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

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 10878 of 2019-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-603-2018-19 dated 22.02.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Banco Products Ltd ...Appellant
Bil, Nr Bhaili Railway Station
Padra Road
VADODARA,
GUJARAT
391410

VERSUS

C.C.E. & S.T.-Vadodara-i ...Respondent
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA,
GUJARAT
390007

APPEARANCE:

Present For the Appellant : Shri M. Pandya, Advocate

Present For the Respondent : Shri D. Kanjani, Superintendent (AR)

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

Final Order no. A/12276 / 2021

Date of Hearing: 30/06/2021

Ramesh Nair

The issue involved in the present case is admissibility of the Cenvat Credit in respect of outward GTA.

2. Shri Mrugesh Pandya, learned counsel appearing on behalf of the appellant submits that on the identical facts, in the appellant’s own case Cenvat Credit has been allowed by this Tribunal vide order no. A/10338/2021 dated 28/01/2021 and M/10118/2021 dated 03/06/2021 after relying upon this Tribunal’s judgment in the case of Ultratech Cement Ltd2007 (6) STR 364 (Tri. Ahd) and Sanghi Industries Ltd.2019 (369) ELT 1424 (Tri- Ahd). Therefore, the issue is not under dispute and it stands settled. He prays that following the aforesaid order of this Tribunal, appeal deserves to be allowed.

3. Shri Dharmendra Kanjani, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned orders.

4. We have carefully considered the submission made by both the sides. The facts and documents related there to submitted by the learned Counsel shows that sale of goods is on FOR basis, the freight was paid and born in bond by the appellant. Sale price is inclusive of freight on which excise duty was charged. Considering the same facts in the appellant's own case, this Tribunal has already taken a view in the order (supra) dated 28/01/2021 and 03/06/2021. In the order dated 28/01/2021, following observation was made:

"4. I have carefully considered the submission made by the both the sides and perused the records. I find that there is no dispute that original authority has gone through the document such as sale invoices, LR copies & CA Certificate and allowed the credit considering the sale is on FOR basis. On careful perusal of the invoices, I find that invoices clearly mentioned a condition that the sale is on FOR basis and risk upto the destination is covered. It is also not the case of the department that outward transit insurance was paid by the consignee. In this case it is clear that the sale is on FOR basis and sale invoices itself is a kind of contract and no further contract is required to ascertain that whether the sale is on FOR basis or not. Therefore, there is no dispute that sale is on FOR basis and hence credit is admissible. As regard the judgment cited by Learned Authorized Representative on ULTRATECH CEMENT LTD- 2018 (9) GSTL 337 (S.C.) & NCL INDUSTRIES LTD.- 2020-TIOL-1149-CESTAT-Hyderabad. I find that this tribunal in the case of ULTRATECH CEMENT LTD- 2007 (6) S.T.R. 364 (Tri.-Ahd.) & SANGHI INDUSTRIED LTD-2019 (369) ELT 1424(Tri-Ahmd). Carefully considering the judgment of Hon'ble Supreme Court allowed the credit holding that on the same type of transaction, the sale is on FOR basis. After the Supreme Court judgment in ULTRATECH CEMENT LTD. the board has also issued a Circular No. 97/8/2007-ST. The decision of this tribunal in the case of ULTRATECH CEMENT LTD & SANGHI INDUSTRIED LTD. has been upheld by the Hon'ble Gujarat High Court.

4.1 In this position of law, I find that as regard Hyderabad bench judgment in the case of NCL Industries firstly, it has not considered theboards circular issued subsequent to the Hon'ble Supreme Court in ULTRATECH CEMENT LTD. secondly, this tribunal is bound by the jurisdictional High Court judgment i.e. in the case of ULTRATECH CEMENT LTD AND SANGHI INDUSTRIES LTD. passed by the Hon'ble Gujarat High Court. Therefore, the judgment cited by Shri. Sanjiv Kinker, Learned superintendent (AR) appearing on behalf the revenue are clearly distinguished.

5. In view of my above discussion, the appellant is entitle for the Cenvat Credit on the services of Outward Transit Insurance.

6. Accordingly impugned order is set aside, appeal is allowed."

5. Since in the present case also same facts are involved, the ratio of the above order is squarely applicable in the present case. Following the same, we allow the appeal with consequential relief, if any in the accordance of law.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Diksha