CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

Appeal No.E/730/2012

(Arising out of OIO No.82/CE/CHD-II/2011 dt.15.12.2011 passed by the CCE Chandigarh-II)

Date of hearing/Decision:05.06.2018

M/s. Ultra Tech Cement Ltd. **Appellant**
Vs.
CCE, Chandigarh-II **Respondent**

Present for the Appellant: Shri Amarinder Singh, Advocate
Present for the Respondent: Shri Atul Handa, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Devender Singh, Member (Technical)

FINAL ORDER NO.62444/2018

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the Cenvat credit on outward transportation service has been denied to the appellant.

2. The facts of the case are that the appellant is a manufacturer of cement, mode of clearance of cement is (a) clearance from their factory gate direct to the customers at their place (b) selling to the same to their depots. However, the dispute arose before us is that the clearance made from their factory gate direct to the customers at their place. The case of the appellant is that they are clearing the goods on FOR basis and the transportation cost has been included in the assessable value of their finished goods, therefore, they are entitled to avail Cenvat credit. It is his contention that in the case of Maruti Suzuki Limited-2017 (49) STR 261 (P&H), Coca Cola India vs. CCE-2009 (15) STR 657 (Bom), Ultrattech Cement

Ltd-2010 (260) ELT 369 and Stanzen Toyotetsu India (P) Ltd.-2011 (23) STR 444 (Kar), it has been held that when the transportation cost has been added in the assessable value, the assessee is entitled to avail Cenvat credit being business expenditure in the course of their manufacturing activity. He further submits that as there were contrary decisions during the impugned period, therefore, no penalty is imposable on the appellant.

2. On the other hand, Ld.AR submits that as the issue has already been settled by the Hon'ble Supreme Court in the case of Ultratech Cement Ltd.-2018 (9) GSTL 337 (SC) wherein it has been held that post 1.4.2008 outward transportation service used beyond place of removal to buyer's premises, the assessee is not entitled to avail Cenvat credit.

3. Heard both sides and considered the submissions.

4. The issue of availability of Cenvat credit post 1.4.2008 has been settled by the Hon'ble Supreme Court in appellant's own case cited (supra) that the assessee is not entitled to avail Cenvat credit on outward transportation service. Therefore, we hold that the appellant is not entitled to avail Cenvat credit on outward transportation charges although the same form part of value of the finished goods. Therefore, the Cenvat credit availed by the appellant is denied. Admittedly, there were divergent views during the impugned period, in that circumstance, no penalty is imposable on the appellant. Therefore, the penalty is dropped. Accordingly, following order is passed:-

(a) Cenvat credit denied is required to be paid by the appellant along with interest

(b) Penalty is set aside.

5. With these terms, the appeal is disposed of.

(Dictated and pronounced in the court)

(DEVENDER SINGH)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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