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

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 11880 of 2018

[Arising out of Order-in-Appeal No OIA-VAD-EXCUS-002-APP-002-004-2018-19 dated 12.04.2018 passed by Commissioner (Appeal) of Central Excise & ST, Vadodara]

M/s. Alembic Limited .... **Appellant**
(now Alembic Pharmaceuticals Limited),
At Panelev, Post-tajpura, Taluka-Halol,
PANCHMAHAL, GUJARAT.

VERSUS

Commissioner of Central Excise & ST, Vadodara.... Respondent
Ist FLOOR. ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT - 390023

WITH

(i) Excise Appeal No. 11881 of 2018- M/s. Alembic Limited (ii) Excise Appeal No. 11882 of 2018- M/s. Alembic Limited (iii) Excise Appeal No. 11883 of 2018- M/s. Alembic Limited (iv) Excise Appeal No. 11884 of 2018- M/s. Alembic Limited (v) Excise Appeal No. 11885 of 2018- M/s. Alembic Limited (vi) Excise Appeal No. 11886 of 2018- M/s. Alembic Limited (vii) Excise Appeal No. 11887 of 2018- M/s. Alembic Limited (viii) Excise Appeal No. 11888 of 2018- M/s. Alembic Limited (ix) Excise Appeal No. 11889 of 2018- M/s. Alembic Limited (x) Excise Appeal No. 11890 of 2018- M/s. Alembic Limited

APPEARANCE :

Shri Saurabh Dixit, Advocate for the Appellants
Shri S.N. Gohil, Superintendent (AR) for the Respondent

CORAM : HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/10997-11007/2019

DATE OF HEARING/ DECISION : 06.06.2019

RAJU

These appeals have been filed by M/s. Alembic Limited (API Division) and M/s. Alembic Limited against the denial of Cenvat credit availed on GTA service for movement of finished goods beyond the factory gate.

2. Ld. Counsel for the appellant pointed out that in eight cases pertaining to M/s. Alembic Limited, the order-in-original itself records that the credit on GTA service relates to only in respect of movement of goods up to the place of removal. He pointed out that in such case, the credit would be admissible in terms of Rule 2(l) itself. He also produced certificate of Chartered Accountant which clearly states that in all these cases, the freight was integral part of the sale price and the goods were delivered on FOR basis. In respect of three appeals (Appeal Nos. E/11880/2018, E/11889-11890/2018), relating to M/s. Alembic Limited API Division, he pointed out that though there is no specific mention in the orders-in-original regarding the place of removal of the goods, however he submits that situation is identical and he produces Chartered Accountant certificate for clearances of the goods.

3. Ld. AR relies on the impugned order. He pointed out that in the show cause notice it was alleged that the contract and agreements were not produced. For this, Ld. Counsel pointed out that the said contract and agreement were submitted at later stage.

4. I have gone through the rival submissions. I find that, in the case of eight appeals relates to M/s. Alembic Limited, the order-in-original itself accepts that the goods are sold on FOR basis and that the buyer's premises is the place of removal. Order-in-original placed reliance on the Circular No. 97/08/2007 dated 23.08.2007 wherein two additional conditions were specified for disallowing the credit. It is seen that the Hon'ble Apex Court in the case of *Commissioner of Central Excise & ST vs. Ultra Tech Cement Limited – 2018 (9) GSTL 337 (SC)* has clearly held that the Circular 97/08/2007 dated 23.08.2007 cannot be applied after the amendment to

Rule 2(l) of Cenvat Credit Rules, 2004 from 01.04.2008. In view of the above facts, I find that since the Revenue has accepted that the buyer's premises is the place of removal, credit of GTA service in the eight appeals (E/11881-11888/2018) of Alembic Limited cannot denied and therefore, these appeals are allowed.

5. The facts in the case of three appeals (E/11880/2018, E/11889-11890/2018), relating to M/s. Alembic Limited API Division are apparently identical except for the fact that lower authority has not recorded specific findings with respect to the place of removal. In view of above, in these three appeals, the matter is remanded to the Adjudicating Authority for examining the facts and for passing a fresh order.

(Dictated and pronounced in the open court)

(Raju)
Member (Technical)

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