IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.75999 of 2018

(Arising out of Order-in-Appeal No.43/RAN/2018 dated 01.02.2018 passed by Commissioner (Appeals) of CGST, Excise, Ranchi)

M/s Prasad Explosive & Chemicals
Prasad Mansion, Ratu Road, Ranchi-834001

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi
C.R.Building, 5A-Main Road, Ranchi-834001

Respondent

Appearance:
Shri Deepak Sinha, Advocate for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

FINAL ORDER NO.75544/2022

DATE OF HEARING : 13.10.2022
DATE OF DECISION : 13.10.2022

PER P.K.CHOUDHARY :

The present appeal has been filed by the Appellant against the Order-in-Appeal No.43/RAN/2018 dated 01.02.2018 passed by Commissioner (Appeals) of CGST & Central Excise, Ranchi.

2.1 The facts in brief are that the Appellants are engaged in the manufacture of "Emulsion Matrix (bulk explosive)". The Appellant is one of the prime supplier of bulk explosive to Central Coalfields Limited and other similar mining Companies, who are using such explosive at their mines for the purposes of blasting etc.. For the purposes of manufacturing of the aforesaid product i.e. Emulsion Matrix (bulk explosive)", the Appellants are using the various kinds of raw materials and also using special kind of plant/machinery. In the process of manufacturing of the aforesaid final product i.e. explosive material is to prepare "Non-Explosive/Emulsion Matrix" at its plant/unit situated at Ranchi and for the purposes of production and storage of the said "Non-

Explosive Emulsion Matrix”, a Storage Tank of special nature is required at the said unit of the Appellants. The Storage Tanks are made with the help of Angle, Channel, H.R. Plates, M.S.Bar, Chequered Plates, Troughed Sheet, Welding Electrodes etc., which are used at the manufacturing process. That after production of the aforesaid “Non-Explosive/Emulsion Matrix” at its plant side with the help of aforesaid Storage Tank, the said “Non-Explosive/Emulsion Matrix” along with other chemicals are loaded in a Special Vehicle, namely, “Bulk Mobile Delivery (BMD)” having various Storage Tank and system of mixing up, in which the raw materials and chemicals are loaded and after mixing all those chemicals in right proportion, the “Bulk Explosive” are prepared at the site of blasting. It is submitted that the “Bulk Explosive” are highly inflammable and sensitive in nature, therefore, the mixing of such chemicals for the purpose of preparation of final product i.e. “Bulk Explosive” at the blasting area itself, by taking the help of the special vehicle made only for this purpose, known as “Bulk Mobile Delivery Vehicle (BMD)”. BMD contained 4-5 storage tanks of different capacity for different chemicals and the BMD vehicle regulates the pressure, temperature and flow for mixing of the aforesaid chemicals for the purposes of preparing the final product, i.e. “Bulk Explosive”. It is further submitted that the disputed goods had been used for the purposes of manufacturing of BMD Vehicles and the Storage Tanks, without which, the “Bulk Explosive” cannot be prepared.

2.2 Show-cause notice dated 06.02.2014 was issued alleging wrong availment of cenvat credit during the period January, 2013 to December, 2013. Show-cause notice proposed to disallow and recover cenvat credit amounting to Rs.1,05,990/- along with interest and imposition of penalty.

2.3 The Adjudicating Authority observed that the Certificate dated 26.08.2013 issued by a Chartered Engineer, is not corroborated with evidence on technical diagram with details as to how and where these items have been used. He further emphasized that the assessee had failed to provide any evidence regarding the use of such goods, on which credit had been taken to have qualified as components, spares and accessories of the goods specified under the provisions of Rule 2

(a) (i) & (ii). The Ld.Adjudicating Authority has relied on the Tribunal's Larger Bench decision in the case of Vandana Global Limited Vs. CCE, Raipur : 2010 (253) ELT 440 (Tri.-LB) for disallowing the impugned cenvat credit of Rs.1,05,990/- and also imposed equal amount of penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15 (2) of the Cenvat Credit Rules, 2004. On appeal, the Ld.Commissioner (Appeals) upheld the demand but set aside the penalty imposed. Against the upholding of the demand, the Appellant is in appeal before the Tribunal.

3. Heard both sides and perused the appeal records.

4. I find that the ld.Adjudicating Authority has relied upon the Larger Bench decision of the Tribunal in the case of Vandana Global (cited supra) for dis-allowance of cenvat credit as claimed by the Appellant, which is not at all applicable to the facts of the present case. I further find that the Hon'ble Chhattisgarh High Court [2018 (16) GSTL 462 (Chh)] has distinguished the decision of the Larger Bench of the Tribunal on the findings that it is not a good law and various other High Courts have also expressed similar views. By respectfully following the decision of the Hon'ble Chhattisgarh High Court, I am of the view that the impugned demand cannot sustain and accordingly, the same is set aside.

5. The appeal filed by the appellant is allowed with consequential relief, as per law.

Dictated and pronounced in the open Court.

Sd/

(P.K.Choudhary)
Member (Judicial)

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