# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 20400 of 2017**
**Service Tax Cross Objection Application No.20232 of 2017**

(Arising out of Order-in-Original No. BGM-EXCUS-000-COM-BKK-028-16-17(CX) dt. 28/10/2016 passed by Commissioner Of Central Excise, Customs & Service Tax, Belgaum)

**Commissioner of Central Excise, Customs and Service Tax,**
No.71, Club Road,
Belgaum – 590 001.
Appellant(s)

*VERSUS*

**Vicat Sagar Cement Pvt. Ltd.,**
Now Kalburgi Cement Pvt. Ltd.
Chatrasala Village, Karachakhed Post,
Chincholi Taluka,
Gulbarga, Karnataka – 585 320.
Respondent(s)

**APPEARANCE:**

Mr. Rajiv Kumar Agrawal, Commissioner(AR) for the appellant.
Mr. Ravi Raghavan, Advocate and Mr. Mohd. Ibrahim, Advocate

**CORAM:**
**HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)**
**HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 20050 / 2024**

Date of Hearing: 02/01/2024
Date of Decision: 02/01/2024

**Per : DR. D.M.MISRA**

This is an appeal filed against Order-in-Original No. BGM-EXCUS-000-COM-BKK-028-16-17(CX) dt. 28/10/2016 passed by Commissioner Of Central Excise, Customs & Service Tax, Belgaum.

2. The facts in brief are that the respondents are engaged in the manufacture of excisable goods viz. cement and clinker. The short question involved in the present appeal is whether the respondents are entitled to avail cenvat credit on GTA service for outward transportation of finished goods from the factory on FOR basis up to the customers' premises. Demand notice was issued denying cenvat credit of Rs.1,25.29,631/- for the period August 2014 to January 2015 alleging that credit on the said GTA service is inadmissible as the place of delivery is the factory premises even the sale is on FOR basis.

3. Learned advocate for the respondent submitted that subsequent to the delivery of the judgment of the Hon'ble Supreme Court in the case of Ultra Tech Cement Ltd. [2018(9) GSTL 337 (SC)] on the appreciation of the said judgment, the matter was referred to Larger Bench on account of conflicting opinions of different Division Benches of this Tribunal. The Larger Bench recently in the case of The Ramco Cements Limited Vs. CCE, Puducherry [Central Excise Appeal No.40575/2018 – Interim Order No.40020/2023 dt. 21/12/2023 answered the reference observing as under:

> *35. In the result, in a case where clearances of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgments of the Supreme Court in Emco and Roofit Industries, the decision of the Karnataka High Court in Bharat Fritz Werner, and the Circular dated 08.06.2018 of the Board to determine the admissibility of CENVAT credit on the GTA Service upto the place of removal.*

4. Learned AR for the Revenue has reiterated the findings in the impugned order.

5. Heard both sides and perused the records.

6. Following the aforesaid principle laid down by the Larger Bench of this Tribunal, the matter is remanded to the adjudicating authority to ascertain the place of removal in accordance with the observations of the Larger Bench of this Tribunal. Appeal is allowed by way of remand. All issues are kept open. Cross-objection also gets disposed of. Needless to say that a reasonable opportunity be given to the respondent.

(Operative part of this order was pronounced in open court
on conclusion of the hearing)

**(D.M. MISRA)**
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**
**MEMBER (TECHNICAL)**

Raja...