CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 26436 of 2013
(Arising out of **Order-in-Original** No.04/2013 – C-Ex dated 15.01.2013 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 Excise & Service Tax Guntur .. **RESPONDENT**
P.B.No. 331, C.R. Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:
Shri R. Parthasarathy, Consultant for the Appellant.
Shri V. Srikanth Rao, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30504/2026

Date of Hearing: 24.08.2026
Date of Decision: 10.09.2026

[ORDER PER: ANGAD PRASAD]

The present appeal is directed against the impugned Order-in-Original dated 15.01.2013 passed by the Commissioner of Central Excise, Guntur whereby, Cenvat Credit amounting to Rs. 52,44,388/-, availed on clearing and forwarding services during the period from March, 2008 to March, 2011, has been disallowed along with applicability interest. An equivalent penalty has also been imposed under Rule 15(2) of the Cenvat Credit Rules, 2004.

2. The fact, in brief, is that the appellant is engaged in the manufacture of cement falling under chapter 25 of the Central Excise Tariff Act, 1985.

Cement manufactured by the appellant was cleared from factory and also stock-transferred to its depot/warehouses situated in different states. Such depots were managed by clearing and forwarding agents, who undertook, inter alia, receipt of cement from railway stockyards / transporter's godowns, unloading, storage, handling, loading into transport vehicles and, in certain cases, unloading at the customer's premises.

3. The appellant availed Cenvat Credit of the Service Tax paid on the services rendered by such C&F agents. The Department took the view that these services were rendered beyond the factory or depot, which constituted the "place of removal", and where therefore not covered by the definition of "input service" under Rule 2 (l) of the Cenvat Credit Rules, 2004.

4. Learned Consultant for the appellant submits that the cement was sold on FOR-destination basis and that the responsibility of the appellant continued until the cement was delivered at the customer's premises. Therefore, according to the appellant, the customer's premises constituted the place of removal. It is further submitted that the C&F services were integrally connected with the storage, marketing, sale and delivery of cement and were covered by the expression "activities relating to business" occuring in the definition of input service during the disputed period.

5. Learned Consultant further submits that the issue is covered by the decisions in madras Cements ltd., Vs Additional Commissioner of Central Excise, Bangalore, 2015 (40) STR 645 (Kar.), Bharat Fritz Warner Ltd., Vs CCE, Bangalore (2022 (66) GSTL 434 (Kar), the Larger Bench decision in the Ramco Cements Ltd., Vs CCE, Puducherry, 2023 (12) TMI 1332 – CESTAT Chennai (LB).

6. On limitation, it is submitted that the credit had been duly recorded in the statutory records and reflected in the ER-1 returns. The appellant's records were also subjected to departmental audit in September, 2010 and January, 2012. There was, therefore, no suppression of material facts with intent to evade duty warranting invocation of extended period or imposition of penalty.

7. Learned Authorized Representative reiterated the findings of the impugned order. It is submitted that after the amendment to Rule 2(l) w.e.f. 01.04.2008, credit is available only in respect of services used "up to the place of removal". Mere description of sales as FOR-destination sales would not automatically make the buyer's premises the place of removal. Reliance is placed on the decisions of the Hon'ble Supreme Court in Commissioner Vs Ultra Tech Cement Ltd., 2018 (9) GSTL 337 (SC).

8. We have heard both the sides and perused the records.

9. The principal issue is whether C&F services availed at the depot/ware houses and in connection with the delivery of cement of customers classify as input services under Rule 2(l) of the Cenvat Credit Rules, 2004.

10. In so far as the services rendered within the depot or warehouses are concern, Section 4(3)(C) of the Central Excise Act, 1944 specifically includes a depot, premises of a consignment agent or any other premises from where excisable goods are sold after clearance from the factory, within the expression "place of removal". Consequently, where cement was stock-transferred to the depots and thereafter sold therefrom, services relating to receipt, unloading, storage, handling and loading of cement at such depots cannot be regarded as services rendered beyond the place of removal. Such

services have a direct nexus with the appellant's business of manufacture and sale of cement and are eligible input services.

11. A different consideration, however, arises in respect of services rendered after clearance from the depot, including transportation or unloading at the customer's premises. Eligibility of credit in respect of such services depends upon whether the customer's premises constituted the place of removal in the particular transaction.

12. The Larger Bench of the Tribunal in The Ramco Cement Ltd., supra, has held that where clearances are made under FOR-destination contracts, the place of removal must be determined after examining the terms of the contracts and applying the principles laid down by the Hon'ble Supreme Court in Commissioner Vs Roofit Industries Ltd., 2015 (319) ELT 221 (SC) and Commissioner Vs Emco Industries Ltd., 2015 (322) ELT 394 (SC), the judgment of the Karnataka High Court in Bharat Fritz Warner Ltd., supra, and CBEC Circular No. 1065/4/2018 – CX dated 08.06.2018. It follows that the mere use of expression "FOR-destination" in invoices or contract is not, by itself, conclusive. The relevant factors include;

i) The point at which total in the goods passed to the buyer;

ii) The party who bore the risk of loss or damage during transit;

iii) Whether freight and insurance were borne by the manufacturer;

iv) Whether freight at the assessable value; and

v) Whether delivery at the buyers premises was an essential condition of the sale.

13. If, on verification of the above factors, it is found that ownership and risk remained with the appellant until delivery and that the sale stood completed only at the customer’s premises, such premises would constitute the place of removal. Services, including unloading, used up to completion of delivery at that place would consequently be eligible for Cenvat Credit. Conversely, where title and risk passed at the factory or depot and transportation thereafter was undertaken merely as an additional facility, credit of the services rendered beyond such place would not be admissible.

14. The impugned order proceeds on the general assumption that the factory or depot was necessarily the place of removal. It does not examine the individual contracts, invoices, terms of delivery, treatment of freight in the assessable value or the point of transfer of ownership and risk. The matter, therefore, requires limited factual verification in accordance with the aforesaid legal principles.

15. Coming to limitation, the dispute concerns the interpretation of the expressions “input service” and “place of removal”. The appellant had accounted for the credit in its statutory records and returns. It is also stated that Departmental audits were conducted and the relevant records were made available. Nothing has been brought on record to establish any positive act of fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of duty. The Hon’ble Supreme Court in Cosmic Dye Chemical Vs CCE, 1995 (75) ELT 721 (SC), Pushpam Pharmaceuticals Company Vs CCE, 1995 (78) ELT 401 (SC) and Uniworth Textiles Ltd., Vs CCE, 2013 (288) ELT 161 (SC) has held that mere omission or an incorrect interpretation of law is insufficient to invoke the extended period; the suppression must be deliberate and accompanied by an intent to evade the

duty. In the present case, the availment of credit was based upon the appellant's disclosed interpretation of the statutory provisions. Divergent judicial views also exited concerning the determination of the place of removal in FOR-destination transactions.

16. We therefore, find no justification for invoking the extended period on limitation. The demand pertaining to the extended period is liable to be set aside.

17. For the same reasons, the ingredients necessary for imposing penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 are not established. The equivalent penalty of Rs. 52,44,388/- is accordingly set aside in its entirety.

18. In view of the above discussion, we pass the following order:

i) Cenvat Credit pertaining to service of receipt, unloading, storage, handling and loading of cement rendered at the appellant's depots/warehouses, from where the cement was subsequently sold, shall be admissible;

ii) Eligibility of credit resulting to transportation, delivery and unloading at the customer's premises shall be determined after examining the relevant contracts, invoices and other documents to ascertain the actual place of removal in accordance with the decisions referred to above;

iii) The demand falling beyond the normal period of limitation is set aside;

iv) The equivalent penalty imposed Rule 15(2) of the Cenvat Credit Rules, 2004 is set aside; and

v) The matter is remanded to the Adjudicating Authority only for re-quantification of the credit, if any, falling within the normal period and for factual verification in terms of paragraphs 13 and 14 above.

19. The appellant shall be afforded reasonable opportunity to produce the relevant contracts, purchase orders, invoices, freight documents and insurance records and shall also be granted an effective opportunity of personal hearing. The Adjudicating Authority shall pass a speaking order without reopening the issues of extended limitation and penalty decided herein.

20 The impugned order is modified to the above extent. The appeal is partly allowed and partly remanded in the aforesaid terms.

(Pronounced in the open court on 10.09.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha