Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
s
REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11086 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-06-2019-20 Dated-10/04/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Matrix Comsee Pvt Ltd **........Appellant**
15 And 19 Gidc Waghodia
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I **........Respondent**
1st Floor...Central Excise Building,
Race Course Circle,Vadodara,
Gujarat -390007

APPEARANCE:
Shri Saurabh Dixit (Advocate) with for the Appellant
Shri Ghanshyam Soni, Joint Commir. (Authorised Representative) for the Respondent

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

Final Order No. A/ 10301 /2022

DATE OF HEARING:04.01.2022
DATE OF DECISION:06.04.2022

RAMESH NAIR

This appeal is directed against Order-In-Appeal No.VAD-EXCUS-001-APP-06-2019-20 dtd. 10.04.20219 passed by the Commissioner (Appeals) GST & Central Excise, Vadodara, wherein Ld. Commissioner disallowed the Cenvat Credit on Courier Services.

2. The facts of the case is that during the disputed period i.e. April 2015 to June 2017, the appellant had availed Cenvat credit on the basis of invoices issued by the M/s DHL Express India Ltd., and M/s Fedex Express Transport and Supply Chain Service. However, during the course of audit, the department objected to the issue of availment of Cenvat credit on the ground that service provider had collected the consignment from the Appellant's factory gate and delivered the goods at the overseas

customers, hence, services which were rendered and received by the Appellant are beyond the place of removal and not covered under the definition of "Input Service" as per the definition given under Rule 2(l) of the Cenvat Credit Rules, 2004. Based on the audit report, the Department initiated show cause proceedings against the appellant, seeking for disallowance of alleged irregularly availed Cenvat credit. The matter was adjudicated by the Assistant Commissioner, Division -VII, Vadodara -I vide Order-In-Original dtd. 28.11.2018, wherein the proposal made in the show cause notices were dropped. Being aggrieved by the impugned order, department has filed Appeal. The Learned Commissioner (Appeals) vide impugned order -in-appeal decided the matter against the Appellant and confirmed the Cenvat demand. Feeling aggrieved with the impugned order-in-appeal, the appellant has preferred this appeal before the Tribunal.

3. The learned counsel, Shri Saurabh Dixit appearing on behalf of the appellant submits that Appellant had exported manufactured goods to overseas customers, through courier and availed Cenvat Credit thereof. The impugned order holds that since factory gate/ port of export is the place of removal, transportation beyond it is not eligible for Cenvat Credit. The impugned order failed to appreciate that picking up goods from factory gate of the Appellant and delivering it upto customer doorstep abroad, is one single transaction and cannot be vivisected for upto port of export and beyond port of export at all. As such, the credit for such single transaction therefore is legally available to the Appellant. The Cenvat credit on disputed service activity is eligible in terms of the following catena of decisions

(i) Lifelong Meditech Ltd. Vs. CCEx, & S.T. Gurgaon-II- 2016(44)STR626 (Tri. Chan.)
(ii) M/s DCM Shiram Ltd. final order No. A/11815/2019
(iii) M/s Inox India Pvt. Ltd. Final Order No. A/11814/2019
(iv) Raymond Uco Denim Pvt. Ltd. 2020(33)GSTL 207(Tri.-Mumbai)
(v) Sew Eurodrive India Pvt. Ltd. 2021(10) TMI 89- CESTAT (Ahmd.)
(vi) Tema India Ltd. 2021(11)TMI 402- CESTAT (Ahm)
(vii) Haldyn Glass Ltd. and Ors 2017(8) TMI 1217-CESTAT (Ahm)

(viii) M/s Radical Instrumental 2016(46)STR 631-CESTAT (Delhi)
(ix) Bharat Petroleum Corporation Ltd. 2018 (6) TMI 576 -CESTAT Mumbai
(x) Modern Petrofils Dty Div and Associated Power Structure 2017(9)TMI 206- CESTAT Ahm
(xi) Shankar Packaging Ltd. 2018(4) TMI 1605 -Tri- Ahm
(xii) Lubi Electrical Ltd., Shankar Packaging Ltd., M/s E.I.DuPont India Pvt. Ltd. 2017(10) TMI 1381 – Tri-Ahm

4. The Hon'ble CESTAT in the case of CCE, Vapi Versus Alidhara Textool Engineers Pvt. Ltd. 2009 (14) S.T. R. 305 (Tri.-Ahmd.) has held that the relevance of " upto place of removal" is limited only to GTA services and the same does not apply to other service at all.

5. He also submits that the adjudicating authority, while dealing with refund of the Service tax paid on Courier Service which were used by the Appellant in the course of export activity for the period April 2013 to March 2014 granted to the Appellant vide OIO dtd. 02.05.2016 by treating such courier service to be valid input services.

6. He further submits that given the interpretational issue involved, specially when the matter is well covered vide catena of decision available on the issue, neither extended period of limitation be invoked nor any penalty can be imposed on the Appellant. That the bonafide belief entertained by the Appellant cannot be doubted in the circumstances.

7. Learned Joint Commissioner (Authorized Representative) Shri Ghanshyam Soni appearing for the Revenue relies on the impugned order and reiterated the finding of impugned order. He submits that credit is not permissible beyond the factory gate viz. place of removal.

8. I have considered the submissions made by both the sides and perused the records. I find that the limited issue to be decided that whether the Appellant is entitled for cenvat credit on Courier Service. I find that the Appellant claimed that the Courier Service was used for delivery of their export goods from their factory premises to the premises of customers

abroad. The impugned service was used by the Appellant for export of goods. In these circumstances, I hold that the appellant is entitled to avail Cenvat credit on input service namely Courier Services which have been availed by the appellant in the course of their business to export of goods. further, I find that in number of cases Tribunal has consistently taken a view that Cenvat Credit in respect of Courier Service is admissible. Some of the Judgments are as below

(i) Haldyn Glass Ltd. & Ors Vs. CCE 2017(8) TMI 1217- CESTAT AHMEDABAD
(ii) Raymond Uco Denim Pvt. Ltd. 2020(33)GSTL 207(Tri.-Mumbai)
(iii) Sew Eurodrive India Pvt. Ltd. 2021(10) TMI 89- CESTAT (Ahmd.)
(iv) Radical Instrument Vs CCE Delhi – 2016(46)S.T.R. 631
(v) Amul Industries Pvt. Ltd. Vs. CCE and ST Rajkot – 2018(2)TMI473 -CESTAT AHEMDABD \
(vi) Modern Petrofils Dty Div & Ors Vs. CCE 2017(9)TMI 206 - CESTAT – AHMEDABAD

9. As regard the judgement of Hon'ble Supreme Court in the case of M/s Ultra Tech Cement Ltd. (supra) relies upon by the Ld. Commissioner (Appeals), we find that The *Ultra Tech Cement* (Supra) decision is about admissibility of Cenvat Credit on GTA services, whereas in present matter dispute is related to admissibility of Cenvat Credit of Courier Service which were used for export of goods. Hence ratio of said judgment is not applicable in the present matter.

10. In view of above, we do not find merit in impugned order -in-appeal, consequently the same is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 06.04.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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