IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76108 of 2014

(Arising out of Order-in-Original No.CCE/BBSR-I/09/2014 dated 30.04.2014 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Vedanta Aluminium Limited
(Vill: Jagannathpur, P.O. Lanjigarh, District: Kalahandi, Pin-766027, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

APPEARANCE

Shri Gopal Mundhra & Shri Rajath Bharadwaj Advocates for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 76499/2024

DATE OF HEARING : 11.07.2024
DATE OF DECISION : 31.07.2024

Per : RAJEEV TANDON :

The appellant, engaged in the manufacture of Calcined Alumina, has filed the impugned appeal assailing the order-in-original No.CCE/BBSR-I/09/2014 dated 30 April 2014 whereby, the Ld. Commissioner has confirmed duty demand and Cenvat credit amounting to Rs.99,03,083 under section 11A of the Central Excise Act, 1944[1] read with Rule 14 of the Cenvat Credit Rules, 2004[2]. The

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[1] **The Act**
[2] **The Rules**

order also imposes interest under section 11AB of the Act, read with Rule 14 of the Rules, besides imposing penalty of equal amount under section 11AC of the Act read with Rule 15(2) of the Rules.

2. The appellant was issued a show cause notice alleging that the input tax credit availed by them in respect of services used for construction of housing units in the colony for staff did not have a nexus with the manufacturing activity or for transport or storage of the final product. It is seen from the case records, that services like construction of residential quarters, hostels and barracks have been considered as not qualifying to be an input service in terms of Rule 2(l) of the Rules.

3. For sake of records, rule 2(l) of the Rules, as it then existed is enumerated hereunder:

> *"Rule 2 – Definition - In these rules, unless the context otherwise requires -*
>
> *(l) input service" means any service, -*
>
> > *(i) used by a provider of taxable service ……………………….*
> >
> > *(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and [clearance of final products upto the place of removal],*
>
> *and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"*

4. We have heard Shri Gopal Mundhra, learned Advocate for the appellant and Shri S.Mukhopadhyay, learned Aurhorized Representative for the Revenue in the matter. The Ld.Advocate has broadly canvassed that for a service to be included in the definition of Input Services, must be used directly or indirectly in relation to the manufacture of excisable goods and that the term 'includes' used in the inclusive part of the definition of 'Input Service' is intended to expand and enlarge the scope and ambit of the definition, so as to bring within its fold the services which otherwise may or may not fall within the main definition of 'Input Service'. He asserts that by virtue of the phrase 'in relation to' used in the definition of 'Input Service' such services as may not be used directly in the business of manufacture of excisable goods, are also considerable as 'Input Service', if used in relation to the manufacture of excisable goods.

5. The Ld.Advocate for the appellant submits that they have not violated or contravened any of the provisions of the acts and the rules, as they have not availed any ineligible/inadmissible Cenvat credit. They submit that their factory is located in a very remote area surrounded by hills and forests, where residential accommodation facility is not available. It therefore becomes obligatory on the part of the appellants to provide residential accommodation to their employees. They emphasize that the same is not only necessary but indispensable for smooth functioning of the factory, that the employees are provided appropriate dwellings for the smooth and continuous operation of their plant. In support of the admissibility of Cenvat credit used in such construction activities they place reliance on the decision of the Andhra Pradesh High Court in the case of **CCE vs. ITC Ltd.**[3] wherein the Hon'ble High Court has held as under:-

> *"9………….The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the*

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[3] **2013 (32) STR288(AP)**

manufacturing activity of the respondent-Company was therefore not borne out on facts. The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc., necessarily had to be considered as 'input services' falling within the ambit of Rule 2(l) of the Cenvat Rules, 2004."

6. The Ld.Advocate for the appellant also draws attention to the case of **Commissioner of Central Excise vs. T.G. Kirloskar Automotive Pvt.Ltd.**[4], wherein the Tribunal had allowed the credit of service tax paid on mobile phones provided by the assessee to its employees for business use. Citing analogy the appellant contended that they were rightly eligible for availment of credit on such construction services as provided to the employees to meet the need of housing of its employees located in the remote area. He vehemently submits that a wide amplitude is required to be given to the meaning of the definition of input service for purpose of interpretation. He thereby refers to the inclusive definition, pointing out that the expression 'activities related to business' used in the inclusive part of the definition of input service refers to such activities that are undertaken for purpose of or in connection with running of the business of the manufacture of the finished excisable goods or providing of the taxable service.

7. The Ld. Authorized Representative (AR) for the department, Shri S.Mukhopadhyay, on the other hand contends that the use of input service must be integrally connected with the manufacture of final product, that the input service must have a nexus with the process of manufacture to be entitled to availment of Cenvat credit. His contention is therefore that the expression "in or in relation to", is thus

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[4] **2009 (14) STR 743 (Tri.-Bang.)**

a very limiting concept and no wider expansion can be read there into. He submits that is why the expressions in law highlighting certain specific areas of activity like modernization, renovation, research, storage accounting etc. are therefore expressly included to entitle the availment and utilization of the credit of the services therein, as such areas are not having a direct bearing with manufacture but are however connected quite closely in the accomplishment of manufactured goods. He thus submits that the scope of the definition in section 2 (l) of the Act is to be read in the context of section 37 (2) (xviaa) of the Act and that the credit cannot be held admissible unless the tests as laid down by the apex court in **Maruti Suzuki Limited**[5] were fulfilled. In support of his contention the Ld.AR also places reliance on the decision of the Larger Bench of the Tribunal in the case of **Vandana Global Limited vs. CCE, Raipur**[6]. The Ld.AR also referred to CBEC's Circular No.934/4/201-CX dated 29.04.2011 to state that Cenvat credit is not allowed when only goods or services are used primarily for personal use or consumption of employees. With regard to invocation of larger period of limitation the Ld. AR submitted that the appellant was working under self-assessment scheme in terms of Rules 6 of the Central Excise Rules, 2002 and therefore liability to pay appropriate duty/availment of appropriate credit clearly rested with the appellant and as the appellant had discharged the duty burden by way of improperly availed credit, the impugned show cause notice was not barred by limitation. Finally the Ld. AR observed that the Hon'ble Bombay High Court in the case of **Commissioner, Central Excise, Nagpur v. Manikgarh Cement**[7] had held that services of civil construction in residential colonies could not be considered as input service as it at best were a welfare measure having no nexus with business activities and was a direct judgement on the subject.

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[5] **2009 (240) E.L.T. 641 (SC)**
[6] **2000 (253) E.L.T. 440 (Tri-LB)**
[7] **2010 (20) S.T.R. 456 (Bom.)**

8. We have heard the two sides and perused the case records. The fact of remote location of the unit with difficult accessibility and lack of dwellings is undisputed. The Cenvat credit is availed for construction of barracks and hostel for the CISF personnel, that provide 24X7 security cover to the plant, while residential quarters were meant for the employees that were crucial to the smooth operation of the appellant's works and plant. It is evident from the language, that the expressions made use of in Rule 2(l) call for being considered in an unrestricted and uninhibited sense and thereby give the expression an exhaustive and a wider meaning so as to expand language and the arch of the expression used giving it the widest amplitude. The Hon'ble apex Court in the case of **Good Year India Ltd**[8], had held that the expression 'such as' would indicate the description to be illustrative and not exhaustive. Likewise the Hon'ble Bombay High Court in the case of **Coca Cola Private Limtied vs. Commissioner of Central Excise, Pune**[9], had held :

> *"……….. The expression Business is an integrated/continuous activity and is not confined restricted to mere manufacture of the product. Therefore, activities in relation to business can <u>cover all the activities that are related to the functioning of a business</u> The term business therefore, in our opinion cannot be given a restricted definition to say that business of a manufacturer is to manufacture final products only……"*

[Emphasis supplied]

9. This Tribunal in the case of **Dell International Services India Private Limited v. CCE, Bangalore**[10] had given a very wide sweep to the expression and allowed Cenvat credit availment on cleaning and pest control services as being eligible 'Input Services'. In the said case the appellants had availed Cenvat credit on various services like Insurance Services, Telecom Services, Manpower Recruitment and Supply Services, Advertising Agency Services, Cleaning Services, Commercial Coaching or Training Services, Event Management

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[8] **1997 (95) E.L.T. 450 (SC)**
[9] **2009 (242) E.L.T. 168 (Bom.)**
[10] **2009 (TIOL) 1957 CESTAT, Bangalore**

Services, Outdoor Catering Services, Rent a-cab Services, Security Agency Services, Courier Services, Tour Operator Services, Customs House Agent Services, etc. It was held therein, that going by the definition of the 'Input Service' under Rule 2(l) of the Credit Rules, the service utilized by the assessee for providing output service could indeed be considered as eligible input services, in view of the usage of the expression "activities in relation to business".

9.1 Further, in the case of **Aditya Birla Nuvo Limited vs. Commissioner of Central Excise, Bhavanagar**[11], it has been held by the Tribunal that the words 'and includes' provides for giving the definition of input services a wide interpretation, and bring into ambit those services which may not be considered as directly or indirectly relatable to manufacture. The intention being to provide the benefit of credit of service tax paid on such services.

10. We would like to point out that the Ld. Advocate interalia had also submitted that the cost incurred towards the said construction service were actually a business expenditure and were consumed for the manufacture of finished excisable goods. In this regard he submitted that providing residential accommodation to employees was a pre-requisite within the purview of CAS-4. In substantiation of his arguments he had also placed reliance on the decision of the Hon'ble Karnataka High Court in the case of **Commissioner of Central Excise, Bangalore vs. Millipore India Pvt. Ltd.**[12] wherein the Hon'ble High Court had given a very wide expanse to the term while allowing the appeal in favour of the assessee. We note that the Hon'ble High Court thereon had observed as under:-

> *"……………………..Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The Environmental law expects the employer to keep the*

[11] **2009 (14) S.T.R. 304 (Tri.-Ahmd)**

[12] **2012 (26) S.T.R. 514 (Kar.)**

factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. The appeal is dismissed."

11. This Tribunal in the case of **Hindustan Zinc Ltd vs. CCE Jaipur**[13], in the context of CAS-4 had observed as under:-

"7. *By referring to Para 4.1 of the CAS-4 standards and Para 5.2 of the same, it is seen cost of production consists do, inter alia, Direct Wages and Salaries, which include other allowances such as children's education allowance, conveyance allowance which are payable to employees in the normal course of business etc. As such children education allowance is part of the final cost of the product manufactured by the appellant and the conveyance of children from the residential colony to the school is the responsibility of the appellant, especially when no normal/general mode of transportation is available on account of colony being away from the city. The appellant have also taken a stand that such transportation charges are included by them in the cost of their final product on which excise duty has been paid. As per CAS-4 standards, such education allowance is also required to be made a part of the cost of production. As such I am of the view that as the factory is located at a remote place, providing a residential colony for the staff is essential and providing of transportation for school children is more essential. The Tribunal in the case of Manikgarh Cement v. CCE, Nagpur [2008 (9) S.T.R. 554 (Tri.-Mumbai)] has held even services used for maintenance and repair of the colony are cenvatable input services. If that be so, transportation*

13 **2013 (31) S.T.R. 575 (Tri.-Del.)**

provided for school children would also get covered in the definition of "input services"."

12. In the case of **CCE Vs. Endurance Systems India Ltd.**[14], the Tribunal Mumbai, to drive home the point held that anything inclusive in the CAS-4 would form part of the manufacturing cost and the Cenvat credit thereon was permissible.

13. It may be emphasized that the decision rendered by the Mumbai High Court in the case of Manickgarh Cements[7], relied upon by the Ld.AR, had been subsequently considered by the various Courts. The Tribunal in the case of **Commissioner of Central Excise, Trichy Vs. Madras Cements Ltd.**[15] in this regard had a very close look in the matter. Relevant paras thereof bearing akinness to issues herein are reproduced hereunder :

"9. *The definition as seen above has a 'means' part and an 'includes' part. In the mean part, it says that any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of the final products and clearance of final products upto the place of removal would be an input service. The 'includes' part is worded in such a way that it takes in a large number of services which includes services used not only directly or indirectly, in or in relation to manufacture of final products and their clearance. The meaning of the word 'includes' was considered by the Hon'ble Apex Court while deciding the interpretation of the said word in the definition of 'inputs' in Cenvat Credit Rules, 2004. In the decision of Ramala Sahkari Chinni Mills Ltd. v. Commissioner of Central Excise, Meerut-I - 2010 (260) E.L.T. 321 (S.C.), the Larger Bench of the Hon'ble Supreme Court observed that the word 'includes' cannot be given a restrictive interpretation. As seen from the definition of 'input service' for the period prior to 1-4-2011, input service included the services used in relation to setting up of factory and also office in relation to factory. The staff colony is situated within the factory premises. The intention of providing such residential facility to the employees is to ensure*

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[14] **2009 (237) E.L.T. 204 (Tri.-Mumbai)**
[15] **2019 (370) E.L.T. 568 (Tri.-Chennai)**

availability of sufficient number of employees to attend the work in the factory at required time. The Hon'ble High Court of Andhra Pradesh in the case cited supra, had analysed the said issue and observed that such services for construction of residential complex is intrinsically connected to the activity of manufacture. When the residential colony is provided to ensure the availability of workers round the clock, it would fall within the category of activities relating to business of manufacture. We do take note of the fact that the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise v. Manikgarh Cement - 2010 (20) S.T.R. 456 (Bom.) has held that Cenvat credit is not eligible on construction service used in constructing residential colony as such activity is not intimately connected with the business of assessee. The High Court observed that it is merely a welfare activity and not covered by the expression 'activities relating to business'. In the said case, the need for such residential facility inside the factory was not stressed. The Ld. Consultant has submitted that the residential colony was constructed to ensure availability of workers at all times, in the mines as well as the factory. Thus, the said activity cannot be considered as a mere welfare activity. Further, the decision of Hon'ble High Court of Bombay in Manikgarh Cement (supra) was rendered relying upon the case of Maruti Suzuki Ltd. v. Commissioner of Central Excise - 2009 (240) E.L.T. 641 (S.C.). The said decision was rendered in a case of interpretation of 'inputs' and not 'input services'. Moreover, the decision rendered in Maruti Suzuki Ltd. (supra) was doubted and referred to a Larger Bench and differed as reported in 2010 (260) E.L.T. 321 (S.C.). The decision in the case of Maruti Suzuki Ltd. - 2009 (240) E.L.T. 641 (S.C.) being no longer good law, the judgment rendered in the case of Manikgarh Cement relying upon the decision in the case of Maruti Suzuki Ltd. (supra), in our opinion would not be applicable.

10. *At this juncture, it would be worthwhile to reproduce the discussion of Hon'ble High Court of Andhra Pradesh in ITC Ltd. (supra). It reads as under :-*

> *"9. The Commissioner's Order-in-Appeal dated 27-5-2008 reflects that he accepted that the efficiency of the employees of*

> *an organization would be dependent on various factors, one such being the provision of a housing colony. He further conceded that these facilities would contribute to the enhancement of the productivity of the organization. Having stated so, the appellate authority surprisingly took the view that maintenance of the residential colony by the respondent-Company was only an obligatory activity owing to situational exigencies and was not connected either directly or indirectly to the manufacture of its final products. This inherent contradiction in the Order-in-Appeal was noted by the CESTAT, which opined that if accommodation was not provided by the respondent-Company to its employees at this remote location, it would not be feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the manufacturing activity of the respondent-Company was therefore not borne out on facts. The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc., necessarily had to be considered as 'input services' falling within the ambit of Rule 2(l) of the Cenvat [Credit] Rules, 2004.*

11. *Commercial production would be inexpedient if there is disruption in manufacturing activity due to non-availability of workers. The residential colony having been provided by appellant to ensure the availability of workers on required time, we hold that such activity falls within the category of activities relating to business. After 1-4-2011, the legislature has deleted the services of settling up of factory and also activities relating to business. The services of motor vehicle repair and maintenance as well as vehicle insurance has been excluded. The period being prior to 1-4-2011, the services of construction of residential colony and repair and maintenance of vehicle as well as insurance services are eligible for credit.*

> ***12.*** *We therefore hold that appellant is eligible for credit in respect of construction service used for setting up of residential colony in the factory premises. However, the very same view cannot be applied in the case of guest house and school constructed by the appellant inside the factory premises as the construction of school for providing education to the children of the employees of the factory will fall wholly as a welfare activity and it has no nexus or relation to the activity of manufacture. Similarly, the use of a guest house is a mere facility to visitors of the factory and cannot be considered as activity relating to business of appellant. We hold that the disallowance of credit in respect of construction service of guest house and school is legal and proper and we uphold the same.*
>
> ***13.*** *From the above discussion, we are of the considered view that the credit allowed in respect of construction of residential complex and services relating to vehicle maintenance and repair service and vehicle insurance are eligible for credit whereas the credit availed on construction of school building and guest house cannot be allowed. In view thereof, the impugned order does not call for any interference. The appeals filed by the assessee as well as Revenue are dismissed."*

[Emphasis supplied]

14. We also note that the issue of providing residential facility to the employees was also examined by the Tribunal in the case of **Mangalam Cement Ltd. v. CCE & ST Jaipur-I**[16] and the Tribunal had the following to state:-

> ***"6.*** *Considering the aforementioned activities and the legistature intent behind the Cenvat scheme, the Hon'ble Andhra Pradesh High Court in the case of ITC Ltd. (supra), has held that Cenvat credit of service tax paid on the taxable services used in the residential complex shall be available to the manufacturer. The relevant paragraph of the said judgment is extracted herein below.*

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[16] **2016 (44) S.T.R. 422 (Tri.-Del.)**

> *"9. The Commissioner's Order-in-Appeal dated 27-5-2008 reflects that he accepted that the efficiency of the employees of an organization would be dependent on various factors, one such being the provision of a housing colony. He further conceded that these facilities would contribute to the enhancement of the productivity of the organization. Having stated so, the appellate authority surprisingly took the view that maintenance of the residential colony by the respondent-Company was only an obligatory activity owing to situational exigencies and was not connected either directly or indirectly to the manufacture of its final products. This inherent contradiction in the Order-in-Appeal was noted by the CESTAT, which opined that if accommodation was not provided by the respondent-Company to its employees at this remote location, it would not be feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the manufacturing activity of the respondent-Company was therefore, not borne out on facts. The staff colony, provided by the respondent-Company, being directly and intrinsically linked to its manufacturing activity could not therefore, be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding, etc., necessarily had to be considered as 'input services' falling within the ambit of Rule 2(1) of the Cenvat Rules, 2004."*

15. In view of the foregoing discussions we are of the view that the rules specifically provide for allowing Cenvat credit of any service used by manufacturer, whether directly or indirectly in or in relation to the manufacturer of final products, and clearance of the final product up to the place of removal. In the facts and circumstances of the factory running 24X7, it is imperative for the assessee to provide and maintain the facility of residential colony adjacent to the factory, being located at a remote location. It otherwise cannot get the service of

competent staff and personnel for running the factory, which is run round the clock, and the employees have to work in shifts Certain technical and administrative staff are required to be available in the vicinity of the factory for any administrative or emergency situation for the smooth running of the business. Further, the unit is required to be provided security and by professionally trained and competent personnel, for reasons of again being situated in the remote place, far away from the limits of a municipal body. We thus feel construction services used in construction of barracks and hostel for the jawans and residential complex for the employees not only goes in to offer efficiency of the system and production of finished goods but also ensures and guarantees the unhindered production of the same. These services are certainly made use of in relation to manufacture of goods.

16. In view of various decisions, cited above, we note that this issue has also been considered time and again by various judicial authorities. The said issue is therefore no more *res integra*. We are of the view that in keeping with the ratio of the laws as laid down by the case laws referred and discussed above, the appellant is entitled for availment of input service tax credit for the construction of houses for its employees as also barracks and hostel for the jawans.

17. As for limitation, we also note that the demand is barred by limitation, as in any case the appellant were filing the returns regularly along with which they had also enclosed, copies of input, credit, registers, capital goods, registers, input service registers, clearly indicating the credit availed on a monthly basis as demonstrated by them during the course of hearing (refer Ann-IV, Page 65 of appeal papers). Thus they cannot be charged for suppression as they had laid open their complete account details to the authorities. Moreover, the Tribunal in the case of **CCE, Raipur v. Rajaram Maize Products**[17] in a case where the issue involved is subject to different or alternative

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[17] **2010 (258) E.L.T. 539 (Tri.-Del.)**

interpretations, had held that adoption of any particular interpretation cannot be held as a device adopted by the manufacturer/service provider to suppress the information with intention to evade payment of duty. We are of the view that no suppression clause can be invoked in view of the fact that the appellant had disclosed all particulars required to be disclosed under law. We also place reliance in support to the rulings in the case of :

(i) **CCE, Chennai vs. Essar Engineering & Contractors Ltd.**[18]

(ii) **Shri Shakti LPG Limited vs. CCE & Cus.**[19]

(iii) **Sujana Metal Products Ltd. vs. CCE, Hyderabad**[20]

16. In view of the discussions above, the order of the lower authority is set aside and the appeal allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 31.07.2024.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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[18] **2009 (245) E.L.T. 161 (Tri.-Chennai)**
[19] **2005 (187) E.L.T. 487 (Tri.-Bang)**
[20] **2011 (273) E.L.T. 112 (Tri-Bang)**