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

EXCISE APPEAL NO. 85469 OF 2022

(Arising out of Order-In-Appeal No. SD/278/ST/NGP/2021-22 dated 26.11.2021 passed by The Commissioner of CGST & Central Excise (Appeals), Nagpur.)

M/s. Prism Johnson Ltd.
Windsor, 7th Floor,
CST Road, Kalina,
Mumbai-400 098.

Appellant

Vs.

Commissioner of Central Excise, Nagpur
GST Bhavan, 2nd Floor,
Telangkhedi Road, Civil Line,
Nagpur-440 001.

Respondent

Appearance:

Shri Saurabh Bhise, Advocate for the Appellant.

Shri L.B.D'coasta, Deputy Commissioner, Authorized Representative for the Respondent.

CORAM:

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

Date of Hearing: 12.03.2025
Date of Decision: 21.03.2025

PER : MR. ANIL G. SHAKKARWAR

FINAL ORDER NO :- A/85462/2025.

Brief facts of the case are that appellant is engaged in the manufacture of Ready Mix Concrete falling under Tariff Item no. 38245010. Appellant is also registered with Service Tax and also availing the facility of CENVAT credit. Appellant manufactures Ready Mix Concrete and supplies the same to its customers at the place of use at site irrespective of whether the site for use is first floor, second floor or any higher floor where the construction is taking place. The responsibility of appellant is to pump RMC with the help of concrete pump at the site of construction whether such site is at first floor, second floor or any other higher floor. For pumping concrete at a height, the appellant engages manpower and pays the manpower charges for such service and under reverse charge mechanism pays Service Tax on the value of service of manpower supply service engaged in pumping of Ready Mix Concrete.

Appellant takes CENVAT credit of Service Tax so paid under Reverse Charge Mechanism on manpower supply services. It appeared to Revenue that utilization of manpower for the purpose of pumping at the site of customer is not at the place of removal as defined under Section 4 (3)(c) of Central Excise Act, 1944 and therefore CENVAT credit of Service Tax paid on manpower supply services is not eligible to the appellant since manpower supply service does not satisfy the definition of input service under Rule 2 (l) of CENVAT Credit Rules, 2004. Therefore, a show cause notice dated 01.04.2019 was issued to the appellant covering the period from August, 2016 to June, 2017 proposing denial of CENVAT Credit of Rs. 1,83,377/-. Appellant contended before the Original Authority that place of removal as per the above stated provision of Central Excise Act is the place where excisable goods are sold after the clearance from the factory and in their case same takes place only on delivery to customer after pumping the goods at the site and therefore site is the place of removal of the said goods and therefore they were eligible for said CENVAT Credit. The Original Authority did not appreciate the said contention and confirmed the demand of CENVAT Credit of Rs. 1,83,377/- and imposed equal penalty through order-in-original dated 17.08.2020 Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals) who decided the said appeal through impugned Order-In-Appeal dated 26.11.2021 and through the said order the Order-In-Original passed by the Original Authority on 17.08.2020 was affirmed. Aggrieved by the said order appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that appellant discharges excise duty on the value of Ready Mix Concrete which is inclusive of pumping charges. He further submitted that the nature of the goods is such that unless the goods are kept continuously rotated till the time of delivery at the site at required height, the goods become solid and cannot be used for the purpose of concreting.

Therefore, due to the typical nature of the goods, the goods are purchased by the customers only at the site where they are used. Therefore, the place of delivery for Ready Mix Concrete is the site where the goods are supplied at whatever height. He, further, submitted that for the said reasons Service Tax paid on manpower services is input services for the appellant since it is utilized upto the place of removal and that place of removal as per definition under section 4(3)(c) of Central Excise Act, 1944 is place of removal to be the place where goods are sold after removal from the place of clearance.

3. Heard the Learned Authorized Representative who has supported the Impugned Order.

4. I have carefully gone through the record of the case and submissions. The nature of the goods manufactured by the appellant are such that if the goods are not in flowing condition at the site where they are to be used, they are of no use and therefore customers purchase them at the site of use under free flowing condition. Therefore, the site of use is the place where the goods are sold and therefore the site of use in the present case is place of removal. Since the site of use is the place of removal manpower services is input service for the present appellant.

5. Therefore, the finding of lower authority is not in accordance with the law. I, therefore, set aside the impugned order and allow the appeal.

(Order pronounced in open court on 21.03.2025.)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

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