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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10748 of 2015- DB

[(Arising out of OIO-BHV-EXCUS-000-COM-006-011-14-15 dated 19/02/2015 passed by Commissioner of Central Excise and Service Tax-BHAVNAGAR)]

Saurashtra Cement Ltd **........Appellant**
Nr Railway Station Ranavav,
P O Ranavav,
Porbandar, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar **......Respondent**
Plot No.6776/B-1...Siddhi Sadan,
Narayan Upadhyay Marg,
Beside Gandhi Clinic,
Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

WITH

(i) EXCISE Appeal No. 10749 of 2015- DB (Saurashtra Cement Ltd)
(ii) EXCISE Appeal No. 10750 of 2015- DB (Saurashtra Cement Ltd)
(iii) EXCISE Appeal No. 10751 of 2015- DB (Saurashtra Cement Ltd)
(iv) EXCISE Appeal No. 10752 of 2015- DB (Saurashtra Cement Ltd)
(v) EXCISE Appeal No. 10753 of 2015- DB (Saurashtra Cement Ltd)

APPEARANCE:
Shri Saurabh Dixit, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

Final Order No. 10009-10014/2024

DATE OF HEARING: 07.11.2023
DATE OF DECISION: 02.01.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for Cenvat credit on Service Tax paid for outward transportation of excisable goods from factory gate to customer's door steps or otherwise.

2. Shri Saurabh Dixit, Learned Counsel appearing on behalf of the appellant at the outset submits that the sale of excisable goods is undisputed on FOR basis, the freight amount is included in the assessable value and the Excise duty on the value, inclusive of such freight, was paid in respect of excisable goods. Therefore, the appellant is eligible for Cenvat credit. He placed reliance on the following judgments:

- Vasuvious India Ltd. 2014(34) STR 26(Cal)
- Ultratech Cement Ltd.2020 (3) TMI 1206 - GUJARAT HIGH COURT

- CBIC Circular No. 1065/4/2018-CX dated 08.06.2018
- M/s. Ultratech Cement Ltd 2019 (2) TMI 1487- CESTAT-Ahm

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have careful considered the submission made by both the sides and perused the records. We find that the eligibility of the Cenvat credit in respect of outward transportation of excisable goods depends on nature of transaction of sale of goods. In case of FOR sale, where the transportation charges is included in the assessable value on which excise duty is paid, the assessee eligible for Cenvat Credit and this rule was laid down in the case of Ultra tech Cement Ltd 2019 (2) TMI 1487 CESTAT Ahmedabad and the same was upheld by the Hon'ble Gujarat High Court reported at 2020 (3) TMI 1206. The Tribunal has passed the aforesaid decision Considering the Board Circular No. 1065/4/2018-Cx dated 08.06.2018. We observed that the aforesaid development in the law relating to eligibility of the Cenvat Credit on outwsrd transportation has taken place only after passing of the adjudication orders. Therefore, the entire matter needs to be reconsidered by verifying the fact vis-a-vis applicability of the board circular and the decision referred above.

5. Accordingly, we set aside the impugned orders and remand the matter to the Adjudicating Authority for passing a fresh order by giving sufficient opportunity to the appellant. Appeals are allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 02.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha