

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 444 of 2011

(Arising out of Order-in-Original No.32/AC/KLY/08-09 dated 20.01.2009 passed by Commissioner of Central Excise, Kolkata)

M/s. Phoenix Yule (P) Limited

: Appellant

Ideal Plaza, North Block, 11/1 Sarat Bose Road (4th Floor),

VERSUS

Commissioner of Central Excise, Kolkata

: Respondent

Kendriya Utpad Shulk Bhawan, 1st Floor, 180, Shanti
Pally, Rajdanga Main Road, Kolkata-700 107.

APPEARANCE:

None for the Appellant

Shri S.K.Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 77597/ 2024

DATE OF HEARING :21.11.2024

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Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein Cenvat Credit on cement has been denied on the ground that cement used for foundation of machinery is neither capital goods under Rule 2(a) nor inputs under Rule 2(k) of the Cenvat Credit Rules, 2004. Therefore, they are not entitled to take Cenvat Credit.

2. None appeared on behalf of the appellant nor any request for adjournment has been received.

Considering the issue involved is in a narrow compass, therefore, the appeal is taken up for final disposal.

3. Heard the Ld. Authorized Representative. We find that it is a case of denial of Cenvat Credit on cement used by the appellant for foundation of machinery. We hold that same is entitled to Cenvat Credit as without affixing the machinery, the appellant cannot do their manufacturing activity.

4. As the appellant has explained the usage of cement for foundation of machinery. In that circumstances, they are entitled to Cenvat Credit.

5. In view of this we set aside the impugned order and allow the appeal.

6. Accordingly appeal is allowed.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)