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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10421 of 2019

(Arising out of OIA-CCESA-SRT-APPEAL-PS-632-633-2018-19 dated 04/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Shri Sunil Rathi ....**Appellant**
Account Manager Ms. Salasar Copper Unit-Ii
Survy No 212/2 Near Dadra Check Post, DADRA, U.T.

VERSUS

C.C.E. & S.T.-Daman ....**Respondent**
3RD FLOOR...ADARSH DHAM BUILDING, VAPI-DAMAN ROAD, VAPI
OPP.VAPI TOWN POLICE STATION,
VAPI, GUJARAT-396191

With

Excise Appeal No.10423 of 2019

(Arising out of OIA-CCESA-SRT-APPEAL-PS-632-633-2018-19 dated 04/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Salasar Cooper ....**Appellant**
Unit-Ii
Survey No 212/2 Near Dadra Check Post Village, DADRA, U.T.

VERSUS

C.C.E. & S.T.-Daman ....**Respondent**
3RD FLOOR...ADARSH DHAM BUILDING, VAPI-DAMAN ROAD, VAPI
OPP.VAPI TOWN POLICE STATION,
VAPI, GUJARAT-396191

APPEARANCE:
Shri Dhaval Shah, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12601-12602 /2021

DATE OF HEARING: 10.12.2021
DATE OF DECISION: 10.12.2021

RAMESH NAIR

The issue involved is that whether the appellant is entitled for Cenvat Credit in respect of GTA services.

02. Shri Dhaval Shah, learned counsel appearing on behalf of the appellants submits that the adjudicating authority as well as Commissioner

(Appeals) denied the Cenvat Credit on the sole ground that appellant have not provided CAS-4 Certificate to justify the cost of the final product to ascertain that whether the freight element has been included in the cost of product or otherwise. He submits that the freight charges was borne by the appellant and the same is deemed to have been included in the sale value of the goods. He invited my attention to some sample invoices, LR’s wherein, he has pointed out that no separate freight was charged to the customer and freight is included in the assessable value on which excise duty was paid. He submits that on the identical facts, this tribunal has considered the issue in hand in the case of M/S. ULTRATECH CEMENTS LIMITED Vs. CCE, KUTCHH-2019 (2) TMI 1487-CESTAT AHMEDABAD & M/S. SANGHI INDUSTRIES LIMITED Vs. KUTCHH- 2019 (2) TMI 1488- CESTAT AHMEDABAD, the decisions of this tribunal have been upheld by Hon’ble High Court of Gujarat.

03. Shri R P Parekh, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that the sale of the goods is at factory gate and not FOR. As per the definition of ‘Input Service’ only those GTA Services are eligible for Cenvat Credit where the GTA Service is up to the place of removal. Since in this case the factory gate is a place of removal, Cenvat Credit beyond the place of removal in respect of GTA is not maintainable. He also relied upon the following judgments:-

- CCE Vs. ULTRATECH CEMENT LTD.-2018 (9) GSTL 337 (SC)
- ULTRATECH CEMENT LTD Vs. COMMISSIONER- 2018 (13) GSTL J101 (SC)
- CCE, NAGPUR Vs. ISPAT INDUSTRIES LTD- 2015 (324) ELT 670 (SC)
- RAMCO CEMENTS LTD Vs. COMMISSIONER- 2021 (44) GSTL J20 (Tri.-Chennai)
- ULTRATECH CEMENT LTD Vs. CCE, TIRPATI- 2019 (28) GSTL 84 (Tri.-Hyd)
- VED PMC LTD Vs. CCE, BELAPUR- 2020 (34) GSTL 442 (Tri-Mum)
- CCE, JAIPUR-I Vs. ARL INFRATECH LTD- 2019 (369) ELT 351 (Raj)
- JAMMU PIGMENTS P LTD Vs. CCE, CHANDIGARH- 2019 (366) ELT 837 (Tri-Chan)
- CCE, UDAIPUR Vs. MANGALAM CEMENT LTD.-2019 (24) GSTL 545 (Raj)
- MAHLE ENGINE COMPONENTS Vs. UNION OF INDIA- 2019-TIOL-2805-HC-MP-CX

- UNION OF INDIA Vs. WEST COAST PAPER MILLS LTD.- 2004 (164) ELT 375 (SC)
- AIA ENGINEERING Vs. CCE, AHMEDABAD-I- A/11275/2020 dated 15.10.2020

04. I have carefully considered the submissions made by both the sides and perused the records. I find that the lower authorities have denied the Cenvat Credit on GTA Services on the sole ground that the appellant have not supplied the CAS4 Certificate to ascertain the cost of product and whether the freight element is included or otherwise. I find that the sale of the goods is on Principle to Principle basis. As per Section 4 of the Central Excise Act, 1944 the transaction value at which the goods are sold has to be taken for the purpose of assessment. In case of the value arrived at, as per Section 4(1)(a) no question can be raised. Moreover, in the facts of the present case the freight is deemed to have been included in the assessable value and on such assessable value excise duty was charged which is evident from the sale invoice which shows that the appellant have not collected the freight separately from the customer. The freight charge was borne by the appellant themselves. In this case the transaction should be considered as FOR sale and accordingly, the buyer's place shall become place of removal as all the expenses up to the delivery of the goods at the buyer's place was borne by the appellant. On this principle, this tribunal has considered the issue of admissibility of Cenvat credit on Outward GTA in the case of ULTRATECH CEMENTS LTD & SANGHI INDUSTRIES LTD (supra) and the credit was allowed. These judgments have been upheld by Hon'ble High Court of Gujarat. Accordingly, following the binding precedent of the hon'ble Gujarat High Court I am of the view that the appellant is entitle for the Cenvat Credit on Outward GTA in the facts of the present case. Moreover, the identical issue in the appellant's own case has been considered and decided in favour of the appellant in the judgment reported at M/S. SALASAR COPPER- 2019 (4) TMI 11 CESTAT-AHMEDABAD. wherein, the following order was passed.

> *"This appeal has been filed by M/s. Salasar Copper against denial of Cenvat credit on GTA services availed during the period October 2015 to June 2016.*
>
> *2. Ld. Counsel pointed out that they had produced Chartered Accountant and Cost Accountant's certificates for the said period clearly stating that goods have been supplied on FOR (Free on Road) basis to their buyers. He pointed out that order-in-original in Para 8.6 has examined the facts regarding the nature of sales on FOR basis or otherwise and held that the sale is on FOR basis. He further argued that impugned order does not*

go into this aspect and denies Cenvat credit holding that credit would be admissible only up to the place of removal.

3. Ld. AR relied on the impugned order.

4. I find that the observations of the order-in-original that goods are sold on FOR basis has not been challenged and has not been upset by the impugned order. Ld. Counsel pointed that in the case of Sanghi Industries Limited vs. CCE, Kutch (Gandhidham) – 2019 (2) TMI 1488 – CESTAT Ahmedabad, in the similar circumstances, the benefit of Cenvat credit on GTA services was allowed. Similarly, in the case of Ultratech Cement Limited vs. CCE, Kutch (Gandhidham) – 2019 (2) TMI 1487 – CESTAT Ahmedabad where there was no dispute for the sale being FOR basis, credit has been allowed. Also in terms of Board Circular No. 1065/4/2018-CX dated 08.06.2018, there is no dispute on benefit of Cenvat credit if the sale is on FOR basis.

5. In view of the clear pronouncement of law as well as CBEC Circular, credit of service tax paid on GTA services where goods are supplied on FOR basis, Cenvat credit cannot be denied for the reasons that the said service has been availed for the transportation of goods beyond the place of removal.

Consequently, the appeal is allowed."

In the above judgment it can be seen that on the basis of CA Certificates produced by the appellant regarding the nature of sale i.e. FOR Sale and also the inclusion of freight charge, this tribunal has taken a view that appellant is entitle for Cenvat Credit. In the present case also there is no dispute that the appellant have produced the CA Certificate wherein, it was certified that the sale is on FOR Basis and the freight is included in the sale value accordingly, the facts of the present case as well as the case cited above are identical.

05. Accordingly, the impugned order is set aside, appeal is allowed. Consequently, the appeal filed by SHRI SUNIL RATHI is also allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul