CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD

REGIONAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 11307 OF 2019

[Arising out of OIA-VAD-EXCUS-001-APP-644-655-2018-19 dated 28/03/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

APOLLO TYRES LIMITED **Appellant**
Village Limda Tal Waghodia
Vadodara, Gujarat

Vs.

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

I. **Excise Appeal No. 11308 of 2019 (Apollo Tyres Limited)**
II. **Excise Appeal No. 11310 of 2019 (Apollo Tyres Limited)**
III. **Excise Appeal No. 11313 of 2019 (Apollo Tyres Limited)**
IV. **Excise Appeal No. 11314 of 2019 (Apollo Tyres Limited)**
V. **Excise Appeal No. 11316 of 2019 (Apollo Tyres Limited)**
VI. **Excise Appeal No. 11317 of 2019 (Apollo Tyres Limited)**
VII. **Excise Appeal No. 11319 of 2019 (Apollo Tyres Limited)**
VIII. **Excise Appeal No. 11325 of 2019 (Apollo Tyres Limited)**
IX. **Excise Appeal No. 11332 of 2019 (Apollo Tyres Limited)**
X. **Excise Appeal No. 11333 of 2019 (Apollo Tyres Limited)**
XI. **Excise Appeal No. 11335 of 2019 (Apollo Tyres Limited)**

[Arising out of OIA-VAD-EXCUS-001-APP-644-655-2018-19 dated 28/03/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Appearance:
Shri Joseph Kodianthara, Senior Advocate and Ms. Shweta Garge, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 12688-12699/2024

Date of Hearing : 07.11.2024
Date of Decision : 07.11.2024

SOMESH ARORA

Matter was heard for sometime. It is not forth coming on record from the dispute raised by the department as to whether all invoices of various parties and purchase orders were either having 'FOR' as the term of delivery or not. In this matter, present one is the second round of litigation. The matter was remanded to adjudicating authority vide order No. A/11740-11749/2017 dated 01.08.2017 and Second order No. A/13088/2017 dated 03.10.2017, as reproduced below:-

> *"4. In the absence of any document to evidence as such is the case, before the lower authorities, I find that unless the same is evidenced by the appellant, lower authorities may not be able to come to correct conclusion.*
>
> *5. In view of the fore-going without expressing any opinion on the merit of the case, keeping all the issues open, the impugned order is set aside and the matter is remitted back to the Adjudicating Authority to reconsider the issue afresh after following the principles of natural justice. I place on record that I have not made any observations on the merits of the case. The appellant is at liberty to produce the evidences on which he wish to rely upon in defending eligibility to avail Cenvat Credit."*

2. In response, the party before the adjudicating authority produced a CA certificate which was taken on record, in accordance with the remand direction the party produced other documents too, which are part of Order-In-Original at para 12.2, and are reproduced below:-

> *"12.2 The noticee vide letter dated 08.06.2018, in the matter of SCN No. V.Ch.40 (04)01/1508/Apollo/ADC/Div-VII/17-18 dt. 15.12.2017 and CESTAT, Ahmedabad Orders No. A/11740-11749/2017 dt. 01.08.2017 & A/13088/2017 dt. 03.10.2017, have submitted following additional documents:*
>
> *i. Copy of certificate dt. 09.12.2014 of Independent CA to certify that freight and insurance is included in assessable value on which central excise duty is paid.*
>
> *ii. Further, copies of sample purchase order dt. 15.07.2014 (insurance and delivery terms: "Free delivery")*
>
> *Extension of transportation contract of 01.04.2010 by letter dt. 24.03.2015 (Both Enclosed (sse clause 2(iii) & 2(iv)(a))*
>
> *iv. Circular no. 97/6/2007 dt. 23.08.2007 (see point No. 8(b).*
>
> *v. Circular No. 988/12/2014 dt. 20.10.2014 reaffirming circular dt. 23.08.2007 after amendment w.e.f. 01.04.2008,*

vi. Decision of Division Bench of Karnataka High Court in Madras Cement which relates to period after 01.04.2008

vii. Decision of High Court of Gujarat in CCE vs. Philips Carbon Black Ltd.

viii. Decision of CESTAT, Mumbai in M/s Indo Count Industry Ltd. Vs. CCE, Kolhapur(After 01.04.2008).”

2.1 It is thus noticed that the party had produced a certificate dated 09.12.2014 of independent CA along with sample copies of purchase order indicating delivery terms pre-delivery. However, from the discussions and findings, we find that the matter has been disposed of on the ground that the party has not produced all the requisite documents. The learned authority has not dealt with the specimens produced with the claim that has been made before us that all the documents are very voluminous and therefore the sample copies were supplemented with the certificate of the CA.

3. Learned AR reiterates the findings of the lower authority and emphasizes inadequacy of the documents produced by the party in pursuance to the remand direction.

4. We have considered the rival submissions, we find that the party had produced certain documents and purchase orders. In support of its arguments, that the delivery was placed at the end of the buyer and therefore the claim of the Cenvat Credit was available. We also find that it supplemented the same by a CA certificate in support thereof indicating that similar was the situation with all the purchase orders and invoices. We find that the learned adjudicating authority should have considered the CA certificate in the light of documents produced and only then should have commented about the adequacy or otherwise of the evidence produced, since the same has not been done, we are constrained to remand the matter for the second time to afford opportunity to the party to produce detailed purchase orders and invoices, if feasible or to get the same inspected by

departmental officers and then for the adjudicating authority to decide the matter. It should also consider and comment about the adequacy of the CA certificate produced by the party. We also find recently in the party's own case this Tribunal has taken a view that is indicated below:-

> *"5. On careful consideration of the submissions made by both the sides and perusal of record, we find that the sale of goods is on FOR basis. The contract with the buyer for supply of goods is extracted below:-*
>
> > *"4.8. On perusal of purchase order No. 031 dated 27.01.2014 (relied upon document) the following points can be concluded:-*
> >
> > *(a) The supplies are to the Original Equipment Manufacturers (OEMS). Such OEMs place composite Purchase Orders on them and also fix the schedule of the supply. In all such Purchase orders the sale is complete only when the goods are delivered as per the purchase schedule.*
> >
> > *(b) With respect to OEMs, the Contracts/Purchase Orders specifically contemplate and in fact stipulate that the sale takes place on delivery at the factory premises of the OEMs. The invoices are raised on DDP-023 basis. The freight and insurance for delivery of the tyres at the factory of the OEM where the sale takes place is also borne exclusively by them.*
> >
> > *(c) The price basis is DDP-023 under Incoterms 2000. As per Wikipedia, under DDP terms of contract the seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. The seller is not responsible for unloading. This term places the maximum obligations on the seller and minimum obligations on the buyer. No risk or responsibility is transferred to the buyer until delivery of the goods at the named place of destination. Thus, the seller will be responsible right from loading at Seller's premises, transportation, insurance upto the delivery of goods at the buyer's premises.*
> >
> > *(d) The ownership in the tyres passes on from them to the OEMs only on delivery at their concerned factory. Till such delivery at the factory of OEMs, they remain the owner of the goods. Therefore, there are some instances where the goods are sent back or rejected by OEMs or diverted after their clearance from the factory on the instructions of the OEMs or on their instruction.*
> >
> > *(e) The O.E.M. has the right to make payment after 60 days of the receipt of the goods.*
> >
> > *(1) The O.E.M. has the right to reject the goods. Further in case the O.E.M rejects the goods, it is the responsibility of the supplier to collect back the goods.*

> *(g) The conditions of the purchase order are very strict towards delivery schedule and it is the responsibility of the assessee ie. the seller to deliver the goods at the place of the buyer strictly as per schedule.*
>
> *4.9. Based on the need, after the goods handed over to the transporter for delivery to the OEMs and as a necessary incident of such transportation, situations arise whereby the transporter is required to temporarily store the goods in Godown before actual delivery is effected to OEMs. Such situation may arise on account of change in schedule of delivery affected by the OEMs and other needs involved in transportation and various other ground realities. Further as per the purchase order the delivery schedule is to be strictly adhered to. The seller ile. the assessee would be responsible for bearing the extra cost in case the goods have to be sent through other faster modes of transportation so as to maintain the delivery schedule. All these are vital ingredients of the transportation and cannot be in fact classified as mere storage. The sale takes place at the door step of the O.E.M because entire transit cost is included in the assessable value and excise duty was paid on this. The services in question are outward transportation/storage up to the place of removal and clearly qualify as Input Service and therefore entitle them to take credit.*

On the above contract, the Adjudicating Authority has made his observations as under:-

> *"4.10. In this case, from term & conditions of Purchase Order, I find that there is a requirement of delivery at the premises of the OEM for completion of sale. The sale is complete only on such delivery at the premises of the OEM till which time they remain the owners of the goods. The intent of the purchase order was to complete the sale at the premises of the buyer. Thus, in this case the place of removal would be the buyer's premises."*

6. From the above terms and conditions of the supply and the observations of the Adjudicating Authority, it is absolutely clear that there is no dispute that the sale of goods gets completed only at the buyer's premises therefore, we are of the view that since the appellant is under obligation to deliver the goods at the customer's premises, the sale gets completed only after delivery of the goods. In this fact, all the expenses till the delivery of the goods deemed to have been included in the sale value of the excisable goods. Therefore, for the purpose of Cenvat credit, since the expenses upto the delivery of goods is includible in the excisable goods and excise duty was paid thereon, such services are eligible input service and credit is admissible, as held by this Tribunal in the case of Sanghi Industries Limited vs. CCE, Kutch (Gandhidham) 2019 (369) ELT 1424 (Tri. - Ahmd.) and Ultratech Cement Limited vs. CCE, Bhavnagar 2007 (6) S.T.R. 364 (Tri. Ahmd.). Both the decisions of this Tribunal have been upheld by Hon'ble Gujarat High Court.

7. As regards the submissions made by learned AR and the judgments cited by them, we find that all these judgments are given much before the decision of Hon'ble Gujarat High Court in the case of Sanghi Industries Limited and Ultratech Limited (supra).). Moreover, these judgments were taking cognizance of Board, Circular *which was issued after the Hon'ble Supreme Court decided the matter in the case of Ultratech Cement Limited. Therefore, all these judgments cited by learned AR are clearly distinguished as these judgments are much before the subsequent development of law on the captioned subject."*

4.1 We also direct that the adjudicating authority shall keep in mind this decision and afford benefit to the party, it all the documents and the condition is found to be fulfilled. Since the matter is old, we direct adjudication be completed within three months. Party should cooperate by producing copies of purchase order as has been claimed were produced and adjudicating authority should also take the same into consideration along with the CA certificate as was produced (cited supra). Matter is accordingly remanded with time bound direction.

5. Appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

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