CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 57931 of 2013

[Arising out of Order-in-Appeal No. 80/CE/APPL/CHD-II(JK)/2013 dated 04.03.2013 passed by the Commissioner (Appeals), C.E. & Cus., Chandigarh-II]

Montage Enterprises Pvt Ltd **......Appellant**
Lane No. 4, Phase I, SIDCO Industrial Complex,
Bari Brahmana, Jammu (J&K)

VERSUS

Commissioner of Central Excise and Service Tax, Jammu **......Respondent**
OB 32, Rail Head Complex, Jammu (J&K)

WITH

Excise Appeal No. 61556 of 2018

[Arising out of Order-in-Appeal No. 80/CE/APPL/CHD-II(JK)/2013 dated 04.03.2013 passed by the Commissioner (Appeals), C.E. & Cus., Chandigarh-II]

Montage Enterprises Pvt Ltd **......Appellant**
Lane No. 4, Phase I, SIDCO Industrial Complex,
Bari Brahmana, Jammu (J&K)

VERSUS

Commissioner of Central Excise and Service Tax, Jammu **......Respondent**
OB 32, Rail Head Complex, Jammu (J&K)

APPEARANCE:

Shri Arvind Arora, Advocate for the Appellant

Shri Raman Mittal and Shri Ravinder Jangu, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60531-60532/2025

DATE OF HEARING: 27.02.2025
DATE OF DECISION: 19.05.2025

S. S. GARG :

These two appeals are directed against the impugned order dated 04.03.2013 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II, vide which the learned Commissioner (Appeals) has partially allowed the appeal of the appellant. Since the issue involved in these two appeals is identical and there is a common impugned order, therefore, both the appeals are taken up together for discussion and decision.

2. Briefly stated facts of the case are that the appellant are engaged in manufacture of Printed Plastic Laminates falling under Tariff Heading Nos. 39206290 & 39159990 of First Schedule to Central Excise Tariff Act, 1985. The appellant have been availing the benefit of Notification No. 56/2002-CE dated 14.11.2002. Two show cause notices dated 04.06.2009 and 31.12.2009 for the periods March 2008 to May 2008 and December 2008 to March 2009 respectively were issued to the appellant on the allegations that, firstly, the appellant have wrongly included the element of freight in assessable value of the goods which resulted in paying duty in excess of that leviable as per the provisions of Section 4 of the Act and secondly, on account of excess refund claimed on the duty paid on the returned goods cleared again on the ground that refund has already been availed in respect of these returned goods. Further allegation of the department is that the appellant has availed excess

self-credit in contravention of provisions of the notification. After following the due process, the adjudicating authority confirmed the demand of Rs.2,41,683/- u/s 11A of the Central Excise Act, 1944 along with interest u/s 11AB of the Act and also imposed an equal penalty u/s 11AC of the Act. Aggrieved by the order of the adjudicating authority, the appellant filed appeal before the Commissioner (Appeals), who vide the impugned order, has partially allowed the appeal. It was held by the learned Commissioner (Appeals) that the adjudicating authority has wrongly confirmed the demand with regard to 'sale of returned goods'; it was further held by the learned Commissioner (Appeals) that the appellant have taken CENVAT Credit of the returned goods and thereafter cleared the goods on payment of duty, hence, they are eligible to self-credit/refund of duty in terms of the provisions of Notification No. 56/2002-CE dated 14.11.2002; thus, the learned Commissioner (Appeals) has decided this issue in favour of the appellant and set aside the demand. With regard to the issue of outward freight, the learned Commissioner (Appeals) has held it against the appellant by confirming the demand. Hence, the present appeals.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.1 He further submits that as per the department, the appellant have included the freight element in the transaction value which appears not to be includible in the transaction value as per the provisions of Section 4 of the Act. This has led to increase in transaction value and consequently excess payment of amount representing duty of excise, which is in excess of duty payable under Section 3 of the Act. It is further allegation of the department that the appellant have inflated the transaction value and mis-declared the same with a view to claim higher refund under Notification No. 56/2002-CE dated 14.11.2002 which was not admissible to them.

4.2 He further submits that the Commissioner (Appeals) did not appreciate that the sales of goods by the appellant were made on FOR destination basis. He also submits that the customer's premises would be the 'place of removal' and freight upto that place would be part of the assessable value.

4.3 He further submits that this issue is no more *res integra* as the same has been settled by the Larger Bench of the Tribunal in the case of **M/s Ramco Cements Limited vs. Commissioner of Central Excise, Puducherry [decided on 21.12.2023 in Excise Appeal No. 40575 of 2018]** as well as by the Hon'ble High Court of Himachal Pradesh in the case of **M/s Inox Air Products Pvt Ltd [decided on 21.03.2024 in CEA No. 2 of 2019]**.

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on records. We note that the only issue involved in the present case is whether the amount paid on outward freight would be included in the assessable value or not? We find that in the present case, from the perusal of documents on record, it is clear that the appellant sold the goods on FOR basis and have included the value of freight in the assessable value which has been disputed by the department. Further, we find that this issue is no more *res integra* as the same has been settled by the Larger Bench of the Tribunal in the case of **M/s Ramco Cements Limited** (supra) as well as by the Hon'ble High Court of Himachal Pradesh in the case of **M/s Inox Air Products Pvt Ltd** (supra), wherein the Hon'ble High Court, after considering various judgments of Hon'ble Supreme Court as well as the decision of Larger Bench of the Tribunal in M/s Ramco Cements Limited (supra)'s case, has held that when there is FOR sale and the assessable value includes freight charge also, in that situation, the assessee is entitled to the CENVAT Credit of service tax. The relevant findings of the Hon'ble High Court of Himachal Pradesh are reproduced as under:

> "**31)** The CBIC, in it's circular dt.8.6.2018 has considered these two decisions and also the decision in Ultra Tech cement (Supra) and had specifically held (as set out in para 23 supra) that in the case of FOR destination sale where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.

32) This circular binds the respondents though it had been issued by the CBIC on 8.6.2018 after the decision was rendered in the instant case by the CESTAT on 27.2.2018.

33) In Ranadey Micronutrients etc. vs. Collector of Central Excise [AIR 1997 SC 69] the Supreme Court held that in view of Section 37B of the Central Excise & Salt Act, 1944, instructions issued by the Board in order to ensure uniform practice of assessment of excisable goods throughout the country get statutory status and significance, and they are binding on officers of the Central Excise Department.

34) Similar view was also taken by the Supreme Court in Commissioner of Customs, Calcutta and others vs M/s Indian Oil Corporation Ltd. & another [(2004) 3 SCC 488], Commissioner Of Central Excise, Bolpur vs M/s Ratan Melting & Wire Industries [MANU/SC/8792/2008].

35) We may also point out that the decisions of the Supreme Court in EMCO Ltd. (supra) and M/s Roofit Industries Ltd. (supra) which specifically dealt with FOR contract sales were not referred to or considered in Ultra Tech Cement Ltd. case (supra) and the said case was not a case of FOR contract.

36) Learned counsel for the respondent has also brought to our notice decision rendered in the very case of the appellant in M/s. Inox Air Products Limited vs. Commissioner of GST and Central Excise [Excise Appeal No. 41117/2013 dated 22.02.2024], by the Customs, Excise and Service Tax Appellate Tribunal, Chennai rendered on 22.02.2024, where a plea similar to that one raised by the appellant in the instant case was accepted by the Customs, Excise and Service Tax Appellate Tribunal, Chennai. In the said case, the Tribunal has also held that there is no dispute in the payment of service tax or in regard to the documents and the appellant need not to produce one-to-one co-relation and it has no need to establish nexus of the input services with manufacturing activity.

37) Reliance was also placed by the Tribunal on its Larger Bench decision in M/s Ramco Cements Limited vs. Commissioner of Central Excise, Puducherry [Appeal No. E/40575/2018 decided on 21.12.2023], wherein the Larger Bench had held that the credit availed on outward transportation services is eligible when the freight charges are included in the taxable value.

38) Therefore, we hold on issues mentioned above that the Tribunal was not justified in holding that place of removal for the GTA Services provided under FOR sale contract is the manufacturer's premises and not the place where the goods are sold; that the Tribunal was not justified in holding that the GTA services in the present case are being received beyond the place of removal and therefore not covered within the definition of Input Service under Rule 2(1) of CANVET Credit Rules, 2004.

39) Accordingly, the appeal is allowed and the impugned orders are set aside."

7. In view of our discussion above and by following the ratios of the decisions cited supra, we are of the considered opinion that the impugned order is not sustainable in law; accordingly, we set aside the same and allow the appeals of the appellant.

(Order pronounced in the open court on 19.05.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi