CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. E/60578, 60645/2018

[Arising out of Order-in-Appeal No. 407-408-CE-CGST-APPEAL-GURUGRAM-SG-2017-18 dated 28.03.2018 passed by the Commissioner of Central Excise (Appeals), Faridabad]

Date of hearing/decision: 06.03.2019

M/s Dee Development Engineers Ltd	:	**Appellant(s)**
VS		
C.C.E. & S.T. Faridabad II	:	**Respondent(s)**

Appearance:
Present for the Appellant(s): Shri N.K. Sharma (Advocate)
Present for the Respondent(s):Shri Harvinder Singh (AR)

CORAM:

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

FINAL ORDER NO. 60216-60217 / 2019 /2019

***Per :* Ashok Jindal**

The appellants are in appeal against the impugned orders wherein the cenvat credit on outward transportation has been denied on FOR destination sales on the ground that place of removable is the factory gate and no cenvat credit is available to the assessee beyond the place of removal i.e. factory gate.

2. The facts in all the appeals are identical, therefore, all the appeals are disposed of by a common order.

3. The facts in brief are that the appellants are manufacturing excisable goods and obtaining purchase orders from their buyers wherein the goods are to be delivered at buyers place i.e. on FOR basis. The appellants sold goods to buyers and transportation cost were borne by the appellants and the goods were in their possession till goods were delivered at the factory gate of the buyer. The Revenue is of the view that as per Rule 2 (q)(a) of Cenvat Credit Rules, 2004 the place of

removable is the factory gate or depot or the place where the goods have been sold by the assessee. It is alleged by the Revenue that in this cases, the place of removable is factory gate, therefore, after removable of the goods from the factory gate, the appellants are not entitled to avail cenvat credit of outward transportation service charges, hence, the show cause notices were issued to the appellant to deny cenvat credit. The matters was adjudicated and the adjudicating authority relied on the decision of ***Ispat Industries Ltd. reported in 2015 (324) ELT 670 (SC) and Ultra Tech Cement Ltd. reported in 2018 (9) GSTL 337 (SC)*** and held that the appellants are not entitled to avail cenvat credit on outward transportation charges, therefore, the appellants are before me by way of these appeals.

4. The ld. Counsel appearing on behalf of the appellant submits that in terms of Circular number. ***1065/04/2018-CX dated 08.06.2018,*** this Tribunal is required to identify what is the place of removal for allowing cenvat credit on outward transportation service and the same is to be examined in each facts and circumstances of the case and thumb rule is not applicable as decided by the Hon'ble Apex Court in the case of Ultra Tech Cement Ltd. or Ispat Industries Ltd. (Supra).

5. He further submits that similar issue has been dealt by this Tribunal in the case of ***M/s A K Automatics*** and others **vide Final Order No. *63477-63481/2018*** dated 20.11.2018 allowed the Cenvat credit for outdoor transportation service, therefore, the impugned orders are to be set aside.

6. On the other hand, the Ld. AR reiterated the impugned orders.

7. Heard the parties, considered submission.

8. On perusal of the record as well as the submissions made by both the sides, I find that in this case, it is a fact on record that goods were required to be delivered by appellant at buyers place and transportation cost have been borne by appellant, moreover, in the goods were handed over to the buyers, the appellant rebate the owner of the goods. In that circumstances, in terms of Rule CBEC No. 1065/04 /2108-cx dated 08.06.2018, this Tribunal has examined the issue in the case of ***M/s A K Automatics (Supra)***, Wherein this Tribunal 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.*

Further the same view was taken by this Tribunal in the case of ***M/s Sanghi Industries Ltd. Vs. C.C.E Kutch (Gandhidham)***

Vide Final Order No. 10374-10375/2019 dated 25.02.2019.

9. In view of the above discussion, I hold that as appellant was the owner of the goods till the goods were delivered at buyer's place, the appellant is entitled to Cenvat credit for transportation service, therefore, the impugned orders deserve no merits, hence are set aside.

10. In result, the appeals are allowed with consequential relief, if any.

(Order dictated and pronounced in the court)

Ashok Jindal
Member (Judicial)

Kailash