

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 13327 of 2013-DB

[Arising out of Order-in-Original/Appeal No 18-STC-DEMAND-COMMR-I-2013 dated 02.07.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Bridge & Roof Co (India) Limited

.... Appellant

Kankaria Centre, 5th Floor, 2/1 Russel Street,
KOLKATA, WEST BANGAL-700071

VERSUS

Commissioner of Central Excise & ST, Vadodara-I

.... Respondent

1st Floor, Central Excise Building, Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE :

Shri Tarun Chatterjee, Advocate and Ms. Binita Pandey, CA for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 05.06.2023

DATE OF DECISION: 15.06.2023

FINAL ORDER NO. 11262/2023

RAMESH NAIR :

The issue involved in the present case is that whether the appellant is entitled for Cenvat credit in respect of inputs viz. Cement and Steel used in the output service i.e. Commercial and Industrial Construction Services on which the appellant have discharged the service tax.

2. Shri Tarun Chatterjee learned Counsel along with Ms. Binita Pandey, learned Company Secretary appeared for the appellant. Shri Tarun Chatterjee submits that the Cenvat credit was denied on the ground that same falls under exclusion category as brought in the Rule vide Notification No. 16/2009-CE (NT) dated 07.07.2009. He submits that this explanation to definition of input service by the aforesaid notification is in respect of manufacturer and not for the service provider therefore, the interpretation of the department on amendment in explanation-2 by Notification No. 16/2009-CE (NT) is absolutely erroneous and on this basis credit should not have been denied. He further submits that this issue has been considered

time and again in various judgments and credit on cement and steel has been allowed. He placed reliance on the following judgments:-

- (a) Bharti Airtel Limited vs. Commissioner of Central Excise Pune - 2013 (29) S.T.R. 401 (Tri. Mumbai)
- (b) Mundra Ports & Special Economic Zone Ltd vs. CCE & Cus. - 2015 (39) S.T.R. 726 (Guj.)
- (c) Vandana Global Limited vs. Commissioner of C. Ex., Raipur - 2010 (253) E.L.T. 440 (Larger Bench, New Delhi)
- (d) Collector of Central Excise vs. Chemphar Drugs & Liniments - 1989 (40) E.L.T. 276 (S.C.),
- (e) Indian Oil Corporation Limited vs. Commissioner of Central Excise, Ahmedabad - 2013 (291) E.L.T. 449 (Tri.- Ahmd.)
- (f) Bharti Realty Limited vs. Commissioner of Service Tax, Delhi-II - 2022(65) G.S.T.L 234 (Tri Del)
- (g) Bharti Hexacom Limited vs. Commissioner of C.Ex. & Cus.- Jaipur-I - 2021(52) G.S.T.L 62(Tri Del)

3. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the period involved in the present case is October 2007 to March 2011. The denial of the Cenvat is solely on the basis of amendment in explanation-2 to definition of Input by Notification No. 16/2009-CE (NT) hence it is necessary to read the definition and explanation which is reproduced below:-

“Input” means -

- (i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or

for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all **goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor** vehicles, used for providing any output service;

Explanation 1. - The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2. - **Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;**

The definition after amendment in explanation-2 is reproduced below:-

"Input" means -

(I) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

Explanation 1 - The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2 - Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer; "but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods.

From the plain reading of the explanation-2 it can be seen that explanation-2 is exclusively applicable to manufacturer and not to service provider. Therefore, the entire case based on the amendment in explanation-2 cannot sustain. Further, as regards the admissible inputs for the purpose of Cenvat credit, it falls under clause-(ii) of the definition of inputs according to which the Input includes all goods except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles used for providing any output service. A plain reading of clause(ii) of definition read with explanation-2, it is absolutely clear that the exclusion provided in explanation-2 is applicable to manufacturer and as regard the service provider in terms of clause(ii) of definition Input the service provider is entitled for Cenvat credit of inputs which are used for providing output service. In the present case, the appellant provided output service viz.

Commercial and Industrial Construction Service and for that Cement and Steel are vital input without which output service cannot be provided. Therefore, there is no doubt that appellant is legally entitled for the Cenvat credit on Cement and Steel used for providing output service i.e. Commercial and Industrial Construction Services.

5. We have gone through the judgments cited by learned Counsel in the case of *Mundra Ports & Special Economic Zone Limited (supra)*, the credit of Cement and Steel was allowed against the output service of Port Service. Even though cement and steel was directly used for output service for construction of jetty and then jetty was used for services, credit was allowed. On the face of judgment, the case of the appellant is on much better footing as in the present case the cement and steel was directly used in Commercial and Industrial Construction Services. Therefore, we have no hesitation to hold that appellant is legally entitled for Cenvat credit on Cement and Steel used for providing output service. Accordingly, the impugned order is set-aside and the appeal is allowed with consequential relief, in accordance with law.

(Pronounced in the open court on 15.06.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)