CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20134 of 2021

(Arising out of Order-in-Appeal No. 83-85/2020-21-CT dated 02.11.2020 passed by the Commissioner of Central Tax (Appeal-II), Bangalore.)

ACC Ltd
Unit Thondebhavi Kolar Project P O,
Thondebhavi Dist, Chikkaballapur,
Karnataka – 585225. ……….**Appellant**

VERSUS

Commissioner of Central Tax,
Bangalore North
No 59, HMT Bhawan, Ground Floor, Bellary Road,
Bangalore, Karnataka – 560032. …....**Respondent**

APPEARANCE:
Mr. M P Devnath, Advocate for the Appellant.
Mr. M. A. Jithendra, Authorized Representative (AR) for the Respondent.

CORAM:
HON'BLE SH. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20924 /2026

Date of Hearing: 27.07.2026

Date of Decision: 31.07.2026

PER: R. MURALIDHAR,

The appellant is a manufacturer of cement. In the course of manufacturing, the appellant used Fly Ash as raw material. The Fly Ash is purchased by them from NTPC's electricity generation plant. NTPC dumps the Fly Ash in the pond. From there, the appellant is required to collect the same by incurring their own cost for loading in the truck and movement of the truck to their own factory and unloading the same. The appellant is also required to take up proper maintenance of the Fly Ash Pond as per the conditions specified by the Pollution Control Board. The appellants have been taking the Cenvat credit for the services rendered at the Fly Ash pond as well as for the services used for loading and unloading, freight charges etc., incurred for movement of the Fly Ash to the factory site. On the ground that the services were rendered outside factory premises of the appellant and hence the Cenvat credit is not eligible, a Show Cause Notice (SCN) came to be issued for the period September, 2011 to March, 2012 on 09.10.2012. After due process, the Adjudicating Authority confirmed the demand of Rs. 10,79,166/-. The demand was affirmed by the Commissioner (Appeals). Being aggrieved, the appellant filed their appeal before this Tribunal.

2. The Learned Counsel appearing on behalf of the appellant submits that the issue is no more *res-integra.* He relies on the following case laws;

i. **CC, Nagpur Vs. Ultratech Cement Ltd – 2012 (278) ELT 523**

ii. **Birla Corporation Ltd. Vs. CCE, Lucknow – 2014 (34) STR 589 (Tri.-Del).**

3. He submits that the above case laws covering the identical issue should be applied and accordingly the appeal may be allowed.

4. The Learned Authorized Representative (AR) appearing on behalf of the Revenue submits that the Fly Ash pond is situated outside the factory premises. Therefore the appellant is not eligible to take cenvat credit. He justifies the confirmed demand.

5. Heard both sides and perused the appeal papers.

6. We find that admittedly there is no dispute that the Fly Ash in question is the raw material / input for manufacturing of finished goods. The appellant is purchasing the Fly Ash from NTPC as per conditions set in by NTPC. As per the Pollution Control Board's- direction, the Fly Ash is dumped by NTPC in the Fly Ash pond which is required to be maintained as per the standards specified by PCB. The appellant is undertaking the manufacturing activity and they are using the services of loading and unloading freight charges etc., for bringing the fly ash to their factory premises. The definition of input services as per Rule 2(l) as under;

"[(l) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) <u>used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,</u>

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

7. This Rule allows the appellant to take credit for the input services used in the manufacture of dutiable goods.

8. We find that on the very same issue, the Tribunals have held as under:

CC, Nagpur Vs. Ultratech Cement Ltd

2012 (278) ELT 523 (Tri.-Bom.)

5. The CENVAT Credit to the respondent was denied as proposed in the show-cause notice on the basis of that these services were received outside the factory premises. The CENVAT credit on input service is available as per Rule 2(1) of the CENVAT Credit Rules, 2004 which is reproduced here as under :-

(i) used by a provider of taxable service for providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to

> *business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.*

6. From the plain reading of the Rule 2(1) of the CENVAT Credit Rules, 2004, it is seen that no where it is mentioned that the input service credit is not available for the services utilized outside the factory premises. The denial of CENVAT credit on the ground that the services were not received by the respondent in the factory premises, is not sustainable. Accordingly, I do not find any merit in the appeal and the same is rejected.

Birla Corporation Ltd. Vs. CCE, Lucknow

2014 (34) STR 589 (Tri.-Del).

6. I have considered the submissions from both the sides and perused the records. First of all, I find that the issue of eligibility for Cenvat credit of the services of erection, installation & commissioning, repair and maintenance and insurance availed at the fly ash extraction lant at Thermal Power Plant are eligible for Cenvat credit or not, stands decided in favour of the appellant by a Coordinate Bench of the Tribunal in the case of Ultratech Cement (supra). Moreover, I find that the only basis for denial of Cenvat credit in this case, as mentioned in the show cause notice, is that the appellant company, who have installed fly ash extraction plant at the NTPC's Power Plant at Unachahar, have manufactured fly ash which is an exempted product and, therefore, in terms of Rule 6(1), they would not be eligible for Cenvat credit. This plea of the department is difficult to accept, as fly ash is generated continuously by the Thermal Power Plant by burning the coal. It is extracted by the appellant and is, thereafter, loaded in the bulk trucks for transportation to the appellant's cement plant. Just extraction of the fly ash generated In the Thermal Power Plant cannot be said to be "manufacture of fly ash" by the appellant. Fly ash has been manufactured by the Thermal Power Plant not by the appellant. The Department's stand is absurd, therefore, Rule 6(1) of the Cenvat Credit Rules, 2004 is not applicable at all. Since the services, in question, have been availed for erection, installation & commissioning, repairing and maintenance and insurance of the fly ash extraction plant installed by the appellant at the Thermal Power Plant, these services have to be treated as the services sed in or in relation to the manufacture of the cement by the appellant and would be eligible for Cenvat credit. In view of this, the

<u>impugned order is not sustainable.</u> The same is set aside. The appeal is allowed.

9. We find that to the facts of the present case the ratio laid down in the above case laws are squarely applicable. Accordingly, we set aside the impugned order and allow the appeal. The appellant would be eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 31.07.2026.)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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