CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20118 of 2020

[Arising out of Order-in-Appeal No. MLR-EXCUS-000-APP-MSC-089-2019-20 dated 29/11/2019 passed by the Commissioner of Central Tax, Belgaum (Appeals)]

Keltech Energies Ltd.
S No. 20, Vishwasnagar,
Muniyal, Karkala Taluk
Udupi – 574 108
Karnataka

Appellant(s)

VERSUS

Commissioner of Central Excise & Central Tax, Mangalore Commissionerate
7th Floor, Trade Center, Bunts Hostel Road
Mangalore – 575 003
Karnataka

Respondent(s)

<u>Appearance:</u>

Mr. Syed Peeran, Advocate — For the Appellant

Mr. P. Rama Holla, Superintendent (AR) — For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

<u>Final Order No. 20101 / 2021</u>

Date of Hearing: 07/04/2021
Date of Decision: 07/04/2021

Per : S.S GARG

The present appeal is directed against the impugned order dated 29/11/2019 passed by the Commissioner (Appeals) Belgaum whereby the appeal of the appellant is dismissed. Briefly the facts of the present case are that the appellants are engaged in manufacturing and clearing of excisable goods falling under Chapter Sub-heading 3602.0010, 3824.9090, 2921.1190 and 2703.0090 etc. and are availing the benefit of cenvat credit facility. During the course of verification of the record of the appellant, it was observed that the appellant has availed irregular cenvat credit of Rs. 1,09,477/- (Rupees One Lakh Nine Thousand Four Hundred and Seventy Seven only) on service tax paid on the freight, on final product cleared from their factory gate to the place of buyer for the period March 2005 to May 2005. Thereafter a show-cause notice dated 20/12/2005 was issued disallowing cenvat credit of Rs. 1,09,477/- (Rupees One Lakh Nine Thousand Four Hundred and Seventy Seven only). Thereafter 9 periodical show-cause notices were issued to the appellant proposing to disallow the cenvat credit of Rs. 31,65,426/- (Rupees Thirty One Lakhs Sixty Five Thousand Four Hundred and Twenty Six only) for the period June, 2005 to November, 2010. After following the due process, the Assistant Commissioner vide Order-in-Original dated 04/02/2019 dropped the demand of cenvat credit of Rs. 13,23,747/- (Rupees Thirteen Lakhs Twenty Three Thousand Seven Hundred and Forty Seven only) for the period up to 31/03/2008 and disallowed the cenvat credit and ordered for recovery of Rs. 18,41,679/- (Rupees Eighteen Lakhs Forty One Thousand Six Hundred and Seventy Nine only) along with interest and further a penalty of Rs. 12,000/- (Rupees Twelve Thousand only) was imposed under Rule 15 of Cenvat Credit Rules, 2004. By corrigendum dated 08/02/2019, the demand thereby is modified from cenvat credit of Rs. 13,23,747/- (Rupees Thirteen Lakhs Twenty Three Thousand Seven Hundred and Forty Seven only) to Rs. 16,38,066/- (Rupees Sixteen Lakhs Thirty Eight Thousand and Sixty Six only) and the disallowed cenvat credit of Rs. 18,41,679/- (Rupees Eighteen Lakhs Forty One Thousand Six Hundred and Seventy Nine only) was modified to Rs. 15,27,360/- (Rupees Fifteen Lakhs Twenty Seven Thousand Three Hundred and Sixty only). Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the said appeal and hence the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order disallowing the cenvat credit on outward GTA is not sustainable in law as the same has been passed without properly appreciating the facts and thelaw. He further submitted that even after the amendment to Rule 2(l) of Cenvat Credit Rules w.e.f. 01/04/2008 credit can be availed on service tax paid on transportation of goods up to the customer's premises when the place of removal is the customer's premises. Learned counsel also referred to the definition of 'input service' under Rule 2(l) of Cenvat Credit Rules and the definition of 'place of removal' provided in Clause (c) of Sub section 3 of Section 4 of Central Excise Act, 1944. He also referred to the expression 'sale' which has been defined under the provisions of Section 2(h) of Central Excise Act. He further submitted that in the present case the appellant sells the final product on FOR basis and the ownership of the goods remain with the appellant until the goods are delivered to the customer's premises and the risk of loss/damage of the goods in transit rests with the appellant alone. He further relied upon the decision of the Ahmedabad Bench in the case of ***Ultra Tech Cement Ltd. Vs. CCE*** *reported in* ***2019-TIOL-1420-CESTAT-AHM.*** and ***M/s. Sanghi Industries Ltd. Vs. CCE, Kutch*** reported at ***2019-TIOL-1709-CESTAT-AHM.*** wherein while allowing the admissibility of cenvat credit on outward transportation services, the Hon'ble Division Bench held that the buyer's site is the 'place of removal' in respect of FOR sales and accordingly the assessee is entitled to avail cenvat credit of service tax paid on GTA services for outward transportation. He further submitted that the Revenue has filed appeal before the Gujarat High Court in the case of **Ultra Tech Cement Ltd.** and the Hon'ble High Court has dismissed the appeal and the Department has presently filed an appeal before the Supreme Court which is pending before the Apex Court. The learned counsel also submitted that the freight charged by the appellant were an integral part of the price of the goods. He relied upon the various decisions rendered by various benches of the CESTAT wherein the matter was remanded to the lower authorities to verify whether the sale was on FOR basis to ascertain

the eligibility of cenvat credit on GTA services. The following cases in this regard may be noted.

- *M/s. Honda Seil Power Products Ltd. V. Commissioner of GST and Central Excise, Puducherry reported at 2019-TIOL-1553-CESTAT-MAD.*
- *Wheels India Ltd. V. Commissioner of GST and Central Excise, Chennai North reported at 2019 SCC Online CESTAT 46*
- *Commissioner of Central Excise, Chennai V. Lucas TVS Ltd. reported at 2019-TIOL-1254-CESTAT-MAD.*
- *M/s. Ashok Leyland Foundry Division V. Commissioner of GST and Central Excise, Chennai reported at 2019-TIOL-1318-CESTAT-MAD.*
- *M/s. Gulf Oil Lubricants India Ltd. V. Commissioner of Central Excise and Service Tax, Silvassa reported at 2019-TIOL-1547-CESTAT-AHM.*
- *Mahle Engine Components India Pvt. Ltd. V. CCE & ST, Chennai reported at 2019 (4) TMI 635-CESTAT Chennai*
- *M/s. Hitech Arai Pvt. Ltd. V. The Commissioner of GST and Central Excise reported at 2020-TIOL-537-CESTAT-MAD.*

3.1. He further submitted that in the impugned order the learned Commissioner (Appeals) has held that the appellant is not entitled for cenvat credit solely on the ground that the issue is covered by the decision of the Hon'ble Supreme Court in **Commissioner of Central Excise and Service Tax V. Ultra Tech Cement Ltd.** cited supra. Learned counsel also cited the decision of this Tribunal in the case of Bharat Fritz Werner Ltd. Vs. CCT, Bangalore reported at 2019 (11) TMI 1050-CESTAT Bangalore where the Bangalore bench of the CESTAT has remanded the matter back to the original authority to examine the case afresh in the light of the Board Circular dated 08/06/2018.

4. On the other hand, the learned AR defended the impugned order mainly on the ground that the decision of the Hon'ble Apex Court in

the case of ***Ultratech reported in 2018 (9) G.S.T.L 337 (SC)*** wherein the Apex Court has held that after the amendment in the definition of 'up to the place of removal' in the year 2008, the 'place of removal' will always be factory gate and the assessee is not entitled to cenvat credit on GTA up to the buyer's premises. Learned AR fairly conceded that after the decision of the Apex Court, the Board has issued a Circular No. 1065/4/2018-CX dated 08/06/2018 and by relying upon the Board Circular, the Tribunal has remanded the case back to the original authority to examine the merits of the case afresh.

5. After considering the submissions of both the parties and on perusal of the material on record as well as after going through the various decisions relied upon by both the parties cited supra, I find that on an identical issue, this Tribunal in the case of **Bharat Fritz Werner** cited supra has remanded the case back to the original authority to pass a fresh order after examining various documents for the disputed period. It is pertinent to reproduce the said findings which is contained in para 6:

> *"After considering the submissions of both the parties and perusal of the material on record as well as the various judgments relied upon by both the parties cited supra, I find that after the decision of the Apex Court in the case of Ultratech, the CBEC has issued the Circular dated 08/06/2018 wherein the field formation have been given the liberty to examine each and every case on the basis of the law laid down in various cases. I also find that after the Circular issued by the Board various Benches of the Tribunal have remanded the case back to the original authority to examine the 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. By following the ratio of the said decisions, I am of the considered view that in*

view of the decision of 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 duty paid on the value inclusive of freight amount etc. Consequently, in view of the Board Circular cited supra, the matter is remanded back to the original authority to pass a fresh order after examining the various documents for the disputed period. Accordingly, the appeal is allowed by way of remand."

Since this Tribunal has already taken a view on an identical matter in the case of **Bharat Fritz Werner Ltd.,** by relying on the ratio of the said decision, I set aside the impugned order and remand the case back to the original authority to pass a fresh order after examining the various documents for the disputed period in the light of the Circular issued by the Board dated 08/06/2018. Appeal is accordingly disposed of by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **07/04/2021**)

(S.S GARG)
JUDICIAL MEMBER

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