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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCPAL BENCH - COURT NO. 1

Excise Appeal No. 50168 of 2021

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-037-2020-21 dated 17.08.2020 passed by the Commissioner (Appeals), CGST & Central Excise, Bhopal)

M/s Diamond Cement **Appellant**
P.O. Imlai,
Damoh-470661 (M.P.)

VERSUS

Commissioner, Central Goods & Service Tax, Jabalpur **Respondent**
GST Bhawan, Mission Chowk,
Napier Town, Jabalpur- 482001 (M.P.)

APPEARANCE:

Shri B.L. Narasimhan and Shri Shashwat Arya, Advocates for the Appellant

Shri Rakesh Agarwal, Authorized Representative of the Department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 28.04.2023
Date of Decision: 06.07.2023

FINAL ORDER NO. 50834/2023

HEMAMBIKA R. PRIYA

M/s Diamond Cement (hereinafter referred to as the appellant) has filed the instant appeal to assail the order in appeal dated 17.8.2020 passed by the Commissioner (Appeals), Bhopal. In the said order, the Commissioner (Appeals) had upheld the denial of Cenvat credit of service tax paid on rail freight.

2. The brief facts are that the appellant was engaged in the manufacture of cement, and availed the services of West Central Railway[1] division of Indian Railways, for transportation of their finished goods from the plant to their depots/Godowns/ Warehouses. With effect from 1.10.2012, transportation of goods by Rail was brought under the service tax net and Indian Railways charged and collected service tax on transportation services on the value of total freight, less abatement, as per Board's Circular no. 27/2012-ST dated 26.09.2012. The WCR charged and collected service tax on the rail freight amount from the appellant. At the time of consigning the goods, WCR issued one copy of the railway receipt/consignment note to the appellant which contained details like name of the consignor and consignee name, value of service, service tax particulars, like amount of service tax, registration number of service provider, description of service, Wagon number and commodity code. These original RRs had to be returned to the railways on receipt of the goods at their depot/warehouse/godown. At the time of return of the original RR, WCR provided certified copy of the R.Rs to the appellant to enable them to take CENVAT credit of the service tax paid by them. This document evidenced the factum of payment of service tax. No other document/invoice was issued by WCR at the time of consigning the goods or thereafter. Based on the request by the appellant, WCR issued Monthly Consolidated Certificates[2] for the relevant period evidencing payment of service tax corresponding to the

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1 **WCR**
2 **MCC**

authenticated photo copies of RRs. This practice was intimated to the Department by the appellant.

3. Thereafter, the department issued a notice to the appellant for denial of Cenvat credit amounting to Rs. 1,18,16,326/- availed on certified copy of RRs for non-fulfillment of condition of Rule 9 of the CENVAT Credit Rules, 2004[3]. The adjudicating authority in his order dated 19.12.2013 denied the request for availment of disputed credit on the basis of certified copy of RRs. On appeal, the Commissioner(Appeals) vide order dated 19.11.2015, dismissed the appeal of the appellant, holding that the insertion of clause (fa) in Rule 9(1) would apply prospectively. The appellant filed an appeal before the Tribunal which vide its final order dated 03.11.2017, set aside the order in appeal dated 19.11.2015 and remanded the matter to the adjudicating authority with directions to examine the supporting documents submitted by the appellant and its eligibility for claiming such credit. The adjudicating authority after considering the submissions of the appellant, denied the CENVAT credit observing that STTG[4] certificate and the photocopies of the RRs were notified to be proper documents only with effect from 27.8.2014. Therefore, the RRs issued for the relevant period i.e., from October 2012 to May 2013, were not eligible documents for availing the CENVAT credit as per Rule 9 of the Credit Rules. On appeal, the Commissioner (Appeals) vide the impugned order allowed the appellant to avail CENVAT credit amounting to Rs.22,37,063/- for the months of October 2012 and November

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3 **The Credit Rules**
4 **Service Tax Certificate for transportation of goods by Rail**

2012 and denied the benefit of CENVAT credit amounting to Rs.95,79,263/- for the period from December 2012 to May 2013. The Commissioner (Appeals) held that though the other conditions prescribed under Rule 9 of the Credit Rules had been satisfied, but the assessable value was not mentioned in the certificate issued for the relevant period by the Railways. It is against this denial of credit that the appellant has filed the instant appeal.

4. The learned counsel for the appellant submitted that the Commissioner (Appeals) had failed to appreciate that the assessable value/the freight paid was invariably mentioned in all the RRs submitted by the appellant for the respective months. He stated that the department has not disputed the receipt of the taxable services from the Railways and the tax paid nature of such services. The Commissioner (Appeals) had failed to consider and read the RRs along with the relevant MCCs and the STTG Certificate for the relevant period. He stated that the RRs and the MCC/STTG contains all the requisite details/information in compliance to the proviso to Rule 9(2) of the Credit Rules read with Rule 4A of the Service Tax Rules. He also stated that the practice of availment of Cenvat credit on the basis of MCC was in line with the clarification issued by the Ministry of Railways (Railway Board) vide Rate Circular No. 27 dated 26.9.2012.

4.1 In support of his submissions, he placed reliance on the decision of the Gujarat High Court in the case of **CCE, Vadodara II vs Steelco Gujarat Ltd[5].** He further stated that the Courts have held that CENVAT credit availed on the strength of RRs photocopy

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5 2010 (255) ELT (518) Guj.

authenticated by certificates issued by Railways are valid documents in terms of rule 9 of the Credit Rules, while taking note of clause (fa) inserted to rule 9(1) specifying STTG certificate along with photocopies to be prescribed document under the said rule.

5. The Authorized Representative stated that the STTG certificate issued to the appellant lacked vital information such as name of the consignee, name of the originating station, name and address of the factory or warehouse, description of the taxable service, assessable value etc. The learned Authorized Representative relied on the decision of the Tribunal in the case of **JSW Steel Ltd. Vs. Commissioner of CGST, Navi Mumbai**[6] wherein it was held that the provision of Rule 9(2) read with rule 4A of the Service Tax Rules, the benefit of such certificate can be extended retrospectively by one month as per the time period allowed under the said rule itself.

6. We have heard the learned Counsel for the appellant and the learned Authorized Representative.

7. The issue for consideration is whether the appellant can avail the credit of service tax paid on rail freight on the strength of the certified copy of railway receipts read with Monthly Consolidated Certificates and STTG certificate issued by the Western Central railway. At the outset, it has to be stated that the fact of payment of service tax on the receipt of taxable services from WCR has not been disputed by revenue. This is apparent from the perusal of para 9(vi) of the impugned order which says "the monthly consolidated certificate is proof that the services covered by the said document have been received and accounted for in the books

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6 2022 (3) TMI 913 –CESTAT MUMBAI

of account of the receiver". We note that the Commissioner (Appeals) has not doubted the veracity of the MCCs & STTG certificate submitted by the appellant in support of their claim. In order to satisfy the objection of the department, the appellant has once again placed on record the re-revised STTG certificate dated 31.12.2022 issued by WCR to authenticate the certified copy of RRs in accordance with law. A conjoint reading of the documents placed before us indicate that they contain the following details:

(i) Serial number of the order.
(ii) Name of the service provider.
(iii) Registration no of the service provider.
(iv) Name and address of the service recipient.
(v) Description of services.
(vi) Value of services.
(vii) Service tax payable thereon.

7.1 All these details are corroborated with the re-revised STTG certificate dated 31.12.2022 issued by WCR. We note that the said documents contain all the requisite details/information in compliance to the proviso of Rule 9(2) of the Credit Rules read with Rule 4A of the Service Tax Rules. There is no dispute on the qualification of transportation service as an input service to the appellant under the Rules. Rule 3(1) of the Credit Rules permits a manufacturer of final product to take credit of the tax paid on any input service received by it. We note that the issue of certified RRs read with MCC and STTG being valid documents for availing credit is no longer *res integra*. The Tribunal in the case of **JK Lakshmi**

Cements Ltd[7]. vs Commissioner of Central Excise, Udaipur has held as follows:

> "5. We have heard both sides and perused the appeal records. The only dispute in these appeals is the validity of the documents based on which credits were availed by the appellants. Admittedly, the documents which the appellant produced are prescribed as one of the eligible documents by notification number26/2014-CE(NT). The case of the appellant is that such documents were produced by the even for the period prior to such amendment carried out in the rules which should satisfy the statutory records. We note that the admitted position is that the appellant availed taxable service for transporting inputs by Railways and did suffer service tax. With these admitted facts, the only point is whether or not documents evidencing the payments of service tax are in right format as per the CENVAT Credit Rules, 2004. We note that the government specifically inserted that documents issued by the Railways in the form of STTG also form eligible bases. The revenue viewed that these documents are valid only from the date of amendment. We are not in agreement with such proposition. The list of documents which are required are given in rule 9(1). It is also to be noted that the jurisdictional Asst Commissioner/Deputy Commissioner has the discretion in terms of proviso to Rule 9(2) of the said rules to allow the credit if the documents produced contains details of duty or service tax payable, description of the goods or the taxable service, assessable value, service tax registration number of the person issuing the invoice et cetera. We note such discretion has been given in order to facilitate the bona fides is the availed credit of input services to avail such credit even in the case of certain infirmity in the documents supporting the tax payment. We note the provisions of rule nine is basically to ensure that no sissy availed the credit which is not due to the in the present case, the denial of credit of the ground the documents produced were officially prescribed by the rule only from a particular date is not justifiable. We set aside the impugned order and direct the original authority to examine documents which the appellant claims are duly authenticated by the service provider Indian Railways and to examine the eligibility of the appellant for such credit. In view of the above observations, the appeal is allowed by way of remand in above terms".

8. In the instant case as well, we note that credit has been denied by the appellate authority only on the grounds that the assessable value has not been indicated. This has been satisfactorily explained by the learned counsel that that the freight amount mentioned in all the RRs is the assessable amount for the

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7 Final order No. 57354-57355/2017

disputed period. Once the payment of tax is not disputed, and the receipt of service is not disputed and further the revised STTG document has been issued by the WCR, there can be no justification for denial of credit due to the appellant.

9. Accordingly, we allow the appellant to avail the credit of Rs. 95,79,263/- which has been held inadmissible in the impugned order. The impugned order is modified and the appeal is allowed to the extent indicated above.

(Pronounced in open Court on 06.07.2023)

(Justice Dilip Gupta)
President

(Hemambika R. Priya)
Member (Technical)

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