CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 1070 of 2012

(Arising out of Order-in-Appeal No. YBD/45/LTU/MUM/2012 dated 16.04.2012 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU, Mumbai)

M/s Ambuja Cements Limited ....Appellant
Elegant Business Park, MIDC Cross Road 'B',
Off Andheri-Kurla Road, Andheri (E),
Mumbai 400059.

VERSUS

Commissioner of Central Excise & Service Tax ....Respondent
Large Tax Payer Unit,
29th Floor, Center-1, World Trade Center,
Cuff Parade, Mumbai – 400005.

APPEARANCE:

Shri Somesh Jain, Chartered Accountant, for the Appellant
Shri Sanjay Hasija, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85277 / 2022

Date of Hearing: 17.02.2022
Date of Decision: 31.03.2022

PER: AJAY SHARMA

The issue involved in the instant appeal is about penalty under Rule 15 of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") on the Appellant for taking cenvat credit on service tax paid on 'input services' by the appellant, for transporting Furnace Oil to the plant for generation of electricity for supplying to the residential colony, which was denied to the appellant by the department as it was not used for manufacture of the excisable goods.

2. The facts in brief are as follows. The appellant is engaged in manufacture of cement and are clearing their final product on payment of excise duty. They availed Cenvat credit on inputs and input services. They have their own captive plants at Rabriyawas unit for generation of electricity with the aid of furnace oil and various other inputs and input services. Some portion of the electricity so generated is also supplied to the residential colony of the appellant situated near the plant. A show cause notice dated 05.05.2010 was issued to them demanding the reversal of proportionate Cenvat credit, on inputs which comes to Rs. 38,77,297/- and on input services the amount was Rs. 1,40,777/-, which were used in generation of electricity supplied to the residential colony. Undisputedly the appellants have paid the entire amount demanded which has been appropriated also, as recorded in the Order-in-Original dated 31.3.2011. The appellants have also paid interest amount of Rs.42,091/-. Although the Adjudicating Authority set aside the penalty to the extent of Cenvat Credit availed on inputs on the ground that it was reversed immediately by the appellant, but the penalty of Rs.1,41,541/- was imposed for availing Cenvat credit on input services although the same was also reversed before the passing of the Order-in-Original. The learned Commissioner vide impugned order dated 16.4.2012 upheld the

Adjudicating order and rejected the appeal filed by the appellants.

3. Learned Chartered Accountant for the appellant confining his arguments to the penalty only, submits that the issue relates to interpretation of legal provision which has been amended multiple times and due to conflicting views on the issue, imposition of penalty is uncalled for. In support of his submissions learned Chartered Accountant relied upon the decision of the Hon'ble Supreme Court in the matter of *Maruti Suzuki Ltd. vs. Commissioner; 2009 (240) ELT 641 (SC)* in which the Hon'ble Supreme Court in a similar situation has held that *on account of repeated amendments in the Cenvat Credit Rules, large litigation in the country stands generated and in the circumstances penalty is not leviable on assessees, particularly when in large number of other cases, on account of conflict views expressed by various Tribunals/High Court, the assessees have also succeeded. Hence although M/s. Maruti Suzuki Ltd. (appellant) has failed in their civil appeals, the department will not impose penalty.* Per contra learned Authorised Representative appearing for Revenue submits that the appellants have wrongful availed the credit and therefore they are liable for penalty and prayed for dismissal of Appeal.

4. I have heard learned Chartered Accountant for the Appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions and case laws cited by the respective sides. Since

the issue is only about the penalty of Rs.1,41,541/- imposed on appellants for wrongly availing Cenvat credit on input services therefore I am not going in other details of the matter. This Tribunal also in the matter of *Ultratech Cement Ltd. vs. Commissioner of C.Ex.& ST, Bhavnagar; 2019(24) GSTL 604 (Tri.-Ahmd.)* has held as under:-

> "xxx xxx xxx
>
> *6. I find that this Tribunal in similar circumstances in the appellant's own case considering all aspects of the case including the ratio in Hindustan Zinc Ltd.'s case observed as follows :*
>
> > *"5. Heard both sides and persued the record. I find that the issue of eligibility of CENVAT credit on the quantum of Naphtha used in generation of steam which in turn used for generation of electricity in the factory premises and wheeled out to their sister concern is squarely covered by the judgement of the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd's case (supra). Therefore, the Appellants are not eligible to the credit on Naphtha used for generation of electricity wheeled outside the factory as held by the Ld. Commissioner (Appeals) in the impugned order. However, I find force in the contention of the Ld. Advocate for the Appellant regarding imposition of penalty. While confirming denial of credit, the Hon'ble Supreme Court in Maruti Suzuki Ltd's case (supra) observed that due to conflicting views on the issue, imposition of penalty is uncalled for. Following the same, penalty imposed on the Appellants is set aside. The impugned order is modified to this extent. The appeal is partly allowed as mentioned above."*

> *7. I do not find any reason to deviate from the said observation of the Tribunal. In the result, the impugned order is also modified in the light of the above observation to the extent of setting aside the penalty. The appeal is partly allowed to the said extent, accordingly."*

6. Following the law laid down by the Hon'ble Supreme Court in the matter of *Maruti Suzuki (supra)* and the aforesaid decision of the Tribunal, I am of the considered opinion that in view of the peculiar facts of this case no penalty is imposable on the appellants for wrongly availing Cenvat credit on input services. The appeal is accordingly allowed to that extent.

(Pronounced in open Court on 31.03.2022)

(Ajay Sharma)
Member (Judicial)

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