CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Excise Appeal No. 88625 of 2018

(Arising out of Order-in- Original No. 72/NVK/COMMR/RGD/2018-19 dated 27.06.2018 passed by the Commissioner of CGST & Central Excise, Raigad)

M/s Hindustan Copper Ltd .....Appellant
Plot No. E-33-36 MIDC Taloja
Raigad, Maharashtra

VERSUS

C.C.E. & S.T., RAIGAD .....Respondent
Null 4th Floor...Kendriya Utpad Shulk
Bhawan,,Plot-01...Sec.17,
Khandeshwar,
Raigad,,Maharashtra-410206

APPERANCE:

Shri Vinay S. Sejpal, Advocate for the Appellant
Shri Anil Choudhary, Deputy Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85260/2020

Date of Hearing: 03.09.2019
Date of Decision: 19.02.2020

PER: AJAY SHARMA

This Appeal has been filed impugning the order dated 27.06.2018 passed by the Commissioner of CGST & Central Excise, Raigad in Order-in-Original No. 72/NVK/COMMR/RGD/2018-19.

2 The issues involved in this Appeal is whether GTA service is entitle as an input service in terms of Rule 2(l) of Cenvat Credit Rules, 2004 even after 1.4.2008 on FOR sales i.e. delivery upto the

factory gate of the customers, which, according to Revenue, was beyond the place of removal?

3. The appellant is a Government-owned corporation in the Central Public Sector Enterprise under the Ministry of Mines (India), Government of India. During the period from October, 2007 to October, 2010 they availed Cenvat Credit on GTA Services for their depot transfers and sale on FOR basis, which according to them, was available as per CBEC Circular No.97/8/2007-ST, dated 23.8.2007. Accordingly a show cause notice dated 8.6.2011 was issued to the Appellant, proposing denial of Cenvat Credit of Rs.82,52,201/- on the aforesaid GTA services, since as per department it was not covered under the scope of input services as prescribed under Rule 2(l) of Cenvat Credit Rules, 2004. Initially the demand was Rs.82,52,201/- for the period from October, 2007 to October, 2010 but by the earlier Order-in-Original dated 23.8.2012 it was reduced to Rs.5,26,089/- and later on upon remand by this Tribunal, in the subsequent O-I-O dated 27.6.2018 which is the impugned order herein, it was further reduced to Rs.2,61,459/- for the period April, 2008 to October, 2010 alongwith equal amount of penalty by the learned Commissioner while relying upon the decision of the Hon'ble Supreme Court in the matter of *C.C.E. & S.T. vs. Ultratech Cement Ltd.; 2018(9) GSTL 337(SC)* in which it was laid down that Cenvat Credit on Goods Transport Agency (GTA) service for transport of goods from the place of removal to buyer's premises is not admissible in view of the amendment carried out in Rule 2(l) of Cenvat Credit Rules, 2004 in the year 2008. So now the period of dispute is from April, 2008 to

October, 2010 and the amount of Cenvat Credit involved is Rs. 2,61,459/- only.

4. I have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the case records including the synopsis as well as the decisions/ circular cited by the respective sides. According to learned counsel, the appellants were required to deliver the goods at the customer's premises and their sale price is inclusive of all the cost, till the said goods are delivered at the customer's premises and therefore the Cenvat credit proposed for denial is an *input service* as it is incurred upto the place of removal i.e. customers premises and the same is also covered under the amended provision of Rule 2(l) ibid w.e.f. 1.3.2008. He further submits that in view of the facts of this case, the place of removal will be the customer's premises and the input service tax credit for GTA service availed will be eligible as it is upto the place of removal i.e. customer's premises. The learned counsel relied upon the decision of a co-ordinate bench of the Tribunal in the matter of *Birla Corporation Ltd. vs. CCE, Jaipur II; 2018(10)GSTL 43 (Tri-Delhi)* in which the Tribunal while relying upon the decision of the Hon'ble High Court of Punjab & Haryana at Chandigarh in the matter of *Ambuja Cements Ltd. vs. UOI; 2009(14) STR 3 (P&H)* as well as the decision of the Hon'ble Karnataka High Court in the matter of *Madras Cement Ltd. vs. Addl. Commr. Bangalore; 2015(4) STR 645 (Kar.)* held that as goods have been supplied on FOR basis to the buyers place and value of the transportation has been included in the assessable value of the goods, therefore the assessee is entitled to

avail Cenvat Credit on outward goods transportation agency service. He also submits that extended period of limitation is wrongly invoked by the department since in the facts of this case there was no suppression or willful default on the part of the Appellants and the whole issue is about the interpretation of statutory provisions including the CBEC circular of 2007 as well as the decisions of the Hon'ble Karnataka High Court in the matter of *ABB Ltd.; 2011-TIOL-395-HC-KAR-S.T.* He also relied upon the *CBEC Circular No.1065/4/2018- CX dated 8.6.2018* in which it was stated that no show cause notice invoking extended period of limitation should be invoked in such cases where an alternate interpretation was taken by the assessee before the date of the Hon'ble Supreme Court's decision as the issue is in the nature of interpretation of law. According to learned counsel, show cause notice dated 8.6.2011 raising demand for the period prior to May, 2010 would be barred by limitation. Per contra learned Authorised Representative reiterated the findings recorded in the impugned order and prayed for dismissal of appeal.

5. Prior to the amendment of 2008, in the definition of '*input service'* as per Rule 2(l) ibid, the words used were *'outward transportation* ***from*** *the place of removal'* but vide notification No.10/2008-CE (NT), dated 1.3.2008 the aforesaid definition of *'input service'* was amended by substituting the same with the words, *'outward transportation* ***upto*** *the place of removal'*. Although the pre-amended definition of *'input service'* as contained in Rule 2(l) ibid uses the expression *from the place of removal*, however, after the amended w.e.f. 1.3.2008 the word '*from'* is replaced by the word

'*upto'* and from the amended definition it the clear that only upto the place of removal the service is treated as input service and not beyond that. In other words, the definition of *'input* service' has been restricted w.e.f. 1.3.2008. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal itself. I have gone through the decision of the Hon'ble Supreme Court in the matter of *Ultratech Cement (supra)* and in that case also the assessee as well as the Tribunal and the Hon'ble High Court relied upon the Circular dated 23.8.2007 in favour of the assessee but the same was held to be untenable by the Hon'ble Supreme Court. The Hon'ble Supreme Court laid down that Cenvat credit is not admissible on Goods Transport Agency services used for transportation of goods from the place of removal to the buyer's premises in view of the amendment made in 2008 in the definition of input service in Rule 2(l) of the Cenvat Credit Rules, 2004 whereby the term 'from place of removal' has been replaced by 'up to place of removal'. The Hon'ble Supreme Court also held that if the CBEC Circular No. 97/8/2007-S.T., dated 23.8.2017 which has not dealt with the post-amendment case, is applied to the post-amendment cases, it would be violative of Rule 2(l) of the Cenvat Credit Rules, 2004. So far as the applicability of Rule 2(l) ibid is concerned, the same is settled by the Hon'ble Supreme Court by virtue of the aforesaid decision and therefore I am afraid that I cannot agree with the decisions cited by the learned Counsel in support of his submissions and the said submission is hereby rejected. My view is further strengthen by a recent decision of a Co-ordinate Bench of the

Tribunal on a similar issue in the matter of *Ultra Tech Cement Cements Ltd. vs. CCE, Tirupati; 2019(28) GSTL 84 (Tri.-Hyd.)*. Now I will take up the issue of extended period of limitation as raised by learned counsel. So far as the circular dated 8.6.2018 is concerned, the same is not applicable as it is only applicable on the new show cause notices. Still I agree with the submission of learned counsel regarding the extended period, as I am of the view that in a way the issue about GTA service can be said to be settled only after the decision of the Hon'ble Supreme Court in *Ultratech Cement (supra)* and before that there were divergent views of different High Courts as well as of the Tribunal about GTA service concerning Rule 2(l) ibid after its amendment in the year 2008. The issue was interpretation of statutory provision regarding availment of input service tax credit for GTA services on outward supply in cases of FOR supplies and such issues of interpretation cannot be a ground for invoking extended period. According to me, in the facts of this case and also in the light of the fact that the appellant is a Government of India Enterprise, there is no suppression of facts nor any willful default with intention to evade duty or to avail excess Cenvat credit. Accordingly, the extended period was not invocable and the demand for the period, which as per learned counsel is from April, 2008 to May, 2010, is barred by limitation. So far as the period June, 2010 to October, 2010 is concerned, the same being within normal period, the Appellants are liable for the same and for the demand for this period, the show cause notice is upheld. Since as per the discussions made hereinabove, the appellants did not have any malafide

intention, therefore they are not liable for any penalty also. For the purpose of re-calculating the demand for the normal period as per the discussions made hereinabove, the matter is remanded to the Adjudicating Authority.

6. The Appeal is disposed of in the above terms.

(Order pronounced in the open Court on 19.02.2020)

(Ajay Sharma)
Member (Judicial)

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