CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5

EXCISE APPEAL NO. 85338 OF 2016
E/CO-91052/2016
(Arising out of Order-In-Original No. 35/SHH/PC/RGD/2015-16 dated 30.11.2015 passed by The Principal Commissioner.)

SUDARSHAN CHEMICAL INDUSTRIES LTD
46, MIDC Estate,
Dhatav Roha,
Maharashtra,
Raigad-402 116.
........Appellant

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, RAIGAD
Plot no. 1, Sector-17,
Khandeshwar,
Navi Mumbai-410 206.
.......Respondent

Appearance:
Shri Sachin Chitnis & Shri Kiran Chavan, Advocates for the Appellant.

Shri Dinesh Nanal, Deputy Commissioner, Authorized Representative for the Respondent.

CORAM:
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 20.01.2025
Date of Decision: 20.01.2025

PER : ANIL G. SHAKKARWAR

FINAL ORDER NO :- A/85074/2025.

Brief facts of the case are that the appellant is manufacturer of organic and inorganic chemicals including pigments and intermediates of pesticides. During the audit conducted and audit report prepared during the year 2012-13 and 2013-14, it was observed that the appellant had availed cenvat credit of service tax paid on civil construction services which included excavation, masonry work, carting of excavated material, providing and laying stone flooring etc. It appeared to Revenue that such services are not covered as input services for availment of cenvat credit. Therefore, a show cause notice dated 30.09.2014 was issued to the appellant proposing reversal of cenvat credit of Rs.1,57,20,501/- under Rule 14 of Cenvat Credit Rules, 2004. Further there was proposal to appropriate an amount of Rs.19,01,290/-

already paid by the appellant. Further there was another proposal to appropriate an amount of Rs.8,55,024/- paid by the appellant on 01.08.2014. Further there were proposals of imposition of penalty.

2. Representative of the appellant appeared for hearing before the original authority on 27.10.2015. He submitted before the original authority that the construction service rendered was essentially for repair of the factory premises such as repair of walls, floors etc., tiling of floors and walls. He further submitted that there was no fresh construction for which credit was being denied. He further submitted that the appellant had already reversed credit on construction services amounting to Rs.19,01,290/- and interest of Rs.8,55,024/- was paid and a penalty of Rs.4,75,322/- was also paid. Out of the demand of Rs.24,11,930/-, Rs.2,41,752/- is pertaining to manpower recruitment and tangible goods services. He further submitted that Rs.5,51,187/- pertains to the period from April 2011 to December 2013. Further he did not submit any invoice for verification by the adjudicating authority and requested the adjudicating authority for visit of departmental officers to factory for verification of invoices. Learned original authority has denied cenvat credit of Rs.38,58,123/- and credit of Rs.1,18,62,378/- under Rule 14 of Cenvat Credit Rules, 2004 and imposed penalties. Aggrieved by the said order, appellant is before this Tribunal.

3. We have heard both sides and perused the record. We also note that there is one cross objection filed by Revenue. From the record we note that invoices on the basis of which these objections were raised were not produced before the original authority and the consultant appearing before the original authority had made a suggestion that the departmental offices to visit the factory to verify the same. We hold that the appellant was given opportunity by the original authority to defend their case. However, the appellant had not produced the invoices before the original authority which resulted in passing the present order impugned before us. In the interest of justice, we set aside the impugned order and remand the matter to the original authority with a

direction to take into consideration invoices that the appellant would be presenting before him and all other grounds stated in the reply to show cause notice into consideration and decide the matter afresh. We direct the appellant to produce all the invoices before the original authority without delay after the matter is posted for hearing.

4. In above terms, by setting aside the impugned order, we allow the appeal by way of remand. The cross objections are also disposed of.

(Dictated and pronounced in open court)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

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