CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 26689 of 2013

(Arising out of **Order-in-Original** No.02/2013 (C.E.)-Commr dated 04.03.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

The India Cements Ltd., .. **APPELLANT**
Malkapur (Village),
Tandur (Mandal)
Ranga Reddy District,
Telangana – 501 157.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
& Central Excise
Hyderabad – I
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Ch. Sumanth, Advocate for the Appellant.
Shri V R Pavan Kumar, Authorised Representative for the Respondent.

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

FINAL ORDER No. A/30079/2023

Date of Hearing:24.04.2023
Date of Decision:24.04.2023

[ORDER PER: BENCH]

The Appellant is a manufacture of cement and clinker falling under Chapter Heading 2523 29 10, 2523 29 30 and 2523 10 00. During the period April 2007 to January 2012 they have undertaken expansion activity in their factory premises. In the case of such expansion, they have constructed many buildings and undertaken several civil constructions within the factory premises. They have taken the input credit on the Service Tax paid by them for various input services utilised by them during this period. Show Cause Notice was issued on 02.04.2012 for the period April 2007 to March 2011 for an amount of Rs. 2,71,40,130/-. For the period April 2011 to January 2012 demand was issued for Rs. 73,256/-. The Department alleged that the input services utilised has resulted in the factory premises coming up in existence which are basically immovable properties in nature. Therefore, the Department took the view that the Appellant is not eligible to take the CENVAT Credit. After due process the demands were confirmed. Aggrieved by the same, the Appellant is before us.

2. The Learned Counsel appearing on behalf of the Appellant submits that the issued no more *res integra*. He submits that in the case of first Show Cause Notice the period covered is prior to amendment of Rule 2(l) of the Cenvat Credit Rules, 2004. Before amendment came into effect, they are eligible to take the CENVAT Credit on the input services used in relation to 'setting up, modernisation, renovation or repairs of the factory'. The expansion taken up by them also is part of the 'setting up' of the facility within the same factory premises. He relies on the case law of Bharati Cement Corporation Pvt Ltd., Vs CCE, Cus & ST [2017 (7) TMI 679 - CESTAT HYD], Bharati Cement Corporation Pvt Ltd., Vs CCT, Tirupati – GST [2022 (9) TMI 845 CESTAT-HYD] and Orient Cement Ltd., Vs CCE & ST, Hyderabad-I [2017 (1) TMI 1124 - CESTAT HYD]. He submits that in all these cases, the issues were identical and this Tribunal has taken the view that for the input services availed before 01.04.2011, they are squarely covered by the definition of input services under Rule 2(l) of CCR, 2004 and hence the Appeals were allowed. While allowing these appeals the Tribunal has also taken note of the case law of Liugong Indian Pvt Ltd., Vs CCE and ST, Indore [2015 (38) STR 96 (TRI-DEL)] where it is held that Cenvat Credit can be availed when an immovable property comes into existence by the service in question.

3. In respect of the CENVAT Credit of Rs. 73,256/- taken by them during the period April 2011 to January 2012 he submits that since the credits have been after 01.04.2011 subsequent to Amendment, they are not contesting this demand on merits.

4. Learned AR reiterates the findings of the Adjudicating Authority and submits that since immovable property has come into existence, the Appellant is not entitled to take the CENVAT Credit and hence the Adjudicating Authority has correctly confirmed the demands.

5. Heard both sides and perused the documents.

6. We find that the issue is no more *res integra* and the very same issue has been gone into by this Tribunal in the case of Bharati Cement Corporation Pvt Ltd., [2017 (7) TMI 679 - CESTAT HYD] where in it is held that the Appellant is eligible to take the CENVAT Credit. Following this decision, subsequently the Tribunal Hyderabad in the case of Bharati Cement

Corporation Pvt Ltd., [2022 (9) TMI 850 - CESTAT HYD] has allowed their Appeals holding that they are eligible to take the CENVAT Credit. On a specific query from the Bench as to whether this 'expansion of capacity' can be equated with 'setting up' of the unit, the Learned Counsel submits that within the same factory premises, they have constructed new premises for various facilities which should be treated as 'setting up'. Further he placed reliance on Orient Cement Ltd., Vs CCE & ST, Hyderabad-I [2017 (1) TMI 1124 - CESTAT HYD] wherein the issue as to whether 'expansion' can be taken as 'setting up' was gone into and this Tribunal has held that the Appellant is eligible for CENVAT Credit.

7. Finding that the present issue is squarely covered by the cited case laws, respectfully following them we allow the present Appeal of the Appellant in respect of the confirmed demand of Rs. 2,71,40,130/-.

8. In respect of the second confirmed demand of Rs. 73,256/- the same is dismissed. Appellant is required to pay the same along with interest. However, considering the factual matrix of the case and interpretation involved, the penalty imposed is set aside.

9. The appeal is disposed as above.

(Order dictated and pronounced in open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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