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

SINGLE MEMBER BENCH

COURT NO.1

Appeal No.E/61993/2018

(Arising out or OIA No.133/ST/CGST-APPEAL-GURGARM/SG/2018 dt.24.9.2018 passed by the Commissioner (Appeals), CGST, Gurugram)

Date of hearing/decision: 26.02.2019

M/s. Shivani Locks Limited **Appellant**

Vs.

Commissioner, CGST, Faridabad **Respondent**

<u>Appearance</u>

Shri Vikrant Kackria, Advocate for the appellant
Shri G.M.Sharma, AR for the respondent

CORAM: **Hon'ble Mr.Ashok Jindal, Member (Judicial)**

FINAL ORDER No.60187/2019

Per: Ashok Jindal

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

2. The facts of the case are that the appellant is selling their goods as per agreement entered into with buyers. As per purchase order/agreement, the appellant is required to deliver the goods at buyer's premises. It is a fact that the appellant has not charged the transportation charges separately from the buyers. The appellant has sent the goods to the buyer premises at their own place borne the transportation charges for delivery of the goods and took the credit. The Revenue has entertained the view in the light of the decision of the Hon'ble Supreme Court in the case of Ultra Tech Cement Ltd.-

2018 (9)GSTL 337 (SC) held that as per 2 (qa) of Cenvat Credit Rules, 2004, the place of removal is the factory gate of the appellant, therefore, they are not entitled to avail credit beyond the place of removal i.e. factory gate. In these circumstances, the proceedings were initiated against the appellant, the matter was adjudicated and the credit was denied to the appellant. Against the said order, the appellant is before me.

3. Ld.Counsel for the appellant submits that the appellant has not charge the transportation charges to deliver the goods separately and have borne the same. Even as per the agreement, the appellant is required to supply the goods at buyer's premises. Therefore, in view of the CBEC circular No.1065/04/2018-CX dt.8.6.2018, they are entitled to avail credit on transportation charges. To support his contention, he relied on the decision of this Tribunal in the case of M/s.A.K.Automatics and others vide Final Order No.63477-63481/2018 dt.20.11.2018. Therefore, the impugned order is to be set aside.

4. On the other hand, Ld. AR has relied upon the decision of Hon'ble Supreme Court in the case of Ultra Tech Cement Ltd. He further submits that it is fact on record that the appellant has sold the goods to the buyer at the factory gate as per LR produced before this Tribunal.

5. Heard the parties.

6. As the CBEC circular No.1065/04/2018-CX dt.8.6.2018 has been issued after considering the decision of Hon'ble Supreme Court in the case of Ultra Tech Cement Ltd.(supra) which stipulated the place of removal is to be decided with facts of each case separately.

Admittedly, in the case in hand, the appellant was required to supply the goods at the buyer's place without any transportation charges and the transportation charges has been borne by the appellant. In these circumstances, the place of removal is the buyer's premises as held by this Tribunal in the case of M/s.A.K.Automatics and others and observed as under:-

> " 7. In this case, the facts which are not in dispute are that the appellants have obtained purchase orders from their buyers and as per purchase orders, they are required to supply the goods at buyer's place on FOR basis. As the goods are required to be supplied by the appellant at buyer premises, in that circumstances, the question arose before this Tribunal what is the place of removal? I find that the appellants have borne the transportation charges on the goods in question. On transportation of those goods, cenvat credit sought to be denied. I find that the appellants were owner of the goods till delivery of these goods to the buyers and the goods have been delivered to the buyer at buyer's place which is not disputed by the Revenue. In that circumstances, place of removal is buyer's place. As it has been decided that place of removal is buyer's place, therefore, following the analogies of this Tribunal i.e. in the case of export the port of export has been held as place of removal of goods, I hold that any expenses incurred by the seller of the goods till the buyer place is entitled to avail cenvat credit. In these circumstances, I hold that the appellants are entitled to avail cenvat credit on outward transportation charges, in case, the appellant is having the ownership of the goods till delivery of the goods to the buyers in terms of the Notification No. 1065/04/2018-cx dated 08.06.2018, therefore, cenvat credit in all the above matters is allowed."

8. As the facts of the case are not disputed that the transportation charges have been borne by the appellant and no outward transportation charged from the buyers, in that circumstance, the appellant is entitled to avail credit on outward transportation charges as the place of removal is the buyer's premises.

(dictated & pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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