CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 88680 OF 2013

[Arising out of Order-in-Original No: 05 to 21/P-III/COMMR/C.EX/2013-14 dated 31st May 2013 passed by the Commissioner of Central Excise & Service Tax, Pune – III.]

Ultra Tech Cement Ltd
Ahura Centre, 2nd Floor, 'B' Wing, Mahakali Caves Road
Andheri East, Mumbai - 400093 … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
Pune – III
41-A, ICE House, Sassoon Road, Pune – 411 001 ***…Respondent***

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the appellant

Shri Xavier Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86956/2025

DATE OF HEARING: 03/06/2025
DATE OF DECISION: 02/12/2025

PER: C J MATHEW

The appellant, M/s Ultra Tech Cement Ltd, is aggrieved by

confirmation of recovery of ₹ 3,26,81,951, comprising proposals in two notices, under rule 14 of CENVAT Credit Rules, 2004 and detriment of like amount as penalty in one, together with penalty of ₹ 85,000 in the other, under rule 15 of CENVAT Credit Rules, 2004.

2. The appellant is a manufacturer of 'cement' and 'clinker' and, while with most of the production cleared to independent buyers, a minor, though relatively significant portion, was utilized for 'ready mix concrete (RMC)' plants operated by them at designated locations. While the former was subject to duties of central excise, the latter, till February 2011, was exempted and though the 'cement' so supplied was, for purposes of determination of duty, to be charged on value as prescribed in rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the liability on specific rate, being higher, prompted non-recourse to section 4 of Central Excise Act, 1944. The dispute concerns 'common services' procured by the appellant through its five zonal offices and credit thereof, of tax charged by provider, being assigned to 17 manufacturing units by the zonal offices as 'input service distributor (ISD)' under rule 7 of CENVAT Credit Rules, 2004 and, in particular, to 'goods transport agency service' utilized for outward removal from the factory of manufacture. There is no dispute that the activity was of essence in removal of cement from factory of production for one or the other reason.

3. The case of the service tax authorities is that there were two products manufactured by M/s Ultra Tech Cement Ltd and tax paid on 'goods transport agency service' could not availed except as 'input service' for manufacture of 'ready mix concrete (RMC)' which, being exempted from duties of central excise was to be disallowed for retention under rule 6 of CENVAT Credit Rules, 2004 warranting recovery from the zonal offices to that extent and from the seventeen factories to the extent utilized for clearances effected by them. The proceedings sought to fasten the demand of the credit, distributed between March 2007 and January 2011, on the zonal offices and the distributed credit, totaling the same, on the 17 units with consequent liability for recovery.

4. Before proceeding to adjudge on the merit of the claim of the appellant on the several grounds canvassed in the appeal, written submissions and oral arguments, it would be appropriate to examine

> *'**RULE 7. Manner of distribution of credit by input service distributor.** — The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service, subject to the following conditions, namely :—*
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> *(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or*
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> *(b) the credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or*

providing of exempted services shall not be distributed.

of CENVAT Credit Rules, 2004 and take notice that it provides for distribution of common 'input services' unfettered by any restriction or qualification. Likewise, it is seen from

> *'RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. —*
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> *(1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries;*
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> *(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.'*

of CENVAT Credit Rules, 2004 that the jurisdiction to recover is limited to 'taking and/or utilisation' and the 'input service distributor (ISD)' neither takes nor utilizes credit with no scope in this empowerment for fastening any liability on the zonal offices. Moreover, the zonal offices have nothing to do with the credit so distributed except as 'pass through', and, consequently, have not accumulated credit amenable to reversal which is the consequence

obligated in rule 6 of CENVAT Credit Rules, 2004 with rule 14 therein to be invoked only upon failure to do so. In this context, decisions of the Tribunal, in *Mahindra & Mahindra Ltd v. Commissioner of Service Tax, Mumbai [2017 (7) TMI 167 – CESTAT MUMBAI]* and in *Mahindra & Mahindra v. Commissioner of Service Tax, Mumbai-II [2018 (4) TMI 670 –CESTAT MUMBAI]*, afford binding precedent on jurisdiction to effect recovery, one way or other, from the zonal offices.

5. Learned Counsel for the appellant submitted that the 17 units, too, had not taken the credit which was merely assigned to them by the zonal offices. It is further submitted that the service tax authorities proceeded erroneously, and merely from the amendment of 'input service', effective from 1st April 2008, excluding services used by manufacturer beyond the 'place of removal' as substitution, in rule 2(l) of CENVAT Credit Rules, 2004, for 'from the place of removal' with 'up to the place of removal' with effect from 1st April 2008[1] whereas part of the credit denied pertain to the period prior to the amendment and, hence, not being ineligible as held in the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Belgaum v. Vasavadatta Cements Ltd [2018 (11) GSTL 3 (SC)]*. Learned Counsel also submitted, by referring to definition of 'place of removal' in section 4(3)(c) of Central Excise Act, 1944, that 'place of removal' need not necessarily be the factory but, subject to terms and conditions

[1] [notification no. 10/2008-CE (NT) dated 1st March 2008]

of delivery stipulating sale occurring after clearance from the factory, elsewhere too. It was contended by him that transfer of ‘cement’ to ‘ready mix concrete (RMC)’ units were not a sale in the absence of consideration and, as far as sale occurring at the downstream production unit was concerned, the service procured for removal up to such location would not be ineligible for availment as CENVAT credit. Reliance was placed on the decision of the Tribunal in *Commissioner of Central Excise, Raipur v. Lafarge India Pvt Ltd [2017 (52) STR 350 (Tri.-Del.)]* which was affirmed by Hon'ble High Court of Chhattisgarh. Furthermore, it is argued that the revised definition of ‘input service’, read holistically, did not bar service procured for removal from the factory of manufacture to be ineligible thereof. It was further submitted that, the consignor and the consignee being one and the same, liability for tax does not arise and the availment of CENVAT credit of such amount was as good as refund to which they were entitled. It was also submitted that, notwithstanding the decision of the Hon'ble Supreme Court in *Commissioner of Customs & Central Excise, Aurangabad* v. *Roofit Industries Ltd [2015 (319) ELT 221 (SC)]* and in *Commissioner of Central Excise and Service Tax v. Ultra Tech Cement Ltd [2018 (2) TMI 117 (SC)],* several decisions rendered thereafter and, upon facts of each removal, did permit availment of CENVAT credit of tax paid on outward transportation. It is also submitted that the show cause notice was replete with duplication impacting the correctness of demand

computed.

6. Learned Authorized Representative placed reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise and Service Tax v. Ultra Tech Cement Ltd [2018 (2) TMI 117 (SC)]* holding that the amendment in rule 2(l) of CENVAT Credit Rules, 2004, with effect from 1st March 2008, precluded entitlement of outward transportation as 'input service' and, consequently, justified the demands raised in the impugned order.

7. The clearance of cement to themselves for use in manufacture of 'ready mix concrete (RMC)' unit by the appellant, which, even if not chargeable to duty for the period up to February 2011 were, if 'goods transport agency (GTA) service' was utilized for transportation between the 17 factories and the 'ready mix concrete (RMC)' units, nothing but 'input service' for manufacture of 'ready mix concrete (RMC)'; the pleas of the appellant would appear to be no defence of eligibility to take such as credit. The case of the appellant, however, is that these are services utilized for the manufacture and clearance of 'cement' produced in these units and that, in accordance with the terms of supply placing of risk and liability upon the cement manufacturing units, utilization of 'goods transport agency (GTA) service' would be in connection with manufacture of cement. More so, as the appellant has not distinguished between the end uses of 'cement'

for discharge of duty liability. This aspect has not been dealt with in the impugned order. The appellant has also contended that there has been duplication of the elements of demands fastened on the cement manufacturing units. This submission of the appellant has not been taken into consideration in the impugned order.

8. Furthermore, the question of suppression of facts with intent to evade payment of duty by utilization of ineligible credit needs to be ascertained in the context of 17 factories not being cognizant about the source of credit. It is also not seen from the impugned order that the adjudicating authority had taken into consideration availability of credit exceeding the disputed amount for facilitating clearances which would allegedly be effected by utilization of CENVAT credit. In view of the deficiencies and gaps in the findings, it would be appropriate to set aside the impugned order and remand the matter back to the original authority for fresh decision on any recovery to be made from the 17 factories of the appellant.

9. Appeal is allowed by way of remand.

(Order pronounced in the open court on 02/12/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*