

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

REGIONAL BENCH - COURT NO. 3

CENTRAL EXCISE APPEAL NO. 23211 OF 2014

[Arising out of Order-in-Appeal No. 397/2014-CE dated
30.06.2014 passed by the Commissioner of Central Excise
(Appeals-I), Bangalore]

M/s. Nylo Films Private Ltd.

No. 1, 274-D, II Phase
Bommasandra Industrial Area
Bommasandra
Bangalore – 560 099

Appellant(s)

VERSUS

**Commissioner of Central Excise
Bangalore - I**

Post Box No. 5400
C.R. Buildings
Bangalore – 560 001

Respondent(s)

APPEARANCE:

Mr. Ramesh Ananthan & Mr. Sundararaman, Advocates for the
Appellant
Ms Arpitha S., Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20844 / 2025

DATE OF HEARING: 11.06.2025
DATE OF DECISION: 11.06.2025

PER : DR. D.M. MISRA

This is an appeal filed against the Order-in-Appeal No. 397/2014-CE dated 30.06.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of Plastic packing materials falling under Chapter 39 of Central Excise Tariff Act, 1985. During the relevant period from 2007-08 to 2012-13, the appellant had availed cenvat credit of service tax paid on goods transport service in relation to outward transportation

of finished goods. Alleging that credit is not admissible on the service tax paid on GTA service, show-cause notice was issued to them on 01.10.2012 for recovery of credit amounting to Rs. 1,24,571/- with interest and penalty. On adjudication, the demand was confirmed with interest and equivalent penalty was imposed under Section 11AC of the Central Excise Act, 1944. Aggrieved by the same, appellant filed an appeal before the Commissioner (Appeals) who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned Advocate for the appellant has submitted that during the course of audit of their records, it is alleged by the Department that cenvat credit availed on GTA service in relation to outward freight is not admissible, hence the present demand was issued. He has submitted that during the course of their manufacture and clearance of finished goods, the sale price is all inclusive, which includes freight charges and other charges. Therefore, the appellant took into consideration the total price which includes transportation charges for payment of excise duty. It is his contention that since the freight is an integral part of the value and their supply is FOR destination basis, the cenvat credit availed on the outward freight is admissible to them. Further he has submitted that the confirmation of demand invoking the extended period of limitation is incorrect inasmuch as the appellant had availed credit on the basis of the judgment of the Tribunal as was prevailing during the relevant time which was in their favour. Further it is an interpretation of definition of 'input service' under Rule 2(I) of the Cenvat Credit Rules, 2004 therefore invocation of extended period of limitation is unwarranted and accordingly, imposition of penalty on the appellant is bad in law. He submits that there are various judgments on the subject. The Larger Bench of the Tribunal in the case of M/s. The Ramco Cements Limited Vs. CCE, Puducherry vide its Order dated 21.12.2023 held that in FOR basis case, the place of removal has to be determined in

accordance with the judgment of the Supreme Court in **CCE, Mumbai - III Vs. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C)** and **CCE Vs. M/s. Roofit Industries Ltd. - 2015 (319) E.L.T. 221 (S.C)** and Karnataka High Court in **Bharat Fritz Werner Ltd. Vs. CCT, Bangalore - 2022 (66) G.S.T.L. 434 (Kar.)**. Therefore, the matter may be remanded to the adjudicating authority to ascertain the 'place of removal' as per the observation of the Larger Bench in **Ramco Cements** case.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The issue involved in the present appeal for consideration is whether the appellants are entitled to avail cenvat credit on outward freight during the relevant period. I find that the Larger Bench of the Tribunal after analysing gamut of case laws on the subject and the circulars issued by the Board from time to time, held 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.”

7. Following the principle laid down by the Larger Bench, the matter is remanded to the adjudicating authority to ascertain the 'place of removal' in the light of the said case and to decide the admissibility of cenvat credit on the outward freight. Further, since the issue relates to interpretation of law and subjected to varies opinions by different benches of the Tribunal at the relevant point of time, I do not find merit in

invoking the extended period of limitation. Therefore, the demand if any, in the de novo proceedings be limited to the normal period of limitation. Also, penalty in the above circumstances is unwarranted. Appeal is allowed by way of remand on the above terms.

(Dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

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