CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.

Appeal(s) Involved:

ST/491/2009-DB

[Arising out of Order-in-Original No. 03/2009 dated 26/02/2009 passed by the Commissioner of Central Excise and Customs, Belgaum]

JSW Steels Limited
Toranagallu Village, Vidyanagar,
P.O., Sandur Taluk,
Bellary Dist., - 583 275

Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax, Belgaum
No. 71, Club Road,
Central Excise Building,
Belgaum - 590 001
Karnataka

Respondent(s)

Appearance:

Mr. Ravi Raghavan, Ms. Isha Karaskar, Ms Sandhya, Advocates	For the Appellant
Mrs. C.V. Savitha, Supdt. (AR)	For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20737 / 2019

Date of Hearing: 18/09/2019
Date of Decision: 26/09/2019

Per: S.S GARG

Present appeal is directed against the impugned order dated 26.02.2009 passed by the Commissioner of Central Excise and Customs, Belgaum whereby the Commissioner has denied the cenvat credit on outward transportation of goods from the factory/depot to the customers' premises/port of shipment during the period from June 2007 to April 2008 under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73(1) of the Finance Act. The Commissioner has also held that the appellants are liable to pay applicable interest on the said amount under Section 75 of the Finance Act and also imposed penalty under the provisions of Rule 14(4) of the Cenvat Credit Rules, 2004.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of HR Coils/Sheets/Plates etc. falling under Chapter 72 of CETA, 1985 and are availing cenvat credit on inputs, capital goods and input services which are used in or in relation to the manufacture of final product. Appellants also availed credit of service tax paid on transportation of goods from its factory/depot to the port of shipment/customer's premises. Appellants have been filing the returns regularly showing the details of credit availed on the service of goods transport by road from its factory/depot to the port of shipment/customer's premises and based on these returns, the Superintendent of Central Excise vide letter dated 05.11.2007 and 07.05.2008 demanded the details from the appellant regarding the availment of cenvat credit of service tax paid on outward transportation. Appellant provided the requisite details vide their letter dated 14.11.2007 and 26.05.2008. Thereafter, a show-cause notice dated 01.10.2008 was issued to the appellant demanding the service

tax credit along with interest and penalties. After following the due process, the Commissioner vide the impugned order disallowed the service tax credit availed on transportation of goods on the ground that cenvat credit on outward transportation does not fall in the definition of 'input service' under Rule 2(l) of Cenvat Credit Rules, 2004 and that the place of removal will be the factory or depot except in the case of export whereby the port is the place of removal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellants are entitled to the credit of service tax paid on Outward Transportation of Goods "from the place of removal" upto 31.03.2008. He further submitted that this issue is no more *res integra* and has been settled by the Apex Court wherein the Apex Court has held that the assessee is entitled to take cenvat credit of service tax availed on transportation of goods from the place of removal to the buyer's premises for the period up to 31.03.2008. He relied upon the following decisions:

a. *CCE & ST Vs. ABB Ltd. – 2011 (23) STR 97 (Kar.)*
b. *Commr. of Cus. C.Ex. & S.T., Guntur Vs. Andhra Sugars Ltd. – 2018 (10) G.S.T.L. 12 (S.C)*

4.1. He further submitted that in view of the decision of the Apex Court, the demand of Rs. 4,35,84,704/- (Rupees Four Crore Thirty Five Lakhs Eighty Four Thousand Seven Hundred and Four only) for the period from June 2007 to March 2008 is liable to be set aside. He further referred to the definition of 'input service' during the period up to 31.03.2008 as provided in Rule 2(l) of Cenvat Credit Rules, 2004.

He also submitted that in the case of goods cleared for exports, the port is the 'place of removal' even for the period after 31.03.2008. He also submitted that during the period from June 2007 to April 2008, the appellants have availed credit of service tax of Rs. 16,00,842/- (Rupees Sixteen Lakhs Eight Hundred and Forty Two only) on transportation of goods from their factory to the port from where such goods have been exported. He relied upon the following decisions wherein it has been held that in the case of export of goods, the place of removal shall be the port.

a. *Commissioner Vs. Dynamic Industries Ltd. – 2014 (35) STR 674 (Guj.)*
b. *Commr. of C. Ex. Raipur Vs. Bhilai Engineering Corporation Ltd. – 2016 (41) S.T.R. 774 (Tri.-Del.)*
c. *Mahindra Reva Electric Vehicles (P) Ltd. Vs. CCE, C & ST, Bangalore –I – 2017 (3) G.S.T. L. 75 (Tri.-Bang.)*

4.2. Learned counsel submits that in view of the decisions cited by him, denial of cenvat credit availed on transportation of goods up to the port is also liable to be set aside. Learned counsel also submitted that the appellants are eligible for cenvat credit of service tax on transportation to the customer's premises even for the period w.e.f. 01.04.2008. He further referred to definition of 'input service' as well as 'place of removal' as defined in Clause (c) of sub-section (3) of Section 4 of Central Excise Act and submitted that the mere reading of the definition makes it clear that where the goods are not sold at factory gate but from some other place after their clearance from the factory, then the place of removal would be such other place. He also submitted under the Central Excise Act, 1944 'sale' means transfer of possession of goods from one person to another for a consideration and if the same provision is applied to the 'place of removal', then it emerges that in case the possession of goods is transferred by the manufacturer to its buyers at the buyer's doorsteps for a consideration, then the goods should be treated to have been sold at the buyer's doorstep and in such a situation the place of removal would be buyer's premises and not the factory/depot of the manufacturer. He also submitted that during the relevant period, the appellants have cleared the final goods to their customers and the sales were on FOB basis. He further submitted that the decision of the Apex Court in the case of ***CCE Vs. Ultratech Cement Ltd. reported in 2018 (9) GSTL 337 (SC)*** is not applicable in the present case and is distinghishable. He also referred to the decision of the Supreme Court in the case of ***CCE Vs. M/s. Roofit Industries Ltd. 2015 (319) E.L.T. 221 (SC)*** wherein the Hon'ble Supreme Court has held that the property in goods passed at the buyer's premises and thus the buyer's premises will be the 'place of removal' and the amount of freight, insurance and unloading charges would be includible in the value of the goods for the purpose of payment of excise duty. He also referred to the decision of the Apex Court in the case of ***Commr. of Central Excise, Mumbai Vs. M/s. EMCO Ltd. reported in 2015 (322) E.L.T. 394 (SC)*** wherein the Hon'ble Apex Court has relied on the case of **Roofit Industries** and held that the 'place of removal' depends on the facts of each case. He further submitted that after the decision of the Apex Court in the case of **Ultratech,** various Benches of the Tribunal have allowed the cenvat credit on GTA and the Hon'ble Tribunal in various decisions has remanded the matter back to the lower adjudicating authority for the purpose of ascertaining whether the sales/clearance undertaken by the respective assessee's were under FOR basis. On this issue, they relied upon the following decisions:

a. *Bata India Limited Vs. Commr. of Cus. C.Ex. & S.T, Chennai – 2019 (24) G.S.T.L. 326 (Mad.)*

b. *Mahle Engine Components India Pvt. Ltd. Vs. CCE & ST, Chennai Final Order Nos. 40440-40450/2019 dated 25.02.2019*
c. *M/s. Honda Seil Power Products Ltd. Vs. Commr. of GST and C.Ex, Puducherry – 2019-TIOL-1553-CESTAT-MAD.*
d. *Wheels India Ltd. Vs. Commr. of GST and C. Ex, Chennai North – 2019 SCC Online CESTAT 46*
e. *Commr. of C. Ex, Chennai Vs. Lucas TVS Ltd. – 2019-TIOL-1254-CESTAT-MAD.*
f. *M/s. Ashok Leyland Foundry Division Vs. Commr. of GST and C. Ex, Chennai – 2019-TIOL-1318-CESTAT-MAD.*
g. *M/s. Gulf Oil Lubricants India Ltd. Vs. Commr. of C. Ex and ST, Silvassa – 2019-TIOL-1547-CESTAT-AHM*

5. On the other hand the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant is entitled to cenvat credit of service tax paid on outward transportation of goods from the place of removal up to 31.03.2008 in view of the decision of the Hon'ble Apex Court in the case of **Commr. of Cus. C.Ex. & ST, Guntur Vs. Andhra Sugars Ltd.** cited supra and also the decision of the Karnataka High Court in the case of **CCE Vs. ABB Ltd**. cited supra. Further, we find that the Hon'ble Apex Court and the High Court of Karnataka in the aforesaid decision, while allowing the credit of service tax availed on transportation of goods up to customer's premises held that

- "The definition of 'input service' contains both the word 'means' and 'includes'. The portion of the definition to which the word 'means' applies has to be construed restrictively as it is exhaustive. However, the portion of the definition to which the word 'includes' applies has to be construed liberally as it is extensive.

- The exhaustive portion of the definition of 'input service' deals with service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products, it also includes clearance of final products from the place of removal.

- In the first part of the restrictive definition 'clearance of final products from the place of removal' is expressly stated. Therefore, services received or rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of 'input service'.

- Till amendment of the definition of 'input service' w.e.f. 01.04.2008, the words 'clearance from the place of removal' included transportation charges from the place of removal till it reached the destination, namely the customer."

Since the issue is settled in favour of the appellant for the period up to 31.03.2008, we hold that the appellants have rightly availed cenvat credit of Rs. 4,35,84,704/- (Rupees Four Crore Thirty Five Lakhs Eighty Four Thousand Seven Hundred and Four only) for the period up to 31.03.2008 and set aside the demand to that extent. Further we also hold that in the case of export of goods, the 'place of removal' is the port as held by various decisions cited supra. Therefore, up to the place of port, the appellants are entitled to the cenvat credit and denial of cenvat credit availed on transportation of goods up to the port is also set aside. As far as eligibility of cenvat credit of service tax on transportation of goods up to the customer's premises after the period w.e.f 01.04.2008 is concerned, we are of the opinion that in view of the various decisions of the Tribunal and the Madras High Court in the case of **Bata India Limited** cited supra and also in view of the Board Circular No. 1065/4/2018-CX dated 08.06.2018, the matter needs to be remanded to the original authority to verify certain factual aspects such as whether the sale is on FOR basis, whether the freight is integral part of the sale price, whether the Customs duty paid on the value inclusive of freight amount etc. Consequently, we in view of the Board's Circular dated 08.06.2018 remand this matter to the adjudicating authority to pass a fresh order after examining various documents for the period April 2008.

7. In view of our discussion above, appeal is partly allowed in favour of the appellant for the period upto 31.03.2008 and partly remanded back to the original authority to pass a fresh order for the period April 2008 after examining all the decisions relied upon by the appellant cited supra.

(Order pronounced in Open Court on **/ /2019**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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