

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10274 of 2020-DB

(Arising out of OIA-KCH-EXCUS-000-APP-098-2019 Dated- 15/11/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

SANGHI INDUSTRIES LTD

Sanghipuram, Akri, Taluka : Abdasa
Kutch, Gujarat

.....Appellant

VERSUS

C.C.E.-KUTCH (GANDHIDHAM)

Central Excise & Service Tax Commissionerate,
Central Excise Bhavan Plot No. 82, Sector 8, Gandhidham(Kutch)
Gandhidham(Kutch), Gujarat

.....Respondent

APPEARANCE:

Shri. Jigar Shah, Advocate for the Appellant

Shri. Dharmendra Kanjani, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

Final Order No. A/ 11382 /2022

DATE OF HEARING:19.07.2022

DATE OF DECISION:15.11.2022

RAMESH NAIR

The present appeal is directed against the impugned order dated 15-11-2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the case are that the appellant are manufacturers of Cement. On the basis of information called from the Appellant, it was observed that the Appellant had availed the Cenvat Credit of Service tax paid on outward GTA services used for transportation of their finished goods from their factory to customer's premises i.e. beyond the place of removal, during the period from October 2015 to September 2016, which is alleged to be not proper in view of definition of "input service" as given at Rule 2(l) of

the Cenvat Credit Rules, 2004. It appeared that any service availed after clearance of finished goods beyond the place of removal is not an 'input service' and therefore, the appellant are not eligible to avail cenvat credit of service tax paid on outward GTA service. Show Cause Notices were issued to the appellant for recovery of wrongly availed cenvat credit totally amounting to Rs. 2,67,40,513/- alongwith interest, under Rule 14 of the Cenvat Credit Rules, 2004 and proposing imposition of penalty under Rule 15 ibid. The said show cause notices were adjudicated by the adjudicating authority vide Order-In-Original dated 26.11.2018 who dropped the proceedings. Aggrieved by the said order, revenue filed appeal before the Commissioner (Appeals) who after considering the submissions of the parties vide impugned order-in-appeal dated 14.11.2019 allowed the appeal of revenue and hence the present appeal.

3. Shri. Jigar Shah, Learned Counsel appearing for the appellant submits that issue is settled in favour of the Appellant in their own case vide judgment of this Hon'ble Tribunal reported at M/s Sanghi Industries Ltd. Vs. CCE, Kutch- 2019 (2) TMI -1488- CESTAT, Ahmedabad. The Appeal filed by the revenue against the said judgment has been dismissed and the issue is decided in favour of appellant vide dated 23.01.2020 passed by the Hon'ble Gujarat High Court. Thus the issue is squarely covered in favour of the appellant, hence, the impugned order deserves to be set aside.

3.1. He submits that price charged by the Appellant from the customers is inclusive of freight charges for transportation of final products from factory/ depot to customer's premises. Appellant are paying central excise duty at specific rate on ad-valorem on MRP basis. Therefore, the value of the transportation is included in the value of the final products. Hence, if the Cenvat Credit of Service tax paid on the transportation is not allowed it would lead to double taxation. He placed reliance on the following decisions.

- Ultratech Cement Ltd. Vs. CCE, Raipur 2014(35) STR 641 (Chhattisgarh)
- Lafarge India Ltd. Vs. CCE, Raipur 2014(35) STR 645 (Chhattisgarh)
- CCE Vs. Ajinkya Enterprises 2013(294) ELT 203 (Bom)
- CCE Vs, Creative Enterprises 2009 (235) ELT 785

3.2 He further submits that Ld. Commissioner (Appeals) failed to appreciate that the definition of input service includes all the services availed up to the 'place of removal'. Ld. Commissioner also failed to consider that all the conditions specified in circular No 97/8/2017 dated 23.08.2007 and circular No. 988/12/2014-CX dated 20.10.2014 are satisfied hence credit on outward transportation is admissible.

4. On the other hand, Shri. Dharmendra Kanjani, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterated the findings of the impugned order. He placed reliance on the following decisions.

- 2018(9) GSTL 337(SC) –CCE Vs. Ultratech Cement Ltd.
- 2018(13) GSTL J101(SC) – Ultratech Cement Ltd. Vs. Commissioner
- 2019-TIOL 132-SC-CX-LB- Mahale Engine Components India Pvt. Ltd. Vs. Union of India & Others.
- 2020-TIOL-132-SC-CX-LB- Mahale Engine Components India Pvt. Ltd. Vs. Union of India & others.
- 2018(363)ELT 486 (Tri. Hyd) – Alumeco India Extrusion Ltd. Vs. CCE, Hyderabad-I

5. After considering the submissions of both the sides and perusal of the records, we find that in earlier matter of Appellant's own case this tribunal after considering the documents i.e copy of invoices, purchase order and Chartered Accountant certificate decided the eligibility of cenvat credit of service tax paid on outward freight. However in the present matter also appellant has come forward with the documents /details i.e copy of purchase order, copies of invoices, copy of agreements, copy consignment notes, copy of certificate of chartered accountant. In view of the facts of the case and in the light of the Board's Circulars and judgments relied upon by the appellant, we find that the impugned order is not in accordance with law. The Commissioner (Appeals) did not deal properly with these documents/details and facts submitted by the Appellant before him in the impugned order. Therefore the case needs to be reconsidered by the Commissioner (Appeals) to decide the appeal a fresh after considering the said documents and vital facts and Board Circulars and all the judgments relied upon by the Appellant.

6. Accordingly, the impugned order is set aside and appeal is allowed by way of remand to the Commissioner (Appeals).

(Pronounced in the open court on 15.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI