CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 836 OF 2011

[Arising out of Order-in-Appeal No: YDB/101/M-II/2011 dated 15th February 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.]

PRS Permacel Pvt Ltd
Plot No. 11/1 Additional MIDC, Anand Nagar,
Ambernath (E), Thane – 421 506 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – II
9th Floor, Piramal Chambers Jijibhoy Lane, Lalbaug
Parel, Mumbai – 400 012 ***…Respondent***

APPEARANCE:

Shri Subhash Chaudhary, Manager of appellant

Shri AB Kulgod, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87557 / 2019

DATE OF HEARING:	04/01/2019
DATE OF DECISION:	04/01/2019

PER: C J MATHEW

The issue in this appeal of M/s PRS Permacel Pvt Ltd against order-in-appeal no. YDB/101/M-II/2011 dated 15th February 2011 of Commissioner of Central Excise (Appeals-II), Mumbai, which has upheld the denial of CENVAT credit of ₹ 10,48,245, representing tax discharged on transportation of finished goods from April 2005 to February 2008, with consequent recovery under section 11A of Central Excise Act, 1944, along with appropriate interest under section 11AB of Central Excise Act, 1944, and the imposition of penalty of like amount under section 11AC of Central Excise Act, 1944. From the impugned order, it is seen that the original authority had confirmed the demand on the ground that 'place of removal' referred to in rule 2 (l) of CENVAT Credit Rules, 2004 was, till 31st March 2008, qualified by expression 'up to', and would, in accordance with section 4 of Central Excise Act, 1944, be the factory gate.

2. The first appellate authority has held that the claim of the appellant that the contract of sale with the buyer required delivery at the premises of the customer was not supported by any evidence whatsoever of the sale having taken place at the destination.

3. On behalf of the appellant, their Authorized Employee placed on record the decision of the Tribunal in their own case, pertaining to the period from 1st March 2008 to 31st March 2009, remanding the matter back to the original authority for verification of purchase orders and which, having been complied with, led to dropping of proceedings

in four show cause notices on the certificate of the Chartered Accountant. It is further contended that the purchase orders, for 2006-08 and related to the present dispute, had already been verified to the extent of ₹ 7,39,758 and the same should be allowed for the previous period. It is further contended that the transportation charges pertain to movement of import and export goods.

4. We have heard Learned Authorised Representative.

5. It is seen from the order of the original authority for 2008-09 that eligibility for CENVAT credit on tax paid for transportation of goods as provider of 'goods transport agency' services has been allowed subject to verification of the conditions of contract referred to in the purchase orders. This is in line with the decision of the Tribunal in *PRS Permacel Pvt Ltd v. Commissioner of Central Excise, Mumbai-II [order no. A/342/13/SMB dated 26th July 2013 disposing of appeal no. E/1525/11 against order-in-appeal no. US/78/M-II/2011 dated 14th July 2011 of Commissioner of Central Excise (Appeals), Mumbai]*.

6. As the eligibility for CENVAT credit for subsequent period has been allowed by the departmental authorities without further challenge, the only aspect for verification is the terms in the relevant purchase orders. It is seen that the dispute pertains to the period before amendment of rule 2 (l) of CENVAT Credit Rules, 2004 which permitted availment even for transportation from the place of removal.

The appellant had, in proceedings before the original authority, as recorded in paragraph no 9, furnished purchase orders indicating the place of removal to be the premises of the buyer. This factual submission has not been disputed by the adjudicating authority in the order that was impugned before the first appellate authority. In view of the credit availed for the subsequent period having been allowed on the basis of similar documents in adjudication proceedings, there is no reason to deny the same for the period from 2005 to 2008.

7. Accordingly, the impugned order a set aside and appeal allowed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*