respondent.

Coram: **Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30092/2022

Date of Hearing:06.09.2022
Date of Decision:15.09.2022

[ORDER PER: ANIL CHOUDHARY]

1. The appeal is filed against demand of reversal of cenvat credit availed by the appellant on inputs and input services during the period from July 2009 to February 2010, as detailed below, under Rule 14 of CCR read with Section 11A of the Central Excise Act, 1944 and imposition of penalty equal to the duty demanded under Rule 15 of the Cenvat Credit Rules vide show cause notice dt.30.7.2010.

Sl. No	Demand against	Amount (Rs)
1	Credit availed on input services	2,43,24,231
2	Credit availed on Dumpers	6,42,720
3	Credit availed on welding electrodes, welding machines and MS Rolla Deck profile sheet, as capital goods	17,770
	TOTAL	2,49,75,078

2. The demand was made vide the impugned order on the following grounds:

(a) Availment of input tax credit on input services such as erection and commissioning etc., used at the time of construction of factory is incorrect, since they were used for manufacture of capital goods which had become immovable after manufacture, and also as such, exempted from duty vide Notification No.67/95-CE dt.16.3.1995.

(b) Cenvat credit is not allowed on dumpers used for transportation of ore from captive mines to the plant, as they fall under Chapter 87 and thus, excluded from the definition of the term 'capital goods' under Rule 2(a)(A) of CCR.

(c) The welding electrodes and MS Rolla Deck Sheet used for fabrication-erection and for repairs of machinery have individual classification and cannot be treated as components, spares and accessories of any capital goods and hence, not eligible for credit as capital goods and also not even as inputs.

3. Learned Counsel submits that the issue of availment of input services used for fabrication, erection, commissioning and other services at the time of setting up of factory is no more res integra for the period prior to 1.4.2011. The learned respondent authority herself dropped similar demands in identical cases for the periods prior to and thereafter also, the period in the subject appeal and appeals filed by the Revenue against such demands were rejected by this Hon'ble Tribunal. Details of the same are given below and copies of orders are filed herewith:

Sl. No	Appeal No	Period	Tribunal Final Order No & Date
1	E/23436/2014	September 2008 to June 2009	A/310999-31000/2017 dt.20.6.2017
3	E/1027/2012	March 2010 to December 2010	A/30532/2018 dt.20.02.2018

3.1. Thus, the issue of availment of credit on input services availed at the time of setting up of factory is no more res integra. Few other decisions in this regard relied upon are:

(a) Liugong India Pvt Ltd vs. CCE & ST 2015 (38) STR 96 (Tri-Del)

(b) Orient Cement Ltd vs. CCE, Hyderabad 2017 (51) S.T.R. 459 (Tri. - Hyd.)

(c) Maruti Suzuki India Ltd vs. CCE, Delhi 2017 (47) S.T.R. 273 (Tri. - Chan.)

4. Denial of Cenvat Credit on dumpers on the ground that they fall under Chapter 87 and not specified under Rule 2(a)(A)(i) of CCR, 2004. The appellant submits that as per the settled legal position, credit is allowed on dumpers as inputs even if they are not capital goods, as they have close nexus with the manufacturing activity of the appellants as these are part of 'material handling system'. Few decisions relied in this regard are as follows:

(a) Aditya Cement Vs CCE, Jaipur-I[2017(346) ELT 300 (Tri-Del) (para 6)

(b) Jindal Steel and Power Ltd. Vs. CCE, Raipur – 2015 (11) TMI 453 (CESTAT-Delhi)(para 8)

(c) Malabar Cements Ltd Vs CCE, Cochin [2002(149) ELT 751(Tri-Bang)

(d) Hitachi Life & Solution India Ltd Vs CST, Ahmedabad [2015(325) ELT 148(Tri-Ahmd)]

(e) Aditya Cement Vs Union of India [2008(221) ELT 362(Raj)

4.1. The Tribunal and High Court in the above cases Law held that the dumpers are to be treated as inputs used in or in relation to manufacture of goods applying the 'user test', following the ratio laid down by Hon'ble Supreme Court in the following cases:

(a) CCE, Jaipur Vs. Rajasthan Spinning & Weaving Mills Ltd. - 2010 (255) ELT 481 (SC)

(b) Jawahar Mills Ltd. - 2001 (132) ELT 3 (SC)

4.2. If the credit is not allowed, treating the goods as capital goods, same shall be extended as inputs as held in the following cases:

(a) Penna Cements Industries Ltd Vs CCE, Guntur [2017(2) TMI 611-Cestat Hyderabad] (para 4)

(b) CCE, Meerut-I vs. Modi Rubber Ltd 2000 (119) E.L.T. 197 (Trib-LB)

(c) Vishwanath Sugars Ltd vs. CCE, Belgaum 2009 (236) E.L.T. 289 (Tri. - Bang.) as upheld by Hon'ble High Court

5. Denial of credit on welding electrodes, welding machines and MS Rolla Deck Profile sheets is not correct.

5.1. Welding material used for fabrication and repairs and maintenance of the plant and machinery is essential for smooth manufacturing operations, without which manufacturing activity is not feasible, therefore, the cenvat credit is clearly admissible as held in the following cases:

(a) Nayara Energy Limited Vs CCE, Rajkot [2021(8) TMI 644-Cestat Ahmedabad]

(b) Jai Balaji Industries Limited Vs CCGST, Bolpur Commissionerate[2021(6) TMI 1106-Cestat Kolkata]

(c) CCE, Meerut Vs Bajaj Hindustan Ltd [2013 (11) TMI 943-Cestat New Delhi]

6. Even assuming that credit is not allowed on the welding material and another input, imposition of penalty equal to the duty, in a show cause notice issued within the normal period of limitation is not correct, that too in a case involving difference in interpretation of legal provisions. The appellant relies upon the following decisions in this regard:

(a) Deccan Cements Ltd and others [2019 (7) TMI 764 – Cestat Hyderabad] (para 21)

(b) ITC Ltd Vs CCE, Hyderabad [2019(3) TMI 790-Cestat Hyderabad] (para 11)

7. In view of the above, it is prayed that the appeal of the appellant may be allowed.

8. Learned Authorised Representative for Revenue opposing the appeal relies on the impugned order.

9. Having considered the rival contentions we find that so far the first issue is concerned regarding the availment of input services for setting up of the factory we find that this issue is already settled in favour of the appellant

vide Final Order No. A/30999-31000/2017 dated 20 June 2017, in appellant's own case by a co-ordinate bench of this Tribunal.

10. So far the cenvat credit on dumpers is concerned, we find that these are part of the material handling system, as such dumpers are used by the appellant for transfering the raw material (limestone) from the pit head to the crusher. We further find that the issue stands covered in favour of the appellant by Precedent order of this Tribunal in Aditya Cement Vs CCE, Jaipur [2017(346) ELT 300(Tri-Del)].

11. So far the third issue is concerned regarding availment of cenvat credit on welding electrodes, welding machine and MS rolla dalk profile sheet as capital goods, we find that cenvat credit on these items is allowable as inputs under Rule 2(k) as without the use of welding electrodes and welding machine no fabrication and repair and maintenance of plant and machinery is possible. In absence of such inputs, production of dutiable output is not possible. Thus, there is indirect use of these items in the manufacture of dutiable output. Similarly, the profile sheets are also required for use in fabrication of plant and machinery, for setting up of the factory. Thus we hold, credit is available.

12. Accordingly, in view of our afore mentioned findings and observations, we allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits in accordance with law. Appeal allowed.

(Order pronounced on 15.09.2022 in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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