CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 12236 of 2018

[Arising out of OIA-RAJ-EXCUS-000-APP-106-2018-19 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

M/s Rikon Clock Manufacturing Company **........Appellant**
Dharaj, Near Moti Tanki, Dr. Radhakrishna Road,
Rajkot, Gujarat-360001

VERSUS

C.C.E. & S.T.-Rajkot **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road,
Income Tax Office,Rajkot,
Gujarat-360001

APPEARANCE

Sh. P.V. Sheth, Advocate for the Appellant
Sh. S.K. Shukla, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/ 11447/2019

DATE OF HEARING: 31.07.2019
DATE OF DECISION: 31.07.2019

RAMESH NAIR

The issue involved is that whether the appellant is entitled for the cenvat credit in respect of outward GTA.

2. Sh. P.V. Sheth Ld. Counsel appearing on behalf of the appellant at the outset submits that in the appellant's own case in the identical transaction, this Tribunal has considered the issue and remanded the matter vide Final Order No. A/12155-12165/2018 dated 12.10.2018.

3. Sh. S. K. Shukla Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. Heard both the sides and perused the records. The same issue of admissibility of cenvat credit of transport of the goods has been considered by this Tribunal in the order dated 12.10.2018 wherein following order was passed:

> *"The issue involved in this bunch of appeals is if the Cenvat Credit to the Service Tax paid on transportation of goods from the factory to the buyer's premises is admissible or not.*
>
> *2.Ld. Counsel for the appellant points out that on this issue, CBEC has vide circular no. 116/23/2018 dated 08/06/2018 clarified that in certain cases and*

circumstances, the place of removal can be the buyer's premises. Ld. Counsel submits that in such a case, the place of removal is buyer's premise, they have included the price of freight in the assessable value. He pointed out that in similar circumstances the matters have been remanded by Tribunal for verification vide order no. A/12028-12029/2018 dated 25/09/2018.

3.Ld. AR argued that the Hon'ble Apex Court in the case of Ultratech Cement Ltd. 2018(9) GSTL 337(SC) has decided the issue finally and there is no reason to remand the same.

4.I have gone through rival submissions. I find that CBEC after considering the decision of Apex Court in the case of Roofit Industries Ltd. 2015(319)ELT 221(SC), Ispat Industries Ltd. 2015 (324) ELT 670 SC Emco Ltd. 2015 (332) ELT 394 (SC) and Ultratech Cement Ltd. dated 01/02/2018 in civil appeal no. 11261 of 2016 has come to a conclusion that there can be some exceptions to the general rule laid down regarding place of removal. Earlier the matters have been remanded by Tribunal to examine as follows in the order dated 25/09/2018 (supra)
"4. On careful consideration of the submission made by both the sides and perusal of the records, I find that the Board after considering all the judgments of Supreme Court on the issue of "Place of Removal" as well as on the eligibility of the Cenvat credit on outward GTA prescribed some guide lines for field formation for deciding the case of cenvat credit on outward GTA. I also observed that this Tribunal in the case of Shubhlakshmi Polyesters Limited (Supra) remanded bunch of cases only for the reason that the fact that whether the GTA were used upto place of removal or beyond place of removal to be verified. Since the issue involved is mixed question of law and facts, the facts first to be verified that whether the GTA service in each case is up to the place of removal or beyond place of removal. Therefore, without verifying these facts any judgment of Supreme Court cannot be applied in straight away. Therefore, I am of the considered view that the matter needs to be remitted back to the adjudicating authority who shall decide the matter fresh after considering the Board Circular dated 08.06.2018 and also observation made by this Tribunal in the case of Shublakshmi Polyesters Ltd (Supra). I therefore, set aside the impugned orders and allow the appeals by way of remand to the adjudicating authority. Needless to say that opportunity of personal hearing be given to the appellant before passing De-novo adjudication order."

In view of above, being identical matters, the impugned orders are set aside and matter remanded to the original Adjudicating authority for re-examination in the light of CBEC order. MA is also disposed off."

5. Since in the appellant's own above case, the matter has been remanded earlier, this matter is also remanded to the adjudicating authority for passing a fresh by taking observation made in the earlier order dated 12.10.2018. The appeal is allowed by way of remand to the adjudicating authority.

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Seema