

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

PRINCIPAL BENCH,  
COURT NO. IV

**SERVICE TAX APPEAL NO. 55387 OF 2023 (SM)**

[Arising out of the Order-in-Appeal No. 152 (RLM) ST/JPR/2022 dated 22/05/2023 passed by Commissioner (Appeals), Central Excise & CGST, Jaipur.]

**M/s Rajasthan Housing Board**  
**Division – 2,**  
Sector 9, 721 A, Girdhar Marg,  
Malviya Nagar, Durgapura,  
Jaipur (Rajasthan).

**...Appellant**

**Versus**

**Commissioner (Appeals),**  
**Central Excise & CGST, Jaipur**  
NCRB, Statue Circle,  
Jaipur – 302 005 (Raj.).

**...Respondent**

**APPEARANCE:**

Shri M.B. Maheshwari, Chartered Accountant for the appellant.  
Shri Kuldeep Rawat, Authorized Representative for the  
Department

**CORAM:**

**HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 57989/2024**

**DATE OF HEARING : 08.08.2024**

**RAJU**

The matter pertain to an appeal filed by M/s Rajasthan Housing Board in respect of demand of Cenvat credit.

2. Heard both sides.

3. It is seen that the demand has been raised under two different heads. Demand of Rs. 1,07,946/- has been raised on

the basis of the mismatch between the Cenvat credit register and the credit taken in the ST-3 returns filed by the appellant. The second demand relates to an amount of Rs. 12,12,894/- taken in the month of June, 2017 on the strength of invoices allegedly issued in July, 2017.

4. In respect of first issue, learned Chartered Accountant for the appellant submitted before the adjudicating authority the following submissions :-

“18.1 In this context, assessee submitted that they have taken Cenvat credit in their register under the head ‘input RHB’ and ‘input – RCM’. The head ‘input RCM’ denotes Cenvat credit, which is taken under Reverse Charge Mechanism. They have taken Input-RCM (Cenvat credit of contractors bills) in the Cenvat credit register on accrual basis. However in the service tax return the Cenvat credit of ‘input-RCM’ is taken on cash basis i.e. after making payment under RCM. They further submitted that Cenvat credit taken in the month under head ‘input-RCM’ is reflected in the next months ST-3 return and this fact was explained to Service tax Audit Team at the time of Audit and all the returns and document have been provided to them in this regard”.

5. Learned Chartered Accountant further submitted that Revenue has picked up data of only the period of October to March, 2016. He pointed out that is entire period from April 2015 to March 2016 is considered it would show that they were availed lower Cenvat credit in ST-3 as compared to the Cenvat credit register. He submitted the following table in support of the said claim before the Commissioner (Appeals) :-

S. No.	Month	Cenvat as per Register (Rs.)	Cenvat as per ST-3 (Rs.)	Difference (Rs.)
1.	April 2015	1,27,760.00	67,757.00	-60,003.00
2.	May 2015	3,918.00	58,698.00	54,780.00
3.	June 2015	5,59,777.00	2,62,210.00	-2,97,567.00
4.	July 2015	1,60,131.00	3,24,417.00	1,64,286.00
5.	August 2015	8,26,405.00	2,91,753.00	-5,34,652.00
6.	September 2015	19,80,641.00	3,69,088.00	-16,11,553.00
7.	October 2015	12,69,506.00	7,75,636.00	-4,93,870.00
8.	November 2015	0	6,32,933.00	6,32,933.00
9.	December 2015	3,47,997.00	1,58,440.00	-1,89,557.00
10.	January 2016	4,02,479.00	5,60,920.00	1,58,441.00
11.	February 2016	11,14,181.00	5,57,089.00	-5,57,092.00
12.	March 2016	12,05,924.00	17,63,015.00	5,57,091.00
	<b>TOTAL</b>	<b>79,98,719.00</b>	<b>58,21,956.00</b>	<b>-21,76,763.00</b>

6. I find that the Commissioner (Appeals) in respect of the aforesaid issue has observed as follows :-

"8. Now, I come to point no. (ii), I find that it has been alleged by the audit and confirmed by the adjudicating authority that the appellant has taken excess Cenvat credit amounting to Rs. 1,07,946/- as per reconciliation between Cenvat credit register and ST-3 return for the period October 2015 to March 2016. The adjudicating authority after verifying the documents and submissions made by the appellant have verified this aspect in the impugned order. I don't find any force in the submissions made by the appellant. I don't find any infirmity in the impugned order on this point and I don't find any reason to interfere with the findings of adjudicating authority".

7. It is seen that he has not examined any facts whatsoever he has simply confirmed the demand. Ideally he should have called for list of the documents on which the Cenvat credit has been taken and compared with the total credit taken. From the data submitted by the appellant it is apparent there is no mismatch, but only a technical difference. The impugned order is set aside and the matter remanded to the adjudicating authority to call for the invoices from the period October 2015 to March

2016 and compare the credit taken with invoices. If there is any mismatch in that, the demand can be confirmed, if there is no mismatch, then Cenvat credit should be allowed.

8. As regards the second issue where it is alleged that appellants have taken Cenvat credit in month of June, 2017 on invoices issued in month of July 2017. It is seen that the said period pertains to transition from Excise to GST. Learned Chartered Accountant pointed out that the matter is squarely covered by the Circular F. No. 137/16/2017-Service Tax dated 28<sup>th</sup> September 2017 where the issue regarding the Cenvat credit during transitional issues arising with respect to payment of service tax after 30<sup>th</sup> June 2017. The said circular squarely allows the benefit of credit claimed by the appellant. He claimed that such circular squarely covered his case. He submits that the Commissioner (Appeals) has totally ignored the circular while passing the impugned order. Learned authorized representative relies on the impugned order.

9. The Commissioner (Appeals) in his order on this issue has observed as follows :-

"9. Now, I come to point no. (iv), I find that the assessee had wrongly taken Cenvat credit amounting to Rs. 12,12,894/- in June, 17 on the invoices of July, 2017. The adjudicating authority after verifying the documents and submissions made by the appellant have verified this aspect in the impugned order. I don't find any force in the submissions made by the appellant. I don't find any infirmity in the impugned order on this point and I don't find any reason to interfere with the findings of adjudicating authority".

10. It is seen that the arguments raised by the appellant, including ground about the aforesaid Circular has been totally ignored by the Commissioner (Appeals). Prima facie, the issue seems to be covered by the Circular cited by the appellant, however, for a closure scrutiny with the relevant invoices, the matter needs to be remanded to the original adjudicating authority to examine the issue in the light of the circular afresh.

11. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

**(RAJU)**  
**MEMBER (TECHNICAL)**

PK