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

REGIONAL BENCH–COURT NO. 03

Excise Appeal No. 10243 of 2019

[Arising out of OIA-VAD-EXCUS-002-APP-246-2018-19 dated 28/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Phillips Carbon Black Limited **.....Appellant**
N.H. No. 8, Gidc Estate, Palej,
Bharuch, Gujarat.

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:
Shri Anandoday Mishra & Ms. Chaitali Sadayat, Advocate for the Appellant
Shri G.Kirupanandan, Superintendent (AR) for the Respondent

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

FINAL ORDER NO.A / 10392 /2022

DATE OF HEARING: 10.03.2022
DATE OF DECISION:29.04.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for cenvat credit in respect of outward GTA for period prior to 01.04.2008.

2. Shri Anandoday Mishra, Learned counsel along with Ms. Chaitali Sadayat, Advocates appearing on behalf of the appellant submits that from 01.04.2008 in the main clause of the definition of the input service, the service related to removal of inputs was "from the place of removal", which was amended as "up to place of removal". Therefore, prior to 01.04.2008 the cenvat credit on outward GTA was available. He placed reliance on the following judgments:

- PARTH POLY WOOVEN PVT LTD- (Tax Appeal No.419 of 2010)

- GODFREY PHILIPS INDIA LIMITED (Appeal No.ST/138/2008)
- ABB LTD.(APPEAL NO. ST/336/2007, ST/345,347/2006)
- GULF OIL CORPORATION LTD.(APPEAL NO.E/10995/2019-SM)
- H.M.M. LIMITED- (1995 (76) ELT 497 (SC))
- VASAVADATTA CEMENTS LIMITED.(CIVIL APPEAL NO.11710 OF 2016)
- M/S. CADILA PHARMACEUTICALS LIMITED- (E/1412/2011-SM)
- M/S. GUJARAT GUARDIAN LTD.- 2017 SCC ONLINE CESTAT 3230)
- PHILIPS CARBON BLACK LTD. (TAX APPEAL NO.832 OF 2015)
- PIRAMAL HEALTHCARE LTD. (SERVICE TAX APPEAL NO.85315 OF 2019)

3. Shri G. Kirupanandan, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings in the impugned order. He submits that even prior to 01.04.2008 certain criteria to fulfill for allowing the Cenvat Credit on Outward GTA was prescribed in Board Circular No. 97/8/2007-ST dated 23.08.2007. He submits that the appellant have not submitted the documents to satisfy the criteria for allowing credit as prescribed in aforesaid Board Circular. He also placed reliance on the following judgments:

- COMMISSIONER OF CCE & ST Vs. ULTRATECH CEMENT LTD- 2018 (9) G.S.T.L. 337 (S.C.)
- MAHLE ENGINE COMPONENTS INDIA PVT. LTD.- 2018-TOIL-3677-CESTAT-DEL
- MAHLE ENGINE COMPONENTS- 2019-TOIL-2805-JC-MP-CX (APPEAL AGAINST ORDER REPORTED AT 2018-TOIL-3677-CESTAT-DEL)
- MAHLE ENGINE COMPONENTS- 2020-TOIL-132-SC-CX-LB
- SANGHI INDUSTRIES LTD.- 2019 (369) ELT 1424 (Tri.- Ahmd)
- ULTRATECH CEMENT LTD- TAX APPEAL NO.691 of 2019
- SANGHI INDUSTRIES LTD.-(SLP (C) No.11239/2020)

4. I have carefully considered the submissions made by both sides and perused the records. I find that prior to 01.04.2008, the services related to removal of the goods was “from the place of removal” which was replaced as amended with effect from 01.04.2008 as “up to the place of removal”. Therefore, the Cenvat Credit prima facie is available in case of outward transportation for the services availed from the place of removal up to the customers place. However, I also agree with Learned Authorized Representative that Board has prescribed certain conditions for allowing credit which need to be satisfied. Since the adjudicating authority has not verified the fact that, whether the said conditions of Board Circular have been complied with or not, the matter needs to be reconsidered.

5. Therefore, the impugned order is liable to be set aside and Appeal deserves to be remanded to the Adjudicating Authority for passing a fresh order after verifying the documents to ascertain that whether the appellant has fulfilled the condition as prescribed in the Board’s Circular No. 97/8/2007-ST dated 23.08.2007.Needless to say that the Adjudicating Authority shall consider the judgments cited by both the sides. The appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court 29.04.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

Geeta