CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

SERVICE TAX APPEAL NO. 51080/2022

[Arising out of Order-in-Appeal No. 44(CRM)ST/JDR/2021 dated 11.02.2021 passed by the Commissioner (Appeals), Central Excise & Central GST, Jodhpur (Raj)]

SHRIRAM RAYONS **APPELLANT**
Shriram Nagar
Kota-324004
Rajasthan.

Vs.

COMMISSIONER , CENTRAL EXCISE & CGST, UDAIPUR **RESPONDENT**

APPEARANCE:

Shri S C Kamra, Shri Dubey Advocates for the Appellant
Ms Tamanna Alam, Authorised Representative for the Department

CORAM:

HON'BLE DR. MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING /DECISION: June 06, 2022

FINAL ORDER No. 50503 /2022

PER DR. RACHNA GUPTA

The appellant in the present case is engaged in providing taxable services relating to 'Renting immovable of property', 'Transport of goods transport agency service', 'Business auxiliary services', 'Maintenance or repair services' and 'Scientific and technical consultancy service'. During the course of audit of appellants record, it was observed that appellant has availed Cenvat Credit in ST 3 return of June, 2017 to the extent of Rs.25,25,165/- out of which for the amount of Rs.18,09,098/- no documentary evidence were available with the appellant as was required under Rule 9(1) of Cenvat Credit Rules, 2004. Accordingly, while issuing show cause notice No. 8092 dated 01.10.2019, the Cenvat credit for the said amount was proposed to be reversed for the reason that the same was availed prior to making payment of service tax. The said proposal was initially confirmed vide Order-in-Original No. 69/2020 dated 01.07.2020. The appeal thereof was partially been allowed giving the benefit of CBEC Circular No. 207/05/2017 dated 28.9.2017 and the demand of Rs. 12,82,601/- has already been dropped by Commissioner (Appeals). However, the demand of Rs.5,26,497/- has still been confirmed for want of requisite documents i.e. copy of challan No. 28067 dated 06.07.2017, 29936 dated 06.07.2017 and 4079 dated 21.07.2017 involving Cenvat credit availed Rs. 5,26,497/-.

2. The present appeal has been filed to assail the said order confirming the partial demand.

3. I have heard Shri S C Kamra and Shri Dubey learned Counsels for the appellant and learned Authorised Representative Ms Tamana Alam, for the Department.

4. Learned Counsel has submitted that all requisite documents were produced before both the Adjudicating Authorities. It is mentioned that in fact the audit report mentions different challan numbers in the table and said reports whereas the show cause notice has different challan number than the challan number mentioned in Audit Report. It is from the show cause notice only that the numbers have been taken in both the orders of both the Adjudicating Authorities. Learned Counsel further impressed upon that the requisite

documents have been furnished as the challans they possess were very much placed on record. It has also been impressed upon that the credit availed was proportionate and was of lesser the amount than mentioned in the challan. Learned Counsel laid emphasis upon the compilation of challans as was maintained in the appellants' Service Tax register. It is mentioned that the Adjudicating Authority below has failed to appreciate the typing error as has been committed in the show cause notice with respect to challan numbers and also failed to revise the respective amounts mentioned in the Service Tax register which dully corroborates the challan produced by the appellant even before the Adjudicating authority. With these submissions, learned Counsel has requested for remanding the matter back for proper appreciation of the documents and proper calculation in view thereof.

5. Learned Departmental Representative has mentioned that the Commissioner (Appeals) has meticulously considered the CBEC Circular dated 28.9.2017 and due benefit has already been given. The documents submitted were thoroughly examined by Commissioner (Appeals) and it is thereafter that the partial demand was still been confirmed due to non-availability of the respective documents thereof. However, learned Departmental Representative has expressed no objection in remanding the matter back.

6. In view of the submissions and perusing the record, it is observed that the Original Adjudicating Authority has confirmed the entire demand / reversal of Cenvat Credit of Rs.18,09,098/- for the sole reason that the appellant has failed to produce any documentary evidence by which it can be established that the service have been received before 1.7.2017. Commissioner (Appeals) also while confirming the demand of Rs. 5,26,497/- has held the non-availability of the requisite documents as the

reason for the same. However, keeping in view that the documents are impressed upon to have been annexed on record and to have been provided to both the Original Adjudicating Authorities. The typographic error in challan number and co-relation of the compiled record of the appellant is impressed upon by the learned Counsel. Keeping in view the same, the request of remanding the matter is hereby accepted. The matter is remanded back to the Commissioner (Appeals) to appreciate both the challans and to look into the documents produced by the appellant and to appreciate as to whether there is any typographic error. It is thereafter to pass the fresh decision without being affected by any findings in this order.

7. Appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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