

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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.76594 of 2018

(Arising out of Order-in-Appeal No.27/ASN-II/CT(Audit II)/2017-18 dated 15.02.2018 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Pragati Cemex Private Limited

Wilcox Road, Simulia, P.O. & Dist.-Purulia, W.B., Pin-723101

Appellant

VERSUS

Commissioner of CGST & Excise, Bolpur

Nanoor Chandidas Road,SIAN, Dist.-Birbhum, Bolpur

Respondent

APPEARANCE :

None for the appellant

Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.....75913/2023

DATE OF HEARING : 26 .06.2023

DATE OF DECISION : 26.06.2023

Per R.Muralidhar :

None appeared on behalf of the appellants.

2. It is seen from the record that the appellants are not attending the hearings though notice of Hearing is being sent to them regularly. Therefore, the appeal is taken up for disposal with the consent of the A.R. for the Revenue.

3. Perused the appeal papers and documents available on record.

4. It is seen that the issue relates to availment of cenvat credit taken by them on the Service Tax paid for Railway rake charges incurred by them from the railway station to the place of buyers of the cement. The lower authorities have confirmed the demand. Being aggrieved, the appellant is before this Tribunal.

5. The appellant has contested the said demand on merit on the ground that the place of removal of their finished goods is the place of buyer i.e. dealer's premises. Therefore, they submit that the services have been used in or in relation to clearance of goods up to the place of removal. Therefore, they submit that the appeal is required to be allowed on merits.

6. Apart from this, the appellant has also contested the demand on account of limitation as they have filed ER-1 Returns showing availment of such credits. Therefore, they submit that they have not suppressed any facts and hence, their appeal may be allowed on account of limitation also.

7. After going through the factual details and the statutory provisions, it is seen that the appellant is eligible to take the cenvat credit for the services upto the place of removal only after amendment was carried out on 01.04.2018. The "Place of Removal" during the period under dispute was not defined under the Cenvat Credit Rules, 2004. It had to be interpreted through the definition given at Explanation (VI) (c) of Section 4 of the Central Excise Act, 1944, which reads as under :

(c) "place of removal" means -

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;*
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without [payment of duty;]*
- [(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;]*
- from where such goods are removed;”*

8. This matter was also dealt by the Hon'ble Supreme Court in the case of Ispat Industries [2015 (324) ELT 670 (SC)], wherein the Hon'ble Apex Court has taken a clear view that the place of removal cannot be the place of buyer under any circumstances. Therefore, on merit, the appellant has no case. Accordingly, the appeal is rejected on merit.

9. However, I find substance in their submissions that the credit taken by them is reflected in ER-1 Returns. Apart from this, the matter is as to whether the cenvat credit can be taken on such inputs or not, was a matter of dispute.

10. In view of the above, I hold that the demand for extended period is not legally sustainable. Therefore, for the demand for the normal period, the appellant is required to pay the same along with interest.

11. However, the penalty on the same is waived.

12. Appeal is disposed off in the above terms.

(Dictated and pronounced in the open court)

Sd/-
(R.Muralidhar)
Member (Judicial)

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