CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 25234 of 2013
(Arising out of **Order-in-Original** No.101/2012-C.Ex dated 16.10.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Madras Cements Ltd., .. **APPELLANT**
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna District,
Andhra Pradesh – 521 457.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

WITH
Excise Appeal No. 30006 of 2017
(Arising out of **Order-in-Original** No.GUN-EXCUS-000-COM-11-16-17 dated 08.09.2016 passed by Commissioner of Central Excise & Service Tax, Guntur)

The Ramco Cements Ltd., .. **APPELLANT**
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna District,
Andhra Pradesh – 521 457.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

AND
Excise Appeal No. 30850 of 2018
(Arising out of **Order-in-Appeal** No.GUN-EXCUS-000-APP-226-17-18 dated 12.03.2018 passed by Commissioner of Central Tax (Audit), Visakhapatnam)

The Ramco Cements Ltd., .. **APPELLANT**
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna District,
Andhra Pradesh – 521 457.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:
Shri R. Parthasarathy, Advocate for the Appellant.
Shri M Anukathir Surya & V R Pavan Kumar, Authorised Representatives for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30194-30196/2024

Date of Hearing:26.02.2024
Date of Decision:26.02.2024

[ORDER PER: BENCH]

Heard the parties.

2. Issue involved in these appeals is whether the appellant is entitled to Cenvat Credit for the service tax paid on GTA service, for which tax was discharged under Reverse Charge Mechanism (RCM) under the fact that the goods were sold on FOR destination basis and GTA service was availed for transport of cement bags from the depo of the appellant to the place of dealer/ultimate consumers. The said issue have been considered by the Larger Bench of this Tribunal at Chennai in Central Excise appeal No. 40575/ 2018 and the Larger Bench vide Interim Order No. 40020/2023 have held that in view of the ruling of the Apex Court in EMCO Industries and Roofit Industries as well as the ruling of the Karnataka High Court in Bharat Frits Werner read with Circular No. dated 08.06.2018 the Cenvat Credit under the facts and circumstances is available, subject to what is the place of removal, to the assessee.

3. We find that under similar circumstances that Division Bench of this Tribunal in the matter of this very Appellant vide Final Order No. 30018 – 30019/2024 dated 09.01.2024 have held as follows: –

> 5. Heard the parties. Learned Counsel for the appellant submits that the impugned order was passed in July 2012 and March 2013. Subsequently, the law have been examined on this issue by the Hon'ble Supreme Court & High Courts in the following subsequent judgments:
>
> i) Ultra Tech Cements Ltd., [2018 (9) GSTL 337 (SC)]
>
> ii) Ispat Industries Ltd., [2013 (15) ELT 670 (SC)]
>
> iii) CCE, Mumbai-III Vs Emco Ltd., [2015 (322) ELT 394 (SC)]
>
> iv) CBIC Circular No. 1065/4/2018-CX dated 08.06.2018
>
> v) Mangalam Cements Ltd., Vs Commissioner [2020 (32) GSTL J 156 (SC)]
>
> vi) Bharat Fritz Ltd., Vs CCT, Bangalore [2022 (66) GSTL 434 (Kar)]
>
> 6. It is further pointed out that similar issue was referred to Larger Bench in the case of The Ramco Cements Ltd., at Chennai Bench and vide Interim Order No. 40020/2023 dated 21.12.2023 the Larger Bench have opined:

"35. In the result, in a case where clearances of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgments of the Supreme Court in Emco and Roofit Industries, the decision of the Karnataka High Court in Bharat Fritz Werner, and the Circular dated 08.06.2018 of the Board, to determine the admissibility of CENVAT credit on the GTA Service upto the place of removal.

36. The reference is answered, accordingly. The appeal shall now be listed before the Division Bench for hearing."

7. In view of the aforementioned subsequent development of law and clarification on the issue by the Apex Court, we allow these appeals by way of remand. We remand the matter to the Original Adjudicating Authority who shall hear the appellant and after perusing the evidence laid and the case laws referred, shall pass a reasoned Order after giving adequate opportunity for hearing to the appellant. The appellant is also directed to appear before the Adjudicating Authority with a copy of this Order within a period of 60 days and seek opportunity of hearing. All issues are kept open.

8. Appeals allowed by way of remand.

4. Accordingly, following our precedent Order, we allow these appeals also by way of remand to the original Adjudicating Authority who shall hear the Appellant and after perusing the evidence placed before him and the case laws referred, shall pass a reasoned order after giving adequate opportunity of hearing to the Appellant. The Appellant is also directed to appear before the Adjudicating Authority with a copy of this Order within a period of 60 days and seek opportunity of hearing. All issues are kept open.

5. Appeal allowed by way of remand.

(Order dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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