CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 88968 OF 2014

[Arising out of Order-in-Original No: 02/ANS-02/PRS PERMACEL/K-III/Th-I/2014 dated 23rd May 2014 passed by the Commissioner of Central Excise, Thane-I.]

PRS Permacel Pvt Ltd
11/1, Additional MIDC, Anand Nagar
Ambarnath (E), Thane – 421 506 … ***Appellant***

versus

Commissioner of Central Excise
Thane – I
4th Floor, Navprabhat Chambers, Ranade Road
Dadar (W), Mumbai-400 028. ***…Respondent***

APPEARANCE:

Shri Viraj Reshamwala and Shri Siddharth Shriram, Advocates for the appellant

Shri Vinod S Chettiparambil, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86833/2024

DATE OF HEARING: 22/04/2024
DATE OF DECISION: 21/10/2024

PER: C J MATHEW

The dispute in this appeal of M/s PRS Permacel Pvt Ltd against order[1] of Commissioner of Central Excise, Thane – I lies within the narrow compass of entitlement to avail CENVAT credit on capital goods imported by them that, though ordered by them from the address of one of their undertakings existing then, happened to be installed and utilized in another. The appellant, during the process of establishing its unit at Dombivli, had placed order for ‘automatic Werner Kamman screen printing machine’ with the address of their existing factory at Andheri (E), Mumbai and which, upon clearance against bill of entry no. 622674/11.01.2007, having been kept at a godown was, after obtaining registration for the new premises, despatched for installation there. Additional duty of customs charged on the impugned goods was availed in the CENVAT credit account on 24th July 2007 and 13th April 2008 against the endorsement in the bill of entry in favour of the second unit. Proceedings for recovery culminated in demand of ₹ 79,17,604 under rule 14 of CENVAT Credit Rules, 2004, along with interest thereon, and penalty of like amount imposed under rule 15 of CENVAT Credit Rules, 2004.

2. According to Learned Counsel for the appellant, the installation of the goods at the Dombivli premises is not in dispute and neither is there a dispute that the bill of entry pertaining to the goods had been duly endorsed for transport nor that credit had been availed on transfer from the godown to the factory of the appellant. It was further

---

[1] [02/ANS-02/PRS PERMACEL/K-III/TH-I/2014 dated 23rd May 2014]

contended that the import had been in the name of the appellant and installation at one or the other of their undertaking made no difference to entitlement under CENVAT Credit Rules, 2004. It is further contended that the requirement of rule 9 of CENVAT Credit Rules, 2004, *i.e.*, the particulars in the document prescribed for availment of credit, had not been breached in any manner. Reliance was placed on the decision of the Hon'ble High Court of Gujarat in *Commissioner of Central Excise, Vadodara-II v. EUPEC-Welspun Pipe Coatings India Ltd [2010 (260) ELT 381 (Guj.)]* and on the decision of the Tribunal in *Larsen & Toubro Limited v. Collector of Central Excise, Bhubaneswar [1994 (72) ELT 948 (Tribunal)]*. It was also further submitted that credit is admissible with duty having been paid and utilization of ‘capital goods’ not being in dispute for which reliance was placed on the decision of the Tribunal in *Philips Electronics (India) Ltd v Commissioner of Central Excise, Vadodara-I [2009 (237) ELT 596 (Tri- Ahmd)]*.

3. We have heard Learned Authorised Representative.

4. The issue in dispute is very simple. Objection was raised to the availment of credit of additional duties of customs charged on imported goods solely on the ground that the address in the bill of entry differs from the address at which credit was availed. The bill of entry had been duly endorsed from one undertaking to another of the

same appellant company. The requirement of rule 9 of CENVAT Credit Rules, 2004 specifies, *inter alia,* that bill of entry is supporting document for availment of credit. It is abundantly clear from the document that the credit was to be availed by M/s PRS Permacel Pvt Ltd and CENVAT Credit Rules, 2004 permits availment of credit by ‘manufacturer’ and not to the premises. The CENVAT Credit Rules, 2004 does not define ‘manufacturer’ therein except, contextually, for certain specified goods and, consequently, support will have to be drawn from the definition in Central Excise Act, 1944. That expression, as per section 2(f) of Central Excise Act, 1944, is to be construed from ‘manufacture’ therein. Consequently, the implication is that utilization of imported goods at a premises of ‘manufacturer’ established for ‘manufacture’ suffices for eligibility.

5. Furthermore, as per

> *‘RULE 3. CENVAT credit. — xxxxxxxx*
>
> *(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:’*

of CENVAT Credit Rules, 2004 provision has been made for removal of ‘capital goods’ as such, under the cover of an invoice to enable availment of credit by recipient, subject to reversal of credit availed, if any; had the appellant herein taken the goods to the factory at Andheri and availed credit there before shifting the goods to the Dombivli, the latter unit would have entitled to take credit under the authority *supra.* There is, thus, no bar on shifting of capital goods as long as credit is not availed concurrently. Mere technical infraction of a different address of the same assessee is not valid ground for denial of CENVAT credit.

6. Accordingly, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 21/10/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*