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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12504 of 2019-DB

(Excise Miscellaneous Application (EH) No. 10252 of 2022)

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-367-2019-20 dated 30.09.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Schaeffler India Limited .... **Appellant**
M/S. Fag Bearings India Limited, Maneja
Vadodara, Gujarat -390013

VERSUS

Commissioner of Central Excise & ST, Vadodara-ii.... **Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat - 390023

APPEARANCE :

Shri Saurabh Dixit, Advocate for the Appellant
Shri Vijay G. Iyengar, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. A/11146 / 2022

DATE OF HEARING/ DECISION : 20.09.2022

RAMESH NAIR :

Shri Saurabh Dixit, learned Counsel appearing on behalf of the applicant submits that the issue involved is of admissibility of Cenvat credit in respect of outward GTA in case the sale is on FOR basis. He submits that in an identical case, in the appellant's own case, the issue has been decided in their favour vide Final Order No. A/10307/2022 dated 05.04.2022. Considering the submissions made by learned Counsel, the early hearing application is allowed.

2. Since the issue is covered in the appellant's own case, with the consent of both the sides, the appeal itself is taken for disposal.

3. Learned Counsel submits that there is no dispute that the sale is on FOR basis and freight was borne by the appellant. He referred to Para 4.9 and 4.10 of the original order to submit that there is no dispute that the sale is on FOR Basis. He further submits that learned Commissioner (Appeals) decided the matter on the basis of Hon'ble Supreme Court judgment in the case of *CCE & ST vs. Ultra Tech Cement Limited - 2018 (9) G.S.T.L. 337 (S.C.).* The said judgment was dealt with in detail and thereafter this Tribunal came to conclusion that in case of sale on FOR basis Cenvat credit on GTA is admissible in case of *Ultratech Cement Limited vs. CCE, Kutch (Gandhidham) – 2019 (2) TMI 1487 – CESTAT AHMEDABAD* and *Sanghi Industries Limited vs. CCE – 2019 (2) TMI 1488 – CESTAT AHMEDABAD* which have been upheld by Hon'ble Gujarat High Court reported at *Commissioner CG & ST vs. Ultratech Cement Limited – 2020 (3) TMI 1206 – GUJARAT HIGH COURT.*

4. Shri Vijay G Iyengar, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. We find from the record that it is not disputed that the sale is on FOR basis. On the identical facts, in the appellant's own case, this Tribunal has decided the issue in hand vide Order No. A/10307/2022 dated 05.04.2022. The order is reproduced below:-

> "4. I have carefully considered the submission made by both the sides and perused the records.
>
> 5. As regard the fact that whether the sale is on FOR basis or otherwise it is clearly coming out from Order in original as well as from Order in Appeal. The relevant para of the order in original is reproduced below:
>
>> *"I find that there are sufficient evidences in form of C.A. Certificate, sample copy of invoices and purchase orders etc. in support of assessee's claim*

> *that the sale was on FOR/ customer's door delivery basis and freight was integral part of assessable value."*

In the Commissioner (Appeals) Order also Commissioner has recorded the said fact in para 5.3.

> *"The respondent is in their grounds of appeal mainly contended that the place of removal is in their case if the place o their customer's premises as per PO and invoices. In short, they contended that ownership of the goods till the delivery of the goods at the purchaser's door step is with them, they being seller bearing the risk of loss or damage to the goods during the transit to the destination and freight charges were integral part of the price of the goods."*

From the above order in original as well as from the order in appeal the fact is not under dispute that the sale is on FOR basis and the freight is integral part of the price of the goods on which the excise duty was discharged. In this fact the appellant is entitled for cenvat credit as held by this Tribunal in the case of Sanghi Industries Ltd. 2019 (2) TMI 1488-CESTAT-AHD and Ultratech Cement Limited 2019 (2) TMI 1487-CESTAT-AHD, which was upheld by the Hon'ble Gujarat High Court. As regard the reliance placed by the Learned Authorized Representative on the Hon'ble Supreme Court judgement in the case of Ultratech (supra), this Division Bench of this Tribunal in the case of Sanghi Industries and Ultratech has already considered the said judgement and after considering the said judgement and by relying upon the Board Circular dated 08.06.2018 which was issued consequent to the Hon'ble Supreme Court judgement in the case of Ultratech Cement Ltd., came to conclusion that in case of FOR sale, the cenvat credit on outward transportation is admissible. Therefore, as per the facts of the present case, the sale being FOR sale and freight is inclusive in the price of the goods and the same was not charged separately to the customers, the cenvat credit in respect of outward transportation is admissible. Accordingly, the impugned order is set aside. Appeal is allowed.

6. In view of the above Tribunal decision, which is in the appellant's own case on the identical facts, the issue is no longer *res-integra*. The appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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