CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 4

EXCISE APPEAL NO. 86577 OF 2021

(Arising out of Order-In-Appeal No. AJV/10/RGD-APP/2021-22 dated 16.04.2021 passed by The Commissioner of CGST and Central Excise, Raigad.)

PRISM JOHNSON LTD
RMC Readymix (India) Division,
Windsor, 7th Floor, CST Road,
Kalina, Mumbai,
Maharashtra-400 098.

Appellant

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE, BELAPUR
C.G.O. Complex,1st Floor,
Sector-10, C.B.D. Belapur,
Navi-Mumbai,
Maharashtra-400 614.

Respondent

Appearance:
Shri Rajesh Ostwal, Advocate for the Appellant.

Shri C.S. Vinod, Assistant Commissioner, Authorized Representative for the Respondent.

CORAM:
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Date of Hearing: 10.09.2024
Date of Decision: 10.09.2024

FINAL ORDER NO :- 85919/2024.

PER : MR. RAJEEV TANDON

Aggreived by the Order-In-Appeal No. AJV/10/RGD-APP/2021-22 dated 18.03.2021/16.04.2021, the appellant have filed the instant appeal. Vide the said order the Learned Commissioner Central Tax and Central Excise Appeals Raigad have

(i) Denied the availment of CENVAT credit of Rs. 61,833/- primarily contending as per the documents (invoice etc.), the goods were not consigned to the appellant's Mahape manufacturing unit and therefore could not be used in relation to manufacture of excisable goods by Mahape unit.

(ii) Denied availment of CENVAT credit for an amount of Rs.13,57,939 as it was not forthcoming from records that payment to the said extent was made under RCM in respect of Mahape unit and that there was no coraborative evidence submitted to substantiate the same. The learned Commissioner Appeals also dismissed the Chartered Accountants certificate tendered by the appellant in respect of the issue.

(iii) Justifying invocation of extended period of limitation, held that it was the responsibility of the appellants to avail proper and eligible CENVAT credit only and that in terms of Rule 9 of the Cenvat Credit rules, 2004. The burden to prove admissibility thereof lies solely with the appellant.

(iv) In view of his findings at 1-3 above, the learned Commissioner Appeals also upheld the demand for interest and invocation of penalty.

2. The facts of the case are that the appellant-a manufacturer of ceramic tiles obtained centralized registration under Rule 4 (2) of the Service Tax Rules, 1994 which also includes the present unit in question viz Mahape unit. It is the Appellants contention that they availed credit on GTA services, manpower services and works contract services on which tax was duly discharged as per RCM. Their regional office had made the said service tax payment under a consolidated challan. They also submit that the manpower services were availed only in respect of the Mahape unit and therefore service tax credit with reference to that portion pertaining to manpower services was not availed by any other unit of the appellant and was fully transferred to them. The revenue sought to deny service tax credit on manpower services on the ground for having availed the same in the absence of proper documentation as required in terms of Rule 4 CCR Rules read with Rules 7,7A and 9 (l) of the Rules ibid.

3. I have heard the rival contentions of the two sides and perused the case records.

4. It is observed that the findings of the Commissioner dismissing the C.A. certificate submitted towards credit availment of Rs. 13,57,709 by the Mahape unit, without assigning any reason is not justiciable. The fact that the Commissioner Appeals in his order has noted that appellant were in posession of invoices which were held to be valid by him for purpose of availment of service tax paid under RCM, as referred to para 2.2 of the Order-In-Original, belies any merit in rejection of the said certificate. Moreover it is noted that the Commissioner Appeals has held that the appellants were required to

calculate service tax liability on the basis of invoices issued and that the payment of tax vide the consolidated challan was held to be valid by him, further only buttresses and substantiates the contents of the said CA certificate. Thus, the Chartered Accountant certificate tendered by the appellant only to put to rest the doubts of the Revenue and in substantiation of their propositions cannot be held to be unsustainable simply for the reason that it did not indicate the specifics of the documents examined to arrive at the figure of tax credit availed, when the existence of requisite documents is itself recorded in the order. As placed on the records by the appellant, the Chartered Accountant certificate also appended therewith a detailed breakup of the location wise service tax paid by the appellant. As can be seen in the paper book at annexure (G) thereof the appellant have also appended to the paper book sample copies of invoices clearly indicating the details of the transportation charges on which tax payment were made on RCM basis indicating that no CENVAT credit was availed thereon by anyone else other than the appellant.

5. As for the credit of Rs. 61,833/-, the appellant submits that they alone have taken CENVAT credit on said services and it was not apportioned to other locations of the group companies. In this regard, they state that mention of other locations like Thane/Panvel/Lodha/Mumbai was inadvertently done. They contend that the original invoices were within their possession and they alone had received the goods and availed CENVAT credit thereon. Further the appellant have also submitted that in any case the situation is revenue neutral as the tax credit falls to the same parent organization and that the mention of a wrong address was mainly technical and a procedural lapse.

6. The appellant has challenged the impugned show cause notice on limitation as well pointing out that the details of CENVAT credit were duly disclosed in ER-1 and ST-III returns filed on regular basis by the appellant. Thus to include suppression of facts was unreasonable, unrealistic and contrary to law. It is observed that the department has failed to clearly indicate an eventful suppression of facts, as returns were filed regularly indicating requisite credit details as well. In view thereof extended period of limitation is not applicable in the matter.

7. In view of the aforesaid factual premise, the inherent contradiction in the learned Commissioner's order, the fact of availability of requisite invoices duly supported by the Chartered Accountant's certificate clearly stating about the payment of consolidated Service Tax of which an amount of Rs.

13,57,709/- pertained to the Mahape location (as evidenced by location wise break-up appended), I hold that the impugned order of the lower authority is not in accordance with law and the appellant is eligible to avail of the Cenvat Credit of the said amount of Rs. 13,57,709/-. As for the credit of Rs. 61,833/- availed by the assesse, apart from what has been contended by the appellant, the fact that in any case the issue would be revenue neutral, I find no justification in denying the appellant Cenvat credit to the said extent.

8. In view of my findings aforesaid the appeal is allowed both on merits and limitation. The order of the lower authority is set aside along with all attendant liabilities of penalty and interest affixed on the appellant. The appellant shall be entitled to consequential relief, if any as per law.

(Dictated and pronounced in open court)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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