

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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75710 of 2015

(Arising out of Order-in-Appeal No.19/RAN/2015 Dated 28/05/2015 passed by Commissioner (Appeals), Central Excise & Service Tax, Ranchi.)

M/s. Prasad Explosive & Chemicals
(Prasad Mension, Ratu Road, Ranchi-834005)

Appellant

VERSUS

Commissioner of CGST & Central Excise Ranchi
(C. R. Building, Main Road, Ranchi-834001)

Respondent

APPEARANCE :

Md. Nasim Ahmed, Authorized Representative for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75800/2023

Date of Hearing : 22 June 2023

Date of Decision : 22 June 2023

PER R. MURALIDHAR

The Appellant is a manufacturer of bulk explosive. They supply most of their explosives to various Mining Companies to use such explosives at their mines for the purpose of blasting. In the course of their manufacturing activity, they have used various items like Angle, Channel, H. R. Plates, M. S. Bar, Chequered Plates, troughed sheet etc. for usage in their "Bulk Mobile Delivery Vehicle (BMD)".

2. Show Cause Notice was issued on the allegation that the Appellant is not eligible to take the Cenvat Credit and an amount of Rs.16,66,075/- was demanded for such credits taken for the period June 2008 to December 2012. After due process, the Lower Authorities confirmed the demand. Being aggrieved by the impugned OIA, the Appellant is before the Tribunal.

3. The Learned Authorized Representative of the Company submits that the Appellant has produced the evidence before the lower Authorities in the form of Chartered Engineer's Certificate certifying as

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to where these items were used within the manufacturing plant. He draws my attention to Page 31 to 34 of the Appeal Paper Book wherein Chartered Engineer's Certificate along with item wise utilization of Capital Goods have been enclosed.

4. He further submits that the issue is no more *res integra*. In their own case in respect of such demand being made for the period January 2013 to December 2013, the matter had come up before this Tribunal. The Tribunal vide Final Order No.75544/2022 dated 13.10.2022 has held that the Appellant is eligible to take the Cenvat Credit. The facts are identical in the present case and proceedings in that case were in respect of the earlier period. Accordingly, he prays that the present Appeal may be allowed.

4. The Learned AR reiterates the findings of the lower Authorities but does not deny that identical matter had come up before this Tribunal in the Appellant's own case in the Final Order No. 75544/2022 dated 13.10.2022.

5. Heard both sides and perused the documents.

6. It is seen from the Appeal Paper Book that the Appellant has submitted copy of the Chartered Engineer's Certificate specifying the usage of the inputs/capital goods in question. This Tribunal, in the Appellant's own case for the demand made for the period January 2013 to December 2013 has gone through the issue and dealt in detailed manner and has held as under:-

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

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Ranchi and for the purposes of production and storage of the said "Non-Excise Appeal No.75999/2018 2 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.

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.[Emphasis Supplied]

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7. Since the issue is identical pertaining to the same Appellant, respectfully following the decision of this Bench dated 13/10/2022, the present Appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja