CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. ST/60889/2019 -[SM]

(Arising out of Order-in-Appeal No. JNK-EXCUS-APP-2320-19-20 dated 30.04.2019 passed by the Commissioner (Appeals), J & K)

M/s Usha Martin Limited ......**Appellant**
(V P O Chohal Hoshiarpur Punjab - 144214)

VERSUS

Commissioner of Central Excise & S.T. Ludhiana ......**Respondent**
(Central Excise House, F-Block Rishi Nagar Ludhiana Punjab - 14001)

APPEARANCE:

Shri J.S. Bedi, Advocate for the Appellant

, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60821 of 2019

DATE OF HEARING: 16.10.2019
DATE OF DECISION: 16.10.2019

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein Centvat credit has been denied on the business auxiliary service, banking and financial services and transportation by road and rail services on the ground that all the services has been availed by the appellant for export of the goods but beyond the place of removal.

2. The facts of the case are that the appellant is manufacturer and exporter to the goods, it is admitted fact that the appellant has exported the goods and availed the above services for export of goods. The Cenvat credit sought to be denied that most of the services has been availed by the appellant beyond the place of

removal, therefore, they are not entitled to avail Cenvat credit. In these set of facts, a show cause notice was issued to deny the Cenvat credit the appellant but the adjudicating authority dropped the proceedings against the appellant. On appeal filed by the Revenue the Ld. Commissioner (Appeal) affirm the charges in the show cause notice and disallow the Cenvat credit to the appellant. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that the appellant being an exporter and availed all these the services upto the place of removal i.e. upto the port from where the goods have been taken outside India, therefore, they are entitled to avail cenvat credit on the services in question, in terms of CBEC circular no. 999/06/2015-CX dated 28.02.2015.

4. On the other hand, Ld. AR opposed the contentions of the Ld. Counsel and submits that particularly for transportation of goods by road and train from ICD to the port of export is not entitled to avail Cenvat credit as these services have been availed beyond the place of removal. For the remaining services, he submits that proportionate cenvat credit on these services are not entitled to the appellant.

5. Heard the parties. Considered the submissions, I find that the appellant is being an exporter has availed these services for export of goods, therefore, broadly on the services availed by the appellant is entitled to avail Cenvat credit on the services in question.

6. Ld. AR particularly argued that the services availed beyond the ICD where LED has been issued to the appellant, the appellant is not entitled to avail Cenvat credit. In this regard, the case issue to be decided is unless until goods are reached to the port from where the goods has been taken outside India, whether the same place is of removal of goods or not?

7. For that I have to see the definition as per Section 2(18) of the Customs Act, 1962 which describes export. As per Section 2(18) of the Act, export means taking goods out of India to place of outside India which means that in case of export of goods, if goods are within

the territorial jurisdiction of India are within India, the same cannot be said that the export has taken place. In that circumstances, for export the goods are required to be taken outside India, the same is the place of removal, therefore, the argument advanced by Ld. AR is not sustainable in the eyes of the law. Accordingly, I hold that the appellant is entitled to avail Cenvat credit of transportation charges also upto the port from where the goods taken outside India.

8. In these circumstances, I do not find any merit in the impugned order the same is set aside. In result, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

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