CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH

Excise Appeal No. 1637 of 2012

(Arising out of Order-in-Appeal No. BR/29-33/LTU/MUM/2012 dated 13.09.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai Zone-I.)

M/s. Ambuja Cements Ltd. ....Appellant
Elegant Business Park,
MIDC Cross Road, 'B', Off
Andheri-Kurla Road,
Andheri (E), Mumbai – 400 059

VERSUS

Commissioner of CE & ST (LTU), Mumbai ....Respondent
8th Floor, Centre-I,
World Trade Centre,
Cuffe Parade, Mumbai – 400 005

<u>WITH</u>

(i) Excise Appeal No. 1783/2012 (M/s. Ambuja Cements Ltd.); (ii) Excise Appeal No. 1784/2012 (M/s. Ambuja Cements Ltd.); (iii) Excise Appeal No. 1785/2012 (M/s. Ambuja Cements Ltd.); (iv) Excise Appeal No. 1786/2012 (M/s. Ambuja Cements Ltd.);

(Arising out of Order-in-Appeal No. BR/29-33/LTU/MUM/2012 dated 13.09.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai Zone-I.)

<u>APPERANCE:</u>

Shri Rajesh Ostwal, Advocate alongwith
Ms. Hanisha Jatania, C.A. for the Appellant

Shri Amrendra Kumar Jha, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NOS. A/86211-86215/2022

Date of Hearing: 25.11.2022
Date of Decision: 25.11.2022

PER: DR. SUVENDU KUMAR PATI

In all these five appeals the legality of the order passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai Zone-I vide his above referred order confirming the Order-in-Original that denied CENVAT Credit availed on input services used in the captive power plant of the Appellant for generation of electricity in its various units located at Ambujanagar, Ropar, Rabriyawas, Sankrail and Chandrapur for the period between April, 2009 to March, 2010 for a total amount of Rs.1,58,47,940/- alnogwith interest and penalty has been challenged by the Appellant.

2. Facts of the case, in brief, is that Appellant is engaged in the manufacture of Cement Clinker and Cement and it has got its own Captive Power Plant (CPP) for generation of electricity and the entire generation of electricity was used by the Appellant in the manufacturing of final product which were cleared on payment of applicable duty. Appellant has been availing CENVAT Credit of Service Tax paid on various services received by it towards repair & maintenance services, manpower recruitment agency services, consulting engineering services, technical inspection and certification agency services etc. for its CPP but through show-cause notices dated 23.03.2010, 21.10.2010, and 12.10.2010 for the period referred above, CENVAT Credit availment was proposed to be denied as inadmissible credits since CPP is an immovable property and electricity is non-excisable goods. Upon receipt of reply matter was adjudicated upon and vide common Order-in-Original availment of

CENVAT Credit to the extent of Rs.1,58,47,940/- was denied to the Appellant and its recovery alongwith interest and equivalent penalty was also confirmed. Appellant's unsuccessful attempt before the Commissioner (Appeals) to get the desired relief has brought the dispute to the present forum.

3. During the course of hearing of appeal learned Counsel for the Appellant Mr. Rajesh Ostwal alongwith Ms. Hanisha Jatania submitted that the order of Commissioner (Appeals) is unsustainable for the primary reason that show-cause notice was issued denying credit on 'input services' but in the Order-in-Original he confirmed denial of CENVAT Credit on inputs, inputs services & capital goods, which is admittedly beyond the scope of show-cause notice. Further, Mr. Rajesh Ostwal argued that Rule 2(1) of CENVAT Credit Rules, 2004 (un-amended) is very clear that CENVAT Credit is available on any input service which is used directly or indirectly for production of dutiable goods and in citing judicial decisions made in the case of *CCE Vs. Rajasthan State Chemical Works* reported in *1999 (55) ELT 444 (SC), Union of India Vs. Ahmedabad Electricity Co. Ltd.* reported in *2Q03 (158) ELT 3 (SC), CCE Vs. East End Paper Industries Limited* reported in *1989 43 ELT 201 (SC), CCE Vs. Raymond Zambiti Pvt. Ltd.* reported in *2010 (18) STR 734 (T), Ballarpur Industries Ltd. Vs. CCE* reported in *2000 (116) ELT 312 (T), ACC Vs. CCE* reported in *1999 (108) ELT 477(T), S.A.I.L. Vs. CCE* reported in *2001 (130) ELT 459 (T), Hindalco Industries Ltd. Vs. CCE* reported in *2012 (27) STR 401 (T), Endurance Technologies P. Ltd.* reported in *2011 (273) ELT*

248, and Hon'ble Bombay High Court in case of Ultratech Cement Ltd. reported in *2010 (20) STR 577 (Bom),* he also argued that manufacture of goods should normally encompass the entire process involved in it as has been held by the Hon'ble Supreme Court and that captive generation of electricity is a manufacturing process for which input used in such process are valid inputs against which credits should be available. Further, activities relating to business being of wide amplitude it would include various services used in relation to the business of manufacture of final products, both at its pre and post manufacturing stage, as has been held by the Hon'ble Bombay High Court in the case of *Ultratech Cement Ltd.* reported in *2010 (20) STR 577 (Bom.).* Refereeing to direct judgments on the issue that has been passed in the case of *CCE Vs. Sai Sahmita Storages (P) Ltd.* reported in *2011 (270) ELT 33 (A.P.). Vodafone Mobile Services Ltd. Vs. CST* reported in *2018 (11) TMI 713-DELHI HIGH COURT, CCE Vs. Rajaram Bapu Sahakari Sakhar Karkhana Ltd.* reported in *2019 (365) ELT 14 (Bom.), CCE Vs. ICL Sugars Ltd.* reported in *2011 (271) ELT 360 (Kar.), Bannari Amman Sugars Ltd. Vs. CCE* reported in *2010 (250) ELT 326 (Kar.), SLR Steels Ltd. Vs. CCE* reported in *2010 (249) ELT 394 (T.) affirmed by Karnataka High Court at [2012 (280) ELT 176 (Kar.)] and CCE Vs. Doodhganga Krishna Sahakari Sakkare Karkhane Niyamit* reported in *2013 (297) ELT 361 (Kar.) h*e submitted that duty paid on capital goods/inputs used in CPP for generation of electricity cannot be denied to the ground that CPP is a immovable non-excisable goods. Further, movability of goods is relevant only for the purpose of determining levy of excise duty on output and not for the purpose of determining eligibility of CENVAT Credit on inputs services, to which effect he also has placed his reliance on the judgment of Tribunal and various High Courts reported in *2015 (39) STR 726 (Guj.)* in the case of *Mundra Ports & Special Economic Zone Ltd. Vs. CCE, 2015 (40) STR 41 (P&H)* in the case of *CCE Vs. Bellsonica Auto Components India P. Ltd.* and *2011 (270) ELT 33 (A.P.)* in the case of *CCE Vs. Sai Sahmita Storages (P) Ltd.* The gist of his argument is that the issue has been settled long back and has become a judicial precedent with consistent findings of Tribunals and various Writs Courts and even he placed his reliance on the judgment of *Western India Plywoods Limited Vs. CCE* reported in *1998 (102) ELT 52 (T)* of this Tribunal passed during the MODVAT *era* and rest his submissions in affirming that Rule 6(1) of CENVAT Credit Rules, 2004 has not denied CENVAT Credit on Service Tax paid on inputs services utilised in CPP for generation of electricity. Further argument is placed on the point of interest and penalty which he affirms to be unsustainable in view of the fact that demand itself is not supported by law.

4. In response to such submissions learned Authorised Representative for the Respondent-Department Mr. Amrendra Kumar Jha argued in support of reasoning and rationality of the order passed by the Commissioner (Appeals) and pointed out that clear finding is available in the order itself to the effect that CPP has not been classified in the first schedule or second of the Central Excise

Tariff Act, 1985 as excisable goods, for which CENVAT Credit of Service Tax paid on input services, inputs and capital goods are not admissible under Rule 6(1) of the CENVAT Credit Rules 2004, and therefore, interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. We have heard from both the sides and perused the case record as well as the relied upon judgments noted above. As could be noticed, several judgments have been passed on the issue and it has been consistently held by this Tribunal, by Hon'ble High Courts of different States and even by the Hon'ble Supreme Court that capital goods in the firm of Power Plant as immovable property is not the relevant criteria for determining admissibility of credit and capital goods or services used in the manufacturing process. As long as assessee is able to proof that he has used various capital goods for the manufacture of excisable goods CENVAT Credit is admissible. Moreover, in the judgment of Ballarpur Industries Ltd. *cited supra*, it was clearly held that captive generation of electricity is a manufacturing process and inputs used in such process would be considered as inputs used in the manufacture of final products so as to permit availment of credits. It is also noteworthy to mention that both the Order-in-Original and Order-in-Appeal have gone beyond the scope of show-cause notice by adding other inputs and capital goods to inputs services used in the CPP and it is a settled principle of law that such scope is unavailable to the Adjudicating Authority or the Appellate Authority, besides the fact that relevant Rule 2(l) of

CENVAT Credit Rules, 2004 was exhaustive and it had en-compassed every relevant inputs used directly or indirectly in relation to the business activities including the services used for the setting up and maintenance of the entire industrial process. Hence in carrying forward the judicial precedent set by this Tribunal and in order to maintain certainty and predictability of decision of this Tribunal, the following order is passed.

THE ORDER

6. All these five appeals are allowed and the order passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai Zone-I vide Order-in-Appeal No. BR/29-33/LTU/MUM/2012 dated 13.09.2012 is hereby set aside with consequential relief, if any, to the Appellant.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad