CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Excise Appeal No.50528 of 2019

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-275-18-19 dated 26.11.2018 passed by the Commissioner (Appeals), Central Goods and Service Tax, Customs and Central Excise, Bhopal (M.P.)]

M/s.A.C.C. Limited **Appellant**
(Kymore Cement Works),
P.O. Kymore, Katni
Katni, Madhya Pradesh-483 880.

VERSUS

Commissioner of Central Goods and Service Tax, Central Excise, **Respondent**
35-C, GST Bhawan, Administrative Area,
Arera Hills, Jail Road, Bhopal,
Madhya Pradesh-462 015.

APPEARANCE:

Shri Hemant Bajaj, Advocate for the appellant.
Shri Unmesh Kumar, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 58757/ 2024

DATE OF HEARING:17.09.2024
DATE OF DECISION:01.10.2024

BINU TAMTA:

1. The issue decided by the impugned order [1] relates to admissibility of credit of service tax paid on "Goods Transport

[1] Order-in-Appeal No.BHO-EXCUS-001-APP-275-18-19 dated 26.11.2018

Agency Service" [2] availed by the appellant for outward transportation of goods on Free on Road [3] destination basis from the factory gate or depot of the appellant to the premises of the customers under Rule 2 (l) of the Cenvat Credit Rules, 2004 [4].

2. The said issue is no longer *res-integra* and has been decided in several decisions. The Apex Court in **Commissioner of Customs and Central Excise Vs. Roofit Industries Ltd.**[5] laid down the test of determining the place of removal whether it is at the factory gate or at a later point of time when the delivery of goods is affected to the buyer at the premises of the buyer and, therefore, observed that the charges which are to be added have to be up to the stage of transfer of the ownership and once the ownership in goods stands transferred to the buyer, any expenditure incurred, thereafter, has to be on account of the buyer and cannot be a component, which would be included while ascertaining the valuation of goods. On the same analogy, the subsequent decision in **Commissioner of Central Excise Vs. M/s.EMCO Ltd.**[6] was also decided by the Apex Court allowing the appeal of the assessee.

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[2] GTA
[3] FOR
[4] CCR, 2004
[5] 2015(319) ELT 221(SC)
[6] 2015(8) TMI 200(SC)

3. Later, the Supreme Court in **CCE and Service Tax Vs. Ultra Tech Cement Ltd.** [7] once again, examined the admissibility of the Cenvat credit availed on service tax paid for "GTA service" for transport of goods from the place of removal to buyers premises however, the said judgement basically dealt with the question whether it can be treated as "input service" and, therefore, considered the change brought about by the amendment made in the definition of "input service" under Rule 2(l) of the 2004 Rules, as it stood prior to the amendment on 01.03.2008. The principles for ascertaining the 'place of removal' were not laid down in the said judgement, however, the appeal filed by the Revenue was allowed. Following the decision in **Ultra Tech Cement** (supra), the Rajasthan High Court in **Commissioner of CGST, Udaipur Vs. Manglam Cements Ltd.**[8] and **Commissioner of CGST & Central Excise, Jaipur Vs. ARL Infratech Ltd.**[9] — held that Credit would not be admissible on GTA service for delivery of goods at the buyers premises, however, on appeal, the Supreme Court set aside the order of the Rajasthan High Court as reported in **2020 (32) GSTL J-156 (SC)**. The Madhya Pradesh High Court also held

[7] 2018(2) TMI 117 (SC)
[8] 2019(24)GSTL 545 (Raj.)
[9] 2019(369) ELT 351 (Raj.)

similar view in **M/s. Mahle Engine Components Vs. Union of India**[10]**.** On the contrary, the Karnataka High Court in **Bharat Fritz Werner Ltd. Vs. Commissioner of Central Tax** [11], considering the decision of the Supreme Court in **Ultra Tech Cement** and also the Circular No. 1065/4/2018 – CX dated 08.06.2018, allowed the credit to the appellant on the principle that place of removal is buyer's premises.

4. In the above scenario, the Larger Bench of the Tribunal interpreted the applicability of the decision of the Supreme Court in **Ultra Tech Cement (supra)** in view of the reference made in **M/s Ramco Cement Vs. CCE** [12] and in the latest decision in **M/s Sweety Industries Vs. CGST and Central Excise** [13] concluded as under:

> **"35**. In the result, in a case where clearances of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgmenets of the Supreme Court in **EMCO Ltd. and Roofit Industries,** the decision of the Karnataka High Court in **Bharat Fritz Werner,** and the Circular dated 08.06.2018 of the Board to determine the admissibility of CENVAT Credit on the GTA service upto the place of removal."

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[10] 2020(13) GSTL-OL-173 (MP)
[11] 2022(66) GSTL 434 (Kar.)
[12] Interim Order No.40020/2023 in CE Appeal No.40575 of 2018
[13] 2024(2) TMI 1393 CESTAT-Ahmd (LB)

5. Similarly, in the case of **M/s. Sweety Industries**, the Larger Bench once again reiterated the principle that the appellant would be entitled to avail Cenvat credit of the service tax paid on outward GTA service for transportation of the goods from the factory of the appellant to the depot of the buyer.

6. Needless to mention, the Co-ordinate Benches of the Tribunal following the decision of the Larger Bench have decided the issue in favour of the assessee that they would be entitled to avail Cenvat credit of the service tax paid on GTA service from the factory or the depot of the appellant to the premises of the buyers since the sales are on FOR basis, **M/s.Hindustan Zinc Ltd. Vs. CCE and CGST** [14] and **M/s. Prism Johnson Ltd. Vs. Commissioner of CGST** [15]**.**

7. What emerges from the legal principles referred to in the above decisions, the law is settled that in the case of "FOR destination" sales the place of removal is the buyers premises. We may now examine the facts of the present case as to whether the appellant is eligible to claim Cenvat credit.

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[14] 2024(4) TMI 817 (CESTAT-New Delhi)
[15] 2024(6) TMI 612 CESTAT-New Delhi

8. The appellant is engaged in the manufacturing of excisable good i.e. 'cement & clinker' and have been availing the benefit of cenvat credit facility on service tax paid on freight incurred on 'outward transportation' of cement from factory to the customer's premises and depot to the customer's premises on 'FOR' basis destination sales and utilizing it for payment of central excise duty on cement in terms of the Rules, 2004. The case of the Department was that the appellant is not entitled to avail the cenvat credit of service tax paid on the freight incurred on outward movement of the finished goods, beyond the place of removal i.e. from the factory to the customer's premises as the GTA services for outward transportation of goods beyond the 'place of removal' is not covered within the ambit of the definition of "input service" for the purpose of availing the cenvat credit. The submission of the learned counsel for the appellant is that the issue is squarely covered by the decisions cited at the bar and the appeal, therefore, needs to be allowed.

9. Learned Authorised Representative very fairly agreed that the issue is no longer *res integra.*

10. From the records of the case, we find that the appellant was selling their final products on FOR destination price and has paid

the excise duty, which includes the freight also. The evidence placed by the appellant regarding FOR destination sales included the Marketing Circulars, Sales Contract/Agreement, Excise Invoice, Commercial Invoice, Lorry Receipts, Transporter's Bills, Payment Details and Copies of the TR-6 Challans, etc. The invoices supported the submission that the 'place of removal' is customer's premises and the same has been admitted by the Revenue in the show cause notice itself.

11. The functioning of the appellant was to the effect that the customer was charged only for the quantities received by them and in that regard, the transporter appointed by the appellant used to get the acknowledgement copy of the lorry receipts for having delivered the goods to the customers, therefore, the customer pays only for the quantity, which is actually received by him. This shows that the ownership of the goods was transferred at the customer's premises and the appellant bore the risk of loss or damage to the goods during the transit to the destination till the goods finally reaches to the customer's door step.

12. The appellant has also placed on record the Chartered Accountant's Certificate that the ownership of the goods and the

property in the goods remained with the appellant till the delivery of the goods in proper condition to the customer at his premises. The freight charges has not been separately recovered from the customers either directly or indirectly and rather were an integral part of the price of the goods and excise duty paid thereon.

13. We also find from the submission of the learned counsel for the appellant that the same issue came up before the High Court of Punjab & Haryana in their own case as reported in **2009 (14) STR 3 (P&H).** The High Court considered the issue in view of the provisions of Circular No.97/8/2007 dated 23.08.2007, which prescribed three conditions as under:-

> (i) The ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;
> (ii) The seller bore the risk of loss or damage to the goods during transit to the destination; and
> (iii) The freight charges were an integral part of the price of goods."

The High Court, therefore, decided in favour of the appellant that the transportation of the goods upto the customer's premises would also be covered within the definition of "input service".

14. No doubt, the said order of the Tribunal was passed when the Circular dated 23.08.2007 was in vogue and the definition of "input service" had been subsequently amended w.e.f. 1.3.2008. However, the final conclusion would remain the same in the present appeal in the light of the subsequent Circular No.1065/4/2018-CX dated 08.06.2018 and the interpretation placed by the decisions referred above.

15. We, therefore, hold that the impugned order is un-sustainable and needs to be set aside. The appeal is, accordingly allowed.

[Order pronounced on 1st October, 2024]

(BINU TAMTA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)

Ckp.