CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II
Service Tax Appeal No. 51463 of 2022 (SM)

(Arising out of Order-in-Appeal No. 164(CRM)ST/JDR/2021 dated 27.07.2021 passed by the Commissioner (Appeals) CGST & Central Excise, Jodhpur)

M/s Rajasthan State Raod Development And Construction Corporation Ltd **Appellant**
Setu Bhawan, Jaipur-Agra Bye Pass,
Jhalana Doongri, Jaipur,
Rajasthan-302004.

VERSUS

Commissioner, Central Excise & CGST-Jodhpur **Respondent**
G-105, New Indstrial Area,
Opp. Diesel Shed, Basni, Jodhpur
Rajasthan-342901

APPEARANCE:
None for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50228/2023

Date of Hearing: 15.02.2023
Date of Decision: 15.02.2023

ANIL CHOUDHARY:

The appellant is absent on call. I find that the appellant was absent on previous five occasions also. On one or two occasions, the Counsel had appeared and sought adjournment which was last granted on 14/11/2022, neither there is any prayer for adjournment. Accordingly, it is decided that the appeal is taken up for hearing ex parte with the assistance of learned AR.

2. The brief facts are that the appellant is a Public Sector Undertaking (PSU) of Government of Rajasthan and were registered

with the service tax department. Appellant is engaged in providing and receiving of Construction Services other than Residential Complex, also Renting of immovable property service, Works Contract Service, Legal Consultancy Service, etc.

3. During the course of audit, it appeared that appellant have wrongly availed Cenvat credit of Rs. 17,56,714/- which is not on the proper documents as prescribed under Rule 9(1) of CCR, during the period April 2015 to March 2017. The credit, it appeared was taken on the basis of 'running account bills' prepared by the staff of the appellant (service receiver) containing measurement of work and amount to be paid to the Contractor (service provider). It appeared, these bills do not contain the mandatory information required for availing Cenvat credit in terms of Rule 9(1) of CCR. Accordingly, SCN dated 25.01.2020 was issued proposing recovery of Cenvat credit taken Rs. 17,56,714/- with further proposal to impose penalty under Rule 15 of CCR r/w Section 78 of the Act.

4. The appellant contested the SCN by filing reply dated 13.08.2020 wherein they inter alia urged that they being a PSU are required to follow the rules and guidelines framed by the State Government, which have prescribed the format of bills, known as running bill. The Bills are prepared jointly by the department and the Contractor (service provider). These running bills contain all such details and particulars like name of contractor-supplier of service, taxable value, service tax amount etc. The details of the contractors were already made available to the department and thus was verifiable by the department. Evidently the suppliers of service-

contractors are selected by process of tendering who are in almost all cases registered with the service tax department. Complete details of such contractors was provided to the audit team. Payment on the basis of the running bills under dispute was made to the contractors through banking channels. Thus, there is no doubt regarding authenticity of the running bills. Further, Rule 9(2) r/w Rule 9(1) provides that even in case of some minor discrepancy in the bill or document on the basis of which Cenvat credit is taken, the Adjudicating Authority is empowered to verify the details and in case of transaction being genuine, allow the Cenvat credit so taken. Further, evidently appellant have maintained proper books of accounts and vouchers and have availed Cenvat credit on the genuine transaction of service, received from the contractors who are registered with the service tax department. It is the normal practice in the matter of civil work or works contract received by the Government department/ PSU, that periodical running bill is prepared on the basis of measurement taken jointly by the service receiver and service provider. Thereafter, the running bill is prepared and which forms the basis of payment to the contractor after deduction of security deposit, income tax, sales tax etc etc. Admittedly, service tax has been paid to the Service tax department on the basis of such running bills.

5. The SCN was adjudicated on contest and vide O-I-O dated 24.09.2020, the proposed disallowance of credit was confirmed alongwith interest and further equal penalty was imposed under Rule 15 of CCR r/w Section 78 of the Finance Act.

6. Being aggrieved the appellant preferred appeal before the learned Commissioner (Appeals) was pleased to dismiss the appeal observing as follows:

> "I find that the appellant have availed Cenvat Credit on the strength of running account bills/measurement books prepared by them during the said period, I find that these bills/books are not proper document for availing Cenvat credit as discussed in above paras. I find that the appellant has failed to submit invoices/bills issued by the service providers or challans of payment of service tax as prescribed under Rule 9(1) of Cenvat Credit Rules, 2004 read with Rule 4A of Service Tax Rules, 1994 and Rule 9(2) of Cenvat Credit Rules, 2004. Therefore, Cenvat credit of Rs. 17,56,714/- which was availed on the basis of improper documents is not admissible to the appellant and recoverable along with interest."

7. Being aggrieved the appellant PSU is before this Tribunal inter alia on the grounds as taken before the court below, which have been noted hereinabove and also placed reliance on the following rulings; LIC of India vs. Escorts Ltd-AIR 1986 SC 1370 & CCE Vs. System India (2008) 232 ELT 459 (CESTAT SMB), Wherein the Apex Court have held that in case of minor discrepancy in the documents wherein the transaction is not in dispute, Cenvat credit should be allowed.

8. Heard Learned AR who relied on the impugned order.

9. Having considered the grounds of appeal and on perusal of the case records, I find that it is not in dispute that the appellant PSU have prepared the running bills as per the norms prescribed by the State Government. I further find that it is not disputed that such running bills are not genuine, or payment to the service provider/contractor have not been made as per the running bills, after adjustment of various if any like Income Tax at source, Vat at

source, security deposit, etc etc. I further find that it is a case of failure to exercise jurisdiction by the court below in verifying the genuineness of the transaction and allowing the credit accordingly, wherein in Rule 9(2) of CCR read with proviso it has been prescribed that-where a document does not contain all the particulars but contains substantial particulars, inter alia details of service tax payable, description of service etc. The assessing officer on being satisfied that the goods on services covered by the said documents have been received and accounted for in the books of account of the receiver, he may allow the Cenvat credit. I find that there is no such contrary finding in the orders of the court below as regards non receipt of service or the Cenvat credit taken being sham or fake.

10. In view of my findings and observations, I hold that the Cenvat credit in under dispute is allowable to the appellant-assessee. Accordingly, the appeal is allowed, the impugned order is set aside. The appellant is entitled to consequential benefits.

(order dictated in the open court)

Anil Choudhary
Member(Judicial)

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