CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70307 of 2022

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-912-2021-22 dated 24/02/2022 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Kwaliteit De Servici., ...Appellant

(Plot No-53 Udyog Kendra-II,
Sector-Ecotech-III, Greater Noida)

VERSUS

Commissioner of Central Excise &

CGST, Noida ....Respondent

(C-56/42, Sector-62, Noida)

APPEARANCE:

Request for adjournment, for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70085/2025

DATE OF HEARING : 21 February, 2025
DATE OF DECISION : 21 February, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-002-APP-912-2021-22 dated 24/02/2022 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"8. I also find that stand of both the appellant and the respondent department is that the credit of input service of transportation of goods upto the place of removal is admissible to which I also concur with. The point of dispute in the instant case is 'What is place of removal in the facts and circumstances of the case'. The appellant has claimed it to be buyer's premises in the instant case whereas for the department it was appellant's factory premises. I find

that the appellant in their appeal has quoted and relied on decision of the Hon'ble Apex Court 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) wherein the Hon'ble Court extended the benefit on the grounds that ownership, risk in transit remained with the seller till goods are accepted by the buyer on delivery and till such time of delivery, seller alone remained the owner of the goods retaining right of disposal. I have carefully perused the copies of purchased orders submitted with the appeal. I find that at page 27 of the appeal papers, purchase order No. GAWSS:OR:011 & 012: APR:2017:PGP dated 17.04.2017 placed by Canara Bank, H.O. Bangalore has been attached. The purchase order nowhere mentions that ownership and risk in transit will remain with the appellant. The bank only placed order 'on Total Cost basis'. Similarly, at page 31, copy of purchase order No. ROB/IT/ATM-STY/2014/25683 dated 20.10.2014 from Oriental Bank of Commerce has been attached. The terms & conditions of the purchase order mentions 'Prices are excluding of VAT & including of freight and other charges. There is nothing in the said purchase orders which shows that the ownership of the goods in question remained vested with the appellant during the period when the goods were in transit and it remained so till the time the goods were physically handed over to the buyer at their premises by the appellant. Further, the appellant failed miserably to adduce even an iota of evidence to buttress their claim. Although during the course of personal hearing, they submitted a photocopy of certificate dated 02.12.2021 issued by M/s Deepak Kumar & Co., Chartered Accountants confirming that freight charges from factory to buyer door step was borne by the seller, only invoice value was considered and no other amount had been charged from the buyer. I observe that it has never been the case of the department that the party *recovered freight extra from their buyer. The certificate thus fails to help the appellant in their cause. I further find myself in full agreement with the decision of the Hon'ble Supreme Court in case of M/s Ultratech Cement cited supra and relied upon by the adjudicating authority. I therefore, do not find any scope to interfere with the impugned order in original."*

2.1 Facts of the case are that during scrutiny of the returns for the year 2015-16, it appeared to revenue that appellant was availing credit on transportation charges used in outward transportation.

2.2 Since buyer's premises was not defined as place of removal, show cause notice dated 11.04.2017 was issued to the appellant asking them to show cause as to why:

(i) The Cenvat Credit of Rs. 3,84,706/- (Three Lakh Eighty Four Thousand Seven Hundred Six only) should not be disallowed and demanded under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A of the Central Excise Act, 1944;

(ii) Interest on the above said amount of duty should not be demanded from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Act ibid;

(iii) *Penalty should not be imposed upon them under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 1 1AC of the Act ibid*

2.3 The said show cause notice was adjudicated as per the Order-in-Original dated 30.03.2019 holding as follows:

Order

"ORDER

1. I Confirm the demand of CENVAT Credit amounting to Rs. 3,84,706/- (Rupees Three lakh eighty four thousand seven hundred six only) wrongly availed under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 1 1A of the Central Excise act, 1994.

2. *I confirm the demand of interest on the above said amount under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 1 1AA of the Central Excise act, 1994*

3. *I impose a penalty of Rs. 3,84,706/- (Rupees Three lakh eighty four thousands seven hundred six only) under Rule 15 of the Cenvat Credit Rules,2004 read with Section 11 AC of the Central Excise Act, 1944"*

2.4 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order referred in para 1 above.

2.5 Aggrieved appellant have filed this appeal.

3.1 None appeared on behalf of the appellant despite notice, Counsel for the appellant and through E-mail requested for adjournment.

3.2 As the matter has been adjourned three times in the past, I am not in position to allow any further adjournment in the matter. I have heard the learned Authorized Representative appearing for the revenue.

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

4.2 I find that the issue involved in the present case is a very narrow Campos and the same is squarely covered by the Board Circular No.1065/4/2018-CX dated 08.06.2018 wherein following has been stated-

> *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(l) 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.

4.3 The issue to determine is the admissibility of Cenvat credit in respect of outward transportation whether the supply of goods on FOR basis or at the factory gate. If Board has clarified through the circular on FOR basis the credit should have been admissible in the present case, I find from the purchase order reproduced bellow that the supply of total cost basis at the premises of the appellant and in case of any defect entire sale was to be rejected. The copy of the purchase order which is also referred in the impugned order is reproduced below:

(46)

केनरा बैंक Canara Bank

H.O. BANGALORE

ORDER NO: GAWSS: OR: 011 & 012 :APR:2017:PGP Dt. 17.04.2017

M/s Kwaliteit De Servici
Plot No.53, U.K.II, Sec. Ecotech III
Greater Noida-201306
Uttar Pradesh, PHONE 01203294834

Dear Sir,

We are placing the order for supply of the below mentioned item on Total Cost basis on the following terms and conditions.

Sl No.	Item	Quantity	Rate Per Roll Rs.	Total Cost Rs.	Specifications
1	RPT Rolls Thermal for Diebold D 429 ATM	200	112.00	22400.00	As mentioned in our ENQ ref No. GAWSS ENQ ATM 035 2016-17 KDB dated 21.11.2016.
2	RPT ROLLS THERMAL FOR NCR ATM	1500	330.00	495000.00	As mentioned in our ENQ ref No. GAWSS ENQ ATM 033 2016-17 KDB dated 21.11.2016.

Place of Delivery : Patna- Details given in the Anexure.
Payment : Payment to be obtained from **P&S section Patna-** one month after delivery.
Due Date : **17.05.2017 Penalty of 3% per month for delayed period.**

We here by reiterate that payment will be released only after 30 days from the date of supply on thoroughly verifying the quality/length/specification etc. If any defect in the supplied items are observed the entire quantity will be rejected. This is not withstanding Bank's right to charge additional penalty / forfeiting of EMD / blacklisting for further supply etc.

M KRISHNAMURTHY
MANAGER

P.K. SHARMA & ASSOCIATES GHAZIABAD ADVOCATE

STATIONERY SECTION
No. 113/1, J C ROAD
BANGALORE-560002

Telephone: 080-22222899, 22220599
E-mail:hostationery@canarabank.com
Web: www.canarabank.com

4.4 From the perusal of the above purchase order the condition I find that the entire supply is made on total cost basis, and could have been rejected by the buyer for any defects noticed subsequent to delivery. The above condition of purchase order is enough to hold that transit risk was with the appellant and supply was made on FOR basis. That being so, on the basis of Board Circular the credit could not have been denied.

4.5 Further Board has specifically directed against invocation of extended period of limitation, as the issue involved is interpretational in nature. The demand made by invoking extended period of limitation goes contrary to the spirit of the circular. Thus I do not find any merits in the same and also the penalties imposed under Rule 15 read with section 11AC of the Central Excise Act, 1944.

4.6 Accordingly, I find no merits in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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