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

DIVISON BENCH
COURT NO.1
Appeal No. E/52400-52406/2014

[Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-738-13-14 dated 23.01.2014 passed by the CCE (Appeals), Jammu & Kashmir, Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-739-743-13-14 dated 28.01.2014 passed by the CCE (Appeals), Jammu & Kashmir]

Date of Hearing/Decision: 31.08.2018

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Hitachi Home and Life Solutions India Ltd. **Appellant**

Vs.

CCE, Jammu & Kashmir **Respondent**

Appearance

Shri. Naveen Bindal, Advocate- for the appellant
Shri. Harvinder Singh, AR - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO: 62999-63005 / 2018

Per Ashok Jindal:

The appellants are in appeal against the impugned orders.

2. The facts of the case are that the assessee located in the state of Jammu and Kashmir and availing an area based exemption Notification No. 56/2002-CE dated 14.11.2002. On the first issue, the dispute is with reference to eligibility of the appellants for exemption/refund of education/higher education cess paid on the goods manufactured and cleared by the appellants by availing area based exemption under Notification 56/2002-CE dated 14/11/2002. We note that both the sides

agreed that the issue stands settled by the Hon'ble Supreme Court in **M/s. SRD Nutrients Pvt. Limited vs. CCE, Guwahati – 2017-TIOL-416-SC-CX.** As such, following the ratio of the Hon'ble Supreme Court who held that the assessee is eligible for such refund which is paid alongwith the excise duty once the excise duty itself was exempted. As such, all the appeals which were on this dispute are decided following the ratio of the Apex court, stated above.

3. The second issue is with reference to valuation of excisable goods manufactured and cleared by the appellant. The appellant considered the transaction value for their final products inclusive of outward freight up to the place of delivery of their finished goods. The Revenue held a view that the goods were sold and cleared at the factory gate and the appellant is not liable to include the freight component in the transaction value. Such addition of freight resulted in consideration of refund under Notification 56/2002-CE which was held ineligible to the appellant. On this premise, the Revenue proceeded against the appellant to deny such refund and to recover wherever such refunds were sanctioned.

4. We have heard both the sides and perused the appeals record. On the second issue it is noted that the impugned order held that based on the statutory definition of "Place of removal" under Section 4 of the Central excise Act, 1944 it is clear that the same could be factory, warehouse or any other premises or depot or premises of a consignment agent from where the excisable goods are sold after the clearance from the factory. We note in the present case the appellants are claiming that the goods were sold on FOR basis and as such the place of removal is the delivery point to the buyer. The freight element incurred by the appellants should form part of the assessable value in such FOR sale. In this connection, we note that the learned AR relied on the decision of Hon'ble Supreme Court in CCE, Nagpur vs. Ispat Industries Ltd.- 2015 (324) E.L.T.

670 (S.C.). In the said decision the Apex court held under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case. The Apex court also distinguished their earlier decision in Rooffit Industries - 2015 (319) E.L.T. 221 (S.C.). The Apex Court observed as below :-

> *"16. It will thus be seen that where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be the normal value thereof. Sub-clause (b)(iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot, or the premises of a consignment agent of the manufacturer are obviously places which are referable only to the manufacturer. Even the expression any other place or premisesrefers only to a manufacturers place or premises because such place or premises is stated to be where excisable goods "are to be sold". These are the key words of the sub-section. The place or premises from where excisable goods are to be sold can only be the manufacturer is premises or premises referable to the manufacturer. If we are to accept the contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to the buyer's premises".*

The Apex court also held that insurance of goods during transit cannot possibly be the sole consideration to decide ownership or the point of sale of goods.

5. In the present case, the impugned order records that the appellants have not produced anything on record which would show that they had cleared the goods from the factory gate to a warehouse, any other premises, a depot, consignment agents premises etc. from where such excisable goods were sold. Admittedly, the goods sold by the appellant delivered at the buyers premises will not make the place of removal as buyers premises. Following the ratio of the Apex court in Ispat Industries Ltd. (supra), we hold that there is no justification for the appellant to consider the assessable value with inclusion of freight element after the goods were sold/removed from the factory. As such, the question of

paying duty on such value addition to be covered by the exemption under Notification 56/2002-CE does not arise. Accordingly, we hold the claim of the appellant in these appeals are not sustainable.

6. To sum up the appellants will succeed with reference to their entitlement of refund claim for education/ higher education cess in terms of Notification 56/2002-CE. With reference to transaction value, the appellants will not succeed in view of the analysis recorded above.

In result, the appeals are disposed in the above terms.

(Dictated and pronounced in the open court)

Anil G. Shakkarwar **Member (Technical)**	**Ashok Jindal** **Member (Judicial)**

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