**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH, CHENNAI**

**Appeal No. E/41096/2018**

(Arising out of Order-in-Appeal No.16/2017-2018 (Audit – I) dated 2.2.2018 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

M/s. Delphi TVS Diesel Systems Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Outer Commissionerate Respondent

Appearance

Shri M.N.Bharathi, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

**CORAM**

**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**

Date of Hearing / Decision: **07.11.2018**

Final Order No. **42781 / 2018**

Brief facts are that the appellants are engaged in manufacture of fuel injection pump, injector, holder assembly, filter assembly etc. They are availing the facility of CENVAT credit on inputs, capital goods and input services. Show cause notices were issued for the period January 2015 to June 2015 and July 2015 to April 2016 alleging wrongful availment of input service tax credit to the extent of Rs.2,15,225/- and Rs.2,03,160/- on outward transportation of goods. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri M.N.Bharathi submitted that the appellant has the responsibility to deliver the goods at the customers' premises. Even as per the purchase order, the place of removal is the customers' premises and the transaction is on FOR basis. Therefore, the input service is not confined to the premises within the factory gate and would therefore be extended to the buyer's premises. He relied upon the Board's Circular No. 97/8/2007-ST dated 23.8.2007. He also submitted that in the recent circular No. 1065/4/2018-CX dated 8.6.2018, the Board has clarified that if the goods are to be delivered on FOR basis, the decision in M/s. Roofit Industries Ltd. reported in 2015 (319) ELT 221 (SC) would be applicable and that the benefit of credit would be eligible for the appellant.

3. The ld. AR Shri A. Cletus supported the findings in the impugned order. He adverted to the order passed by the Commissioner (Appeals) and submitted that as per the recent decision of the Hon'ble Supreme Court in the case of Ultratech Cement Ltd. reported in 2018-TIOL-42-SC-CX, the issue has attained finality. The Hon'ble Apex Court has allowed the appeal filed by Revenue and held that CENVAT credit on goods transportation agency availed for transportation of goods from

the place of removal to the buyer's premises is not admissible for the period after 1.3.2008.

4. Heard both sides.

5. The issue is whether the appellants are eligible for credit on outward transportation of goods upto the buyer's premises. The issue has attained finality as per the decision of the Hon'ble Supreme Court in the case of Ultratech Cement Ltd. (supra). Although the ld. counsel has referred to various circulars of the Board, since the decision of the Hon'ble Apex Court is binding, I am of the view that credit is not admissible.

6. The ld. counsel has argued that the issue was interpretational and had reached to the Hon'ble Apex Court and therefore the penalty imposed is unwarranted. Taking note of the fact that there were several litigations pending before various High Courts and that the matter had reached the Hon'ble Supreme Court and being an interpretational, I am of the view that the penalty imposed is unjustified. The impugned order is modified to the extent of setting aside the penalty imposed only without disturbing the demand or interest thereon. The appeal is partly allowed in the above terms, with consequential relief, if any.

(Dictated and pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex