CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85051 of 2021

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0140/2020-21 dated 23.09.2020 passed by the Commissioner of Central Tax (Appeals), Pune)

M/s SPM Autocomp Systems P Ltd. **.... Appellant**
F-32, MIDC Indl. Area, Ranjangaon, Tal. Shirur,
Pune, Maharashtra – 412220.

Versus

Commissioner of Central Excise & Service Tax-Pune-I **.... Respondent**
41-A, ICE House, Sassoon Road, Opp. Wadia College,
Pune, Maharashtra – 411001.

Appearance:

Shri D.K. Tyagi, Advocate for the Appellant

Shri Amrendra Kumar Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85654/2023

Date of Hearing: 12.04.2023

Date of Decision: 12.04.2023

Per: Anil G. Shakkarwar

The issue involved is in relation to provisions of CENVAT Credit rules w.e.f. 01.04.2011 particularly definition of input service under Rule 2 (l) of CENVAT Credit Rules, 2004 as amended w.e.f. 01.04.2011, wherein service portion in execution of works contract and construction service insofar as they are used for construction for building are excluded from the definition.

2. Appellant were issue with a show cause notice dated 12.07.2018 for demand of CENVAT Credit availed during the period

from March 2014 to June 2017 of Service Tax paid under reverse charge mechanism on receipt of works contract service for repairs, maintenance, renovation and extension of their factory shed and office building. In view of Revenue, said services received by the appellant were part of the exclusion clause of the amended definition of input service and therefore, were not admissible to the appellant. The appellant contested the issue and stated that the services utilized for construction of building or civil structure are alone excluded from the definition and the appellant utilize the services for repair, renovation, extension and maintenance and therefore, the services utilized by the appellant did not fall under exclusion clause. The original authority did not agree with the appellant and confirmed the demand. The learned Commissioner (Appeals) did not interfere and therefore the appellant is before this Tribunal.

3. Heard the learned Counsel for the appellant. He has submitted that there is no dispute that the services were received by the appellant for repair of factory shed, renovation, maintenance and extension of factory shed and office building and service were not used for construction of building and therefore, the appellant’s case is not covered by exclusion clause. He has relied on decision of this Tribunal in the case of Bombay Market Art Silk Society Vs Commissioner Surat reported at 2022 (65) GSTL 86 (Tri.- Ahmadabad). He has submitted that the Tribunal has held that construction and works contract, if used for repair and renovation of existing factory then the same falls under inclusion clause of definition of input service.

4. Heard the learned AR. He has supported the impugned order.

5. I have carefully gone through the records of the case and submissions made. It is undisputed that the services were utilized for repair, maintenance and extension of factory shed and office building. However, it is not clear whether there was construction of a civil structure. Therefore, the same is required to be verified by the original authority. I rely on decision of this Tribunal relied upon by the learned Counsel for the appellant that insofar as the works contract is used for repair and maintenance of existing factory, they falls under the inclusion clause. In the present case, whether civil structure was constructed or not is not clear from the case record. Therefore, I remand the matter to the original authority with a direction that the CENVAT Credit shall be allowed in respect of such services which were used for repair and maintenance where construction of civil structure was not involved to re-determine the admissibility of CENVAT Credit.

6. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

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