

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

(E-Hearing)

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70040 of 2021

(Arising out of the Order-In-Appeal - NOI-EXCUS-002-APP-502-20-21, dated -24/08/2020 passed by Commissioner (Appeals) CGST, Noida)

M/s Goodluck Engineering Company

.....Appellant

((Unit) Of Goodluck India Ltd.

Khasra No. 2839, Village-dhoom Manikpur, Dadri,

Gautam Buddha Nagar

Uttar Pradesh 201301)

VERSUS

Commissioner of Central Excise, Gautam Buddha Nagar

....Respondent

(3rd Floor, Wegmans Business Park,

KP-III, Greater Noida

Distt. Gautam Buddha Nagar (UP)

APPEARANCE:

Shri Rajesh Chibber, Advocate for the Appellant

Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70283/2024

DATE OF HEARING : 30.05.2024

DATE OF DECISION : 30.05.2024

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Appeal No.-NOI-EXCUS-002-APP-502-20-21, dated -24/08/2020 of Commissioner (Appeals) CGST, Noida. By the impugned order Order-In-Original No.01/AC/D-II/GBN/2018-19 dated 07.01.2020 holding as follows has been upheld:-

"(i) I confirm the demand of an amount of Rs. 3,32,896/- (Rupees Three lakh Thirty Two Thousand Eight Hundred & Ninety Six only) and order to recover the same under Rule 14 of Cenvat Credit Rules, 2004, read with section 11A of

the Central Excise Act, 1944 read with Section 174 of CGST: Act, 2017 from M/s Good Luck Engineering Company [Unit of Good Luck Indin Ltd.,], Khasra No. 2839, G.T. Road, Dadri, Gr. Noida.

(ii) I confirm the demand of interest as per applicable rate on the amount confirmed above in terms of Rule 14 of Cenvat Credit Rules, 2004, read with Section 11 AA of the Central Excise Act, 1944 read with Section 174 of CGST Act, 2017.

(iii) I also impose a penalty of Rs. 3,32,896/-(Rupees Three lakh Thirty Two Thousand Eight Hundred & Ninety Six only) upon M/s Good Luck Engineering Company [Unit of Good Luck India Ltd.,], Khásra No. 2839, G.T. Road, Dadri, Gr. Noida, under Rule 15 of the CCR 2004, read with clause [c] of sub-section [1] of section 11AC of the Excise Act, 1944 read with Section 174 of CGST Act, 2017.

The adjudged dues shall be paid henceforth".

2.1 The appellant is engaged in the manufacture of forged engineering products (forged flanges) falling under Chapter Sub Heading No.73079190 & 73072100 of the First Schedule to Central Excise Tariff Act, 1985.

2.2 During the course of audit of the appellant it was observed that during the period January 2016 to June 2017 appellant has availed CENVAT credit of service tax availed on freight charges for delivery of goods at the buyer's destination considering place of removal as delivery point to buyer's place.

2.3 Revenue was of the view that the claim made by the appellant for CENVAT credit was not proper & maintainable as this place has not been prescribed as 'place of removal' in terms of Section 4(3)(c)(i) to (iii) of the Central Excise Act, 1944.

2.4 For invoking extended period of limitation to make the demand, show cause notice in para 5 observed:

"5. Therefore, in view of the above, it appears that M/s Goodluck has wrongly availed CENVAT credit of Rs.3,32,896/- on goods transport agency services received by them for transportation of goods from their factory to the buyer's premises for the period January 2016 to June 2017 in terms of Rule 3 read with Rule 2(l) of CENVAT credit

Rules, 2004 and the same is liable to be recovered from them along with interest as per Rule 14 of CENVAT credit Rules, 2004. As M/s Goodluck had utilized the inadmissible CENVAT Credit of rs 3,32,896/- towards payment of Central Excise Duty on finished goods cleared from the factory, they have rendered themselves liable for penal action also under Rule 15 of CCR, 2004. The material information in this regard has been concealed from the Department deliberately, consciously & purposefully to evade payment of Central Excise duty. The party should have brought this fact to the knowledge of the department either by correspondence or by mentioning the same categorically in their ST-3/ ER-1 returns, which they failed to do so and the matter was detected at time of audit only. In view of the above facts, the provisions as contained in proviso to Section 11A of the Central Excise Act, 1944 for the extended period of limitation appears to be invokable and the amount of inadmissible CENVAT credit, as mentioned in aforementioned paras, appears to be demandable and recoverable from the party."

2.5 A show cause notice dated 07.06.2019 was issued to the appellant asking them to show cause as to why:

- i. CENVAT credit of Rs 3,32,896.00 (Rupees Three Lakh thirty two thousand eight hundred and ninety six only) should not be demanded and recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with section 11A of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017.
- ii. Interest on the aforementioned amount should not be demanded and recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with section 11AA of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017.
- iii. Penalty should not be imposed upon them under Rule 15 of CENVAT Credit Rules, 2004 read with section 11AC of the Central Excise Act, 1944 read with Section 174 of the CGST Act, 2017.

2.6 The show cause notice has been adjudicated as per the Order-In-Original referred in Para 1 above.

2.7 Aggrieved appellant has filed the appeal before the Commissioner (Appeals) which have been dismissed as in the impugned order.

2.7 Aggrieved appellant has filed this appeal.

3.1 Have heard Shri Rajesh Chhibber, advocate for the appellant and Shri A.K. Choudhary, Departmental Representative for the Revenue.

3.2 Arguing for the appellant learned counsel submits that:-

- they have on the basis of the invoices for clearance of the goods though out taken a stand that all their consignment were cleared on FOR basis.
- As these consignment were cleared on FOR basis the benefit of CENVAT credit on the GTA services availed by them could not have been denied.
- everything was in the knowledge of the Revenue extended period could not have been invoked for this demand and major part of the demand is also accordingly time barred.

3.3 Arguing for the Revenue learned Departmental Representative reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in the appeal and during the course of argument.

4.2 Commissioner (Appeals) has in the impugned order recorded as under for upholding the demand:-

"6.1 The case of the appellant is that he is clearing the goods on 'FOR' basis as stated by him and the transportation cost has been included in the assessable value of their finished goods, therefore, it has been contended that he is entitled to avail Cenvat credit on outward transportation, as that is upto place of removal as per Section (3) of the Central Excise Act 1944, and thus input service.

6.2. I find that there were divergent views regarding admissibility of CENVAT credit on outward freight,

however the issue has attained finality by the judicial pronouncement of Hon'ble Supreme Court, in the case of Ultratech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C)], wherein it was held that the assessee is not entitled to Cenvat credit on 'Goods Transport Agency service used for transport of goods from place of removal to buyer's premises. It was further held that vide amendment carried out in the aforesaid Rules in the year 2008. v.e.f.01/03/2008, the word 'from' is replaced by the word 'upto' and thus, it is only upto the place of removal' that service is treated as input service and the benefit now gets terminated at the place of removal. Subsequently, the review petition filed by Ultratech Cement Ltd also has been dismissed by the Hon'ble Supreme Court [Ultra Tech Cement Ltd. v. Commissioner - 2018 (13) G.S.T.L. 1101 (S.C.)].

6.3 The Hon'ble Apex Court, in the above Ultra-tech case, noted the amendment to the definition of input services in 2008 and observed that 'from was the indicator of starting point, and 'upto' signifies terminating point. Thus, the court held that after 2008, credit would not be available on transportation services beyond the place of removal. At the same time, it is noteworthy that the Hon'ble Court did not analyse in detail as to what actually would constitute the 'place of removal.

To overcome the different interpretations flowing from various Supreme Court decisions and the Tribunal decisions and to clarify the position of law. the Board has come out with the Circular No. 1065/4/2018-CX dated 08/06/2018, clarifying that: -

(a) (Vide para-3): as a general principle, the decision laid down by the Apex Court in the case of Ispat Industries Ltd. may be applied to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that 'place of removal' is to be referred with reference to the premises of the manufacturer.

(b) (Vide para-4): Exception from the general principle is created for the cases of removal of goods for export and cases of sale of goods on FOR contract. In such 'FOR' contract sale cases such as the Apex Court in CCE vs. Roofit Industries [2015 (319) ELT 221 (S.C.)] and CCE vs. Emco Ltd. [2015 9322) ELT 394 (S.C.)] where the ownership, risk in transit remained with the owner of the goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of the facts of the cases.

(c) It has also indicated in the Circular *ibid* that the various judgments of Hon'ble Supreme Court may be referred to, for further guidance in individual cases based on facts and circumstances of each of the case. of good for

6.4 Subsequent to the issuance of the Circular *ibid*, the Hon'ble CESTAT Ahmedabad in the case of Balaji Multiflex Pvt. Ltd. and Circuit Systems (1) Ltd.

[Final Order No. A/12028-12029/2018 dated 25/04/2018] and also the Hon'ble CESTAT Chennai in the case RaneTrw Steering Systems (P) Ltd. [Final Order No. 40672/2019 dated 22/04/2019) and Mahle Engine Components India Pvt. Ltd. Vs. C.C.E. & S.T., Chennai-III &Ors. [2019 (4) T.M.I. 635 CESTAT Chennai) remanded the matters to the adjudicating authority on the basis of the CBIC Circular dated 08.06.2018 with a direction to the authorities below to determine the place of removal and then decide the eligibility of credit.

In a recent case of Panoli Intermediates India Pvt. vs. CCE, Vadodara-1 (F.O. No. A/10869/2019 dated 10/05/2019), Hon'ble CESTAT. Ahmedabad, relying on the decision of the case of M/s Salasar Copper [2019 (4) TMI 11 CESTAT- AMD.] has held that where there was no dispute for the sale being FOR basis, credit has been allowed. It is also held therein that in terms of Board Circular No. 1065/4/2018-CX dated 08.06.2018, there is no dispute on benefit of Cervat credit if the sale is on FOR basis.

6.5 On careful examination of the discussions made herein before, I find that the Board, after considering all the judgments of Supreme Court on the issue of Place of Removal as as well well as as on on th the eligibility of the Cenvat credit on outward aated GTA, prescribed some guidelines for field formation for deciding the case of Cenvat credit on outward GTA. The Board Circular also clarified that the various judgments of Hon'ble Supreme Court may be referred for further guidance in individual cases based on facts and circumstances of each of the case. As the instant issue is required to be decided only on the basis of facts and circumstances of the instant case only, I opine that the facts is first to be verified in this case as to what is the place of removal and whether the GTA service is used up to the place of removal or beyond place of removal.

6.6 I find, that, though the present appellant pleaded that his sale was on come FOR basis and 'place of removal is at buyer's premises', he has not produced the

necessary documentary evidences, viz., copy of sales contract/agreement, invoice/transport document, insurance papers etc. in order to establish his claim of FOR sale to the buyers. In the instant case, the appellant has failed to discharge their onus of admissibility of CENVAT credit, in as much as they did not furnish the supporting documents or plausible explanation either before the adjudicating authority or with their grounds of appeal or at any other stage.

6.7 In view of the foregoing discussions it is concluded that the, appellants could not make any strong assertion against the impugned order and in absence of sufficient material evidence on record to substantiate his claim, I am of the opinion that the recovery of CENVAT credit alongwith interest and penalty on this ground by the adjudicating authority is justified.

4.3 The issue involved in the present case is no longer *res integra*. The issue was decided by the Hon'ble Supreme Court in the case of Roofit Industries (2015 (319) ELT 221 (S.C.) and then in the case of Ultratech Cement Ltd. [2018 (9) GSTL 337 (S.C.)]. Taking note of the above decisions of Hon'ble Apex Court Board has clarified as per the Circular No. 1065/4/2018-CX dated 08.06.2018, as follows:

"Attention is invited to Boards circular no. 97/8/2007-CX dated 23.08.2007, 988/12/2014-CX dated 20.10.2014 and 999/6/2015-CX dated 28.02.2015. Attention is also invited to the judgment of Hon'ble Supreme Court in the case of CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC), CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC), CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE &ST vs. Ultra Tech Cement Ltd dated 1.2.2018 in Civil Appeal No. 11261 of 2016. In this regard, references have been received from field formations seeking clarification on implementation of aforesaid circulars of the Board in view of judgments of Hon'ble Supreme Court.

2.In order to bring clarity on the issue it has been decided that Circular no. 988/12/2014-CX dated 20.10.2014 shall stand rescinded from the date of issue of this circular. Further, clause (c) of para 8.1 and para 8.2 of the circular no. 97/8/2007-CX dated 23.08.2007 are also omitted from the date of issue of this circular.

3.General Principle: As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE vs Ispat

Industries Ltd 2015(324) ELT670 (SC) may be applied. Apex Court, in this case has upheld the principle laid down in M/s Escorts JCB (Supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. The observation of Honb'le Court in para 16 in this regard is significant as reproduced below:

"16. It will thus be seen where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such prices shall be deemed to be normal value thereof. Sub-clause (b) (iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of the premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place of premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the sub-section. The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer. If we were to accept contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises. "

4.Exceptions:

(i) The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC). To summarise, in the case of FOR destination sale such as M/s Emco Ltd and M/s Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.

(ii) Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular no. 999/6/2015-CX dated 28.02.2015 as the judgments cited

above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India.

5.CENVAT Credit on GTA Services etc: The other issue decided by Hon'ble Supreme Court in relation to place of removal is in case of CCE &ST vs. Ultra Tech Cement Ltd dated 1.2.2018 in Civil Appeal No. 11261 of 2016 on the issue of CENVAT Credit on Goods Transport Agency Service availed for transport of goods from the 'place of removal' to the buyer's premises. The Apex Court has allowed the appeal filed by the Revenue and held that CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises was not admissible for the relevant period. The Apex Court has observed that after amendment of in the definition of 'input service' under Rule 2(I) of the CENVAT Credit Rules, 2004, effective from 01.03.2008, the service is treated as input service only 'up to the place of removal'.

6. Facts to be verified: *This circular only bring to the notice of the field the various judgments of Hon'ble Supreme Court which may be referred for further guidance in individual cases based on facts and circumstances of each of the case. Past cases should accordingly be decided.*

7.No extended period: *Any new show cause notice issued on the basis of this circular should not invoke extended period of limitation in cases where an alternate interpretation was taken by the assessee before the date of the Supreme Court judgment as the issue is in the nature of interpretation of law."*

4.4 From the para 7 of the above circular it is evident that the Board has accepted the fact that the issue is of interpretation of law and hence extended period of limitation should not be invoked. Even after such clear cut direction from the Board this demand has been made invoking extended period of limitation as per Section 11A of the Central Excise Act, 1944 and also penalty has been imposed in terms of Rule 15 of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944. The entire proceedings including the impugned order are in contempt of the authority of Board, and the circular issued by it. In my major portion of demand can be set aside for the reason that extended period of limitation could not have been invoked as per the above referred circular.

4.5 Thus if the clearance of the goods was on FOR basis, the Board has clarified that CENVAT credit should have been allowed in respect of GTA services used for outward transportation.

4.6 I have perused the invoice used for clearance of the goods and all sample basis and the same is reproduced below for ready reference:-

0204
05-May-2016

Date & Time of Preparation 05/05/2016 22:18 Hrs
Date & Time of Removal

SALE INVOICE
CIN No.:L74899DL1986PLC050910

Tariff Heading No. 73072100
Excisable Commodity FORGED FLANGES OF ALLOY STEEL

Consignee
AUTOMECH SYSTEMS
UNIT 4, FERROUS METAL COMPOUND
RAGHUNATH NAGAR, NEAR TEEN HATH NAKA
THANE 400604 MAHARASHTRA

Indentor
AUTOMECH SYSTEMS
UNIT 4, FERROUS METAL COMPOUND
RAGHUNATH NAGAR, NEAR TEEN HATH NAKA
THANE 400604 MAHARASHTRA

Consignee TIN 27430251281
Indentor TIN 27430251281
Consignee CST 27430251281
Indentor CST 27430251281

Transporter Care Wide Logistics Vehicle No. UP13T2392
Purchase Order No/Date EMAIL DTD. 15/03/2016 Work Order No PP/1510/15-16

Item SNo	Description & Specification of Goods	Material	Item Code	Qty / Pc	Rate / Pc	Disc. (%)	Assessable Value
1.00	OD 820 x ID 820 x THK 50 (INNER RING HP 3C FORGING)	A182M F91 (I)	TBD00Q-000116-	2	39,322.00		78,644.00
2.00	OD 820 x ID 820 x THK 50 (INNER RING HP 3C FORGING)	A182M F91 (I)	TBD00Q-000117-	2	36,610.00		73,220.00
3.00	OD 1190 x ID 1025 x THK 85 (INNER RING HP 3C FORGING)	A182M F91 (I)	TBD00Q-000118-	2	84,068.00		168,136.00
Total				6			320,000.00

within 90 days

Assessable Value 320,000.00
Excise Duty @ 12.50% 39,999.00

2 BOX

Taxable Amount 359,999.00
C.S.T. @ 2.00% 7,199.98

Sale Against FORM C

Gross Weight 0.720 MT Round Off 0.02
Total Weight 0.600 MT Total Bill Amount 367,199.00

Total Amount (In Words) Three Lakh Sixty Seven Thousand One Hundred Ninety Nine Only

Total Duty 39,999.00 (In Words) Thirty Nine Thousand Nine Hundred Ninety Nine Only

Total Ed. & SAH Ed. Cess 0.00 (In Words) Only

RG-23 A Part II Entry No./Date/Amount 337 05/05/2016 Excise Duty 39,999.00
Ed. Cess

For Good Luck Egg. Co.

Director

GOOD LUCK ENGINEERING CO.

Admn. Off : Good Luck House, II-F-166 & 167, Ambedkar Road, Nehru Nagar, Ghaziabad-201001 (India)

CAREWIDE LOGISTICS

Ledger From 01/04/2016 To 31/03/2017

Date VR No.	VR Type	Particulars	Debit (Rs.)	Credit (Rs.)	Balance
23/05/2016 12	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO.41946, DT. 03/05/2016 FOR SALE MADE TO M/S WILHELMSS GMBH AGAINST BILL NO. 25		11,780.00	28,025.00 Cr
23/05/2016 21	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO.41955, DT. 06/05/2016 FOR SALE MADE TO M/S C.DOCTOR INDIA PVT LTD AGAINST BILL NO. 193.		7,100.00	35,125.00 Cr
31/05/2016 2	BPV	BEING THE CHEQUE ISSUED IN F/O M/S CAREWIDE LOGISTICS AGAINST G/R NO. 41946, 41955, 37792.CH. 3457, DT. 31/05/2016 CH3457 DT 31-05-2016	35,125.00		0.00
31/05/2016 20	Debit Note	BEING DEBIT NOTE NO. 384 WE HAVE DEBITED YOUR ACCOUNT ON A/C OF TDS UNDER SECTION 194C (CONTRACTOR) AGAINST BILL NO(5). 37814(@1% ON 9700) (CAREWIDE LOGISTICS)	97.00		97.00 Dr
31/05/2016 26	Debit Note	BEING DEBIT NOTE NO. 390 WE HAVE DEBITED YOUR ACCOUNT ON A/C OF TDS UNDER SECTION 194C (CONTRACTOR) AGAINST BILL NO(5). 41948, 41949(@1% ON 40200) (CAREWIDE LOGISTICS)	402.00		499.00 Dr
31/05/2016 58	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO. 37814, DT. 17/05/2016		9,700.00	9,201.00 Cr
31/05/2016 77	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO.41948, DT. 04/05/2016 FOR SALE MADE TO M/S BHARAT COOPREATIVE BANK AGAINST INV. NO. 169.		22,800.00	32,001.00 Cr
31/05/2016 78	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO.41949, 04/05/2016		17,400.00	49,401.00 Cr
06/06/2016 1	Debit Note	BEING DEBIT NOTE NO. 429 WE HAVE DEBITED YOUR ACCOUNT ON A/C OF TDS UNDER SECTION 194C (CONTRACTOR) AGAINST BILL NO(S). 41992, 41969, 41970(@1% ON 25700) (CAREWIDE LOGISTICS)	257.00		49,144.00 Cr
06/06/2016 2	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO.41992, DT.14/05/2016 FOR MATERIAL SENT TO M/S CITY TRANSPORT MUMBAI FOR NAVASHIVA PORT MUMBAI AGAINST INV. NO.297.		13,400.00	62,544.00 Cr
06/06/2016 3	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO.41969, DT. 12/05/2016 FOR SALE MADE TO M/S TECHNIP INDIA LIMITED AGAINST INV. NO. 217,218.		7,200.00	69,744.00 Cr
06/06/2016 5	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO.41970, DT. 12/05/2016 FOR SALE MADE AGAINST INV. NO. 204.		5,100.00	74,844.00 Cr
07/06/2016 4	Debit Note	BEING DEBIT NOTE NO. 438 WE HAVE DEBITED YOUR ACCOUNT ON A/C OF TDS UNDER SECTION 194C (CONTRACTOR) AGAINST BILL NO(S). 41392, 1151(@1% ON 45000) (CAREWIDE LOGISTICS)	450.00		74,394.00 Cr
07/06/2016 4	Journal-Auto	BEING THE AMOUNT OF FREIGHT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST G/R NO. 41392, DT. 22/04/2016 FOR MATERIAL SENT TO JWR LOGISTICS MUMBAI (NAVA SHIVA PORT) AGAINST INV. NO. 15.		28,000.00	102,394.00 Cr
07/06/2016 6	Journal-Auto	BEING THE AMOUNT OF DETAINMENT CHARGES THROUGH M/S CAREWIDE LOGISTICS AGAINST BILL NO. 1151, DT. 04/06/2016 FOR LORRY HOLD IN GLE FOR FOUR DAYS OF TEMA.		17,000.00	119,394.00 Cr

BizSol ERP (NITIN JAIN)

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For Good Luck Engg. Co.

Director

GOOD LUCK ENGINEERING CO.

Admn. Off : Good Luck House, II-F-166 & 167, Ambedkar Road, Nehru Nagar, Ghaziabad-201001 (India)

AUTOMECH SYSTEMS

Ledger From 01/04/2016 To 31/03/2017

Date VR No.	VR Type	Particulars	Debit (Rs.)	Credit (Rs.)	Balance
01/04/2016		Opening Balance			0.00
05/05/2016 28	Sales	SALE MADE A/G BILL NO. 204, ORDER NO. (PVT/1510/15-16) (FORGED FLANGES STEEL - 0.6 MT)	367,199.00		367,199.00 Dr
21/11/2016 3	BRV	BEING THE PAYMENT RCVD. ON DT- 19/11/2016, FROM AUTOMECH SYSTEMS AG. INV. NO. 204 RTGS 844509		150,000.00	217,199.00 Dr
		Closing Balance	367199.00	150000.00	217,199.00 Dr

4.7 From perusal of the above invoice and the ledgers it is evident that the freight has been paid at the time before clearance of the goods. No separate value of the freight paid has been indicated on the invoices which leads to the presumption that the value of goods cleared include the freight element. Appellant has paid the due service tax on the freight paid to GTA Operator on the reverse charge basis. The fact that this freight has been paid by the appellant is also evident from the fact that in case of GTA services service tax on reverse charge basis is required to be paid by the consignee/ consigner indicated for consignment note issued by GTA for transportation of the goods who makes the payment of the freight as per the consignment note. Undisputedly in the present cases appellant has paid service tax on reverse charge basis against the consignment note issued for which they are claiming the credit.

4.8 The fact of payment of freight by the appellant is evident from the ledger submitted by the appellant. As the freight has been paid by the appellant and the same fact has been indicated in the sale documents without charging it separately in the invoice I am convinced that the value of the goods cleared is inclusive of the freight element and hence these sales are on FOR basis.

4.9 In terms of Board Circular referred earlier where the sales are on FOR basis CENVAT credit of service tax paid on the GTA service could not have been denied.

4.10 I do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the Order is pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal