CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD
REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 11312 OF 2018

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-474-2017-18 dated 08.01.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-Surat-I]

PRESTRESS WIRE INDUSTRIES **Appellant**
Survey No. 104/1/1, Turi Falia-Umerkoi Road,
Village-Falandi, Silvassa,
Dadra & Nagar Haveli (Ut)

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX -DAMAN **Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

Appearance:
Present for the Appellant :Shri Amal Dave, Advocate
Present for the Respondent: Shri Anoop Kumar Mudvel, Superintendent (AR)

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Date of Hearing/Decision : **08/08/2024**

FINAL ORDER NO. 11784/2024

SOMESH ARORA

In the present case department has disputed the fact that the goods were being delivered by the appellants to their buyers on FREE On Rail (FOR) basis. Since, the appellants had discharged the relevant duties of Central Excise on the freight part upto the rail point of the buyers, therefore, they had sought credit of the same as input. The department disputed the same on the basis of lack of evidence as exhibited from the invoice since the same was not mentioned as FOR, separately. On this basis due to lack of evidence, department disallowed the claim of the appellant and this regard it seeks to place reliance on the decision of this Tribunal as reported in Prestress Wire Industries Vs. CCE and ST - Daman wherein this Court in Final Order No. A/10730/2022 decided on 24.06.2022 which held as follows :-

“ 4. I have carefully considered the submission made by both sides and perused the records. I find that the documents submitted by the appellant which were also placed before the lower authority such as invoices, clearly established that the freight was not separately charged from the customers the same was borne by the appellant therefore, it is the part and parcel of the invoice value and the excise duty was charged on the said value. As per this undisputed fact I am of the view that the appellant is entitled for the Cenvat Credit on GTA Services. The same issue on the identical fact has been decided by this Tribunal in the case of Ultratech Cements Limited - 2019 (2) TMI 1487-CESTAT Ahmedabad and Sanghi Industries-2019 (2) TMI 1488 CESTAT Ahmedabad which have been upheld by Hon'ble High Court of Gujarat therefore, the issue is no longer res-integra. Therefore, following the ratio of the above decision I am of the view that the appellant is legally entitled for the Cenvat credit in the facts of the present case in respect of GTA service.”

In view of the forgoing this Court finds that there is no transgression of law and not separately mentioning FOR charges cannot deny credit, as even in practice they determine the same only after knowing freight from railways, whereas under the Central Excise law invoice is required to be issued at the time of clearance. The practice thus evolved is in consonance with the requirement of compliance of law. In view of the forgoing and following the decision cited above, the appeal is allowed. Accordingly, Appeal is allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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