

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 40635 of 2019

(Arising out of Orders-in-Appeal No. 662 & 663/2018 (CTA-II) dated 28.12.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Ashok Leyland Ltd., : **Appellant**
(Formerly 'M/s. Hinduja Foundries Ltd.'),
Foundry Divn., Plot No. K-2, SIPCOT Industrial Park,
Phase-II, Aaneri Village,
Sriperumbudur – 602 105

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

WITH

Excise Appeal No. 40636 of 2019

(Arising out of Orders-in-Appeal No. 662 & 663/2018 (CTA-II) dated 28.12.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Ashok Leyland Ltd., : **Appellant**
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12th Main Road, Anna Nagar,
Chennai – 600 040

APPEARANCE:

Shri. M. Kannan, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 40897-40898 / 2019

DATE OF HEARING: 13.06.2019

DATE OF DECISION: **04.07.2019**

The appellant is engaged in the manufacture of Castings for Automobiles and Motor Vehicle Parts. The appellants, believing in good faith that they are eligible to avail CENVAT Credit for inputs, input services and capital goods, are availing credit regularly and accordingly, are filing their returns with all particulars duly disclosed.

1.2 The jurisdictional Central Excise authorities sought to disallow the above credit with reference to GTA Outward Transportation Services and accordingly issued Show Cause Notices/Statements of Demand alleging that the appellants are not eligible to avail credit for GTA Outward Transportation Services after 01.04.2008 in the light of the amendment to Rule 2(I) of the CENVAT Credit Rules ('CCR' for short), 2004. The appellants filed reply to each of the Show Cause Notices/Statements of Demand *inter alia* contending that there were agreements in place for the removal of goods up to the customer's place on FOR destination basis and that the ownership of the goods remained with them till they were delivered to the customer's place. The Adjudicating Authority having not accepted their plea, had rejected the credit availed and the same came to be upheld on appeal before the First Appellate Authority. Thereafter, the assessee had filed appeals before this forum and the CESTAT, vide Final Order Nos. 41362-41636/2017 dated 28.07.2017 had allowed the appeals by way of remand for verification and examination of the claim of the assessee, as per the Final Order.

1.3 In the second round of adjudication, the Adjudicating Authority again rejected the appellant's claim for benefit of credit by following the ratio of the decision of the Hon'ble Apex Court in the case of ***Commissioner of Central Excise and Service Tax Vs. M/s. Ultra Tech Cement Ltd. reported in 2018 (9) G.S.T.L. 337 (S.C.)*** holding that GTA Service used for the purpose of outward transportation of goods up to the customer's place was not covered within the ambit of amended Rule 2(I) of the CCR, 2004 and also charged applicable interest and levied applicable penalty. The

appellant thereafter filed appeals before the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai and the Ld. First Appellate Authority vide impugned Orders-in-Appeal Nos. 662 and 663/2018 dated 28.12.2018 while upholding the denial of credit, has however deleted the penalty imposed under Rule 15 of the CCR, 2004. Aggrieved by the denial of credit, the appellant has assailed the same in these appeals.

2. Today, when the matter was taken up for hearing, Shri. M. Kannan, Ld. Advocate, appeared for the assessee and Shri. B. Balamurugan, Ld. AR, appeared for the Revenue.

3.1 Ld. Advocate Shri. M. Kannan contended that the authorities below have seriously erred in not appreciating the facts in the proper perspective, especially the plea of the appellant that it was a case of delivery at the customer's place on 'FOR destination basis', which was not the issue before the Hon'ble Apex Court in the case of *M/s. Ultra Tech Cement Ltd. (supra)*. He further contended that the CBEC Board has subsequently issued a notification in the light of the decision of the Hon'ble Apex Court (*supra*) which has also not been considered by the authorities below.

3.2 He drew my attention to a recent decision of the Hon'ble jurisdictional High Court in the case of ***M/s. Bata India Ltd. Vs. Commissioner of Cus., C.Ex. & S.T., Chennai-III reported in 2019 (24) G.S.T.L. 326 (Mad.)*** to contend that the Adjudicating Authority should record the facts in the proper perspective and only thereafter should apply the ratio of a decided case.

3.3 He thereafter placed reliance on the order of this Bench in the ***assessee's own case in Final Order Nos. 40654-40655/2019 dated 09.04.2019*** wherein the impugned appeals therein have been remanded back to the file of the Adjudicating Authority for fresh verification in the light of the law laid down by the Hon'ble Apex Court.

4. *Per contra*, Ld. AR. Shri. B. Balamurugan supported the findings of the lower authorities.

5. I have considered the rival contentions, perused the documents/orders of the lower authorities placed on record and have also gone through the various decisions referred to during the course of hearing.

6.1 I have no doubt that the matter requires re-adjudication in the light of the decision of the Hon'ble jurisdictional High Court (*supra*) as also that of the Hon'ble Supreme Court (*supra*). The Hon'ble jurisdictional High Court in the case of *M/s. Bata India Ltd.* (*supra*) has, after considering the decision in *M/s. Ultra Tech Cement Ltd.* (*supra*), held as under :

"21. *It has to be noted that for the period prior to 1-4-2008, the Hon'ble Supreme Court, in the case of Vasavadatta Cements Ltd., held that the tax paid on the transportation of final product from the place of removal upto the first point, whether it is the depot or the customer, has to be allowed and we find that the issue addressed by the Hon'ble Supreme Court in the decision in the case of Ultra Tech Cement Ltd., pertains to the first limb of the definition under Rule 2(1) of the CCR. In other words, the issue involved in that decision was regarding availment of Cenvat credit on goods transport agency service availed for transport of goods from the place of removal to buyer's premises. In the case of Ultra Tech Cement Ltd., the Cenvat credit on tax paid upto the customer's premises was disallowed, as it was found that the factory gate is to be determined as the 'place of removal'. Therefore, the larger question would be as to whether the assessee would have been non-suited based on the decision in the case of Ultra Tech Cement Ltd. In our considered view, the assessee should not be non-suited in the light of the said decision for more than one reason.*

22. *Firstly, the modus operandi of the assessee requires to be examined by the Adjudicating Authority i.e. establishment of the RDCs and the WSDCs. The assessee's specific case is that the point of sale in their case is the RDCs. However, this issue has not been examined by the Adjudicating Authority in the manner it was required to be examined. We say so because the Adjudicating Authority is the First Authority, who will record the findings of fact. Therefore, before the legal position is applied, a thorough exposition of the facts needs to be done. Then, law is to be applied to the facts of the case and not vice versa.*

23. *One more reason, which weighs in our mind, is to state that the Adjudicating Authority could have examined the factual background on account of a decision of the Delhi Tribunal in the case of *Pr. CCE v. Lafarge India Pvt. Ltd.* [reported in [2017 \(52\) S.T.R. 350](#) (Tri.-Del.)]. According to the assessee, the said case was on identical facts and it was held in that decision that the place of removal is inextricably linked to the factum of sale. In the light of the decision of the Delhi Tribunal, which was rendered subsequently, what is required to be examined is as to whether the assessee was right in contending that the goods are removed to the RDCs without any sale and therefore, there can be no removal at the factory gate and the retail outlet, at which, the goods were finally sold was the place of removal.*

24. *Thus, in our considered view, the issue requires to be examined in depth on the factual matrix and the Adjudicating Authority shall take note of the decision of the Hon'ble Supreme Court in the case of *Vasavadatta Cements Ltd.*, and the decision of the Delhi Tribunal in*

the case of Lafarge India Pvt. Ltd., and then take a decision as to whether the assessee's contention merits acceptance. Thus, for the above reasons, we are of the considered view that the matters required to be re-adjudicated by the Adjudicating Authority, for which purpose, we intend to remand the matter for a fresh consideration.

25. *In the result, while leaving the substantial questions of law open, we allow these appeals and set aside the orders passed by the Tribunal as well as the Adjudicating Authority insofar as they deny the input service credit availed in respect of GTA services on or after 1-4-2008. In all other aspects, the orders passed by the Tribunal stand confirmed. We make it clear that we have set aside the orders of the Tribunal as well as the Adjudicating Authority with regard to disallowance of Cenvat credit in respect of GTA services. The Adjudicating Authority shall afford an opportunity of personal hearing to the authorized representative of the assessee, take note of our observations and take a fresh decision on merits and in accordance with law. No costs."*

6.2 Further, this Bench in the assessee's own case (*supra*) has remanded the matter back to the file of the Adjudicating Authority for fresh adjudication and the relevant paragraphs read as under :

*"4. I have heard the rival submissions and have gone through the ratio of the decision of this very Bench relied upon by the Ld. Advocate in Final Order dated 25.02.2019 wherein the matters have been remanded to the adjudicating authority to decide the matter afresh in view of the judgments of M/s. Ultra Tech Cements Ltd., M/s. Roofit Industries Ltd. -2015 (319) ELT 221 (S.C) and Board's Circular dated 08.06.2018. By following the precedence of this decision, I deem it fit to remand these cases also to the adjudicating authority to decide the matter along with the other cases keeping in view of the Hon'ble Supreme Court decisions and Board's Circular (*supra*). Further, the adjudicating authority shall ascertain with documentary evidences as to 5 whether the contract is FOR sale or not since there is a finding by FAA and then pass adjudication order as per law. Contentions of assessee as well as Revenue are left open.*

5. Appeals are allowed by way of remand."

7. In view of the above binding precedents and the order of this Bench in the assessee's own case for a different period, it is for the Adjudicating Authority to re-examine the facts afresh in the light of the guidelines laid down by the Hon'ble Supreme Court in all the cases referred to *supra* and the guidelines drawn by the Hon'ble jurisdictional High Court (*supra*) and then decide the eligibility of the appellant for credit. The Adjudicating Authority shall therefore apply his mind to

each of the decisions and then pass a *de novo* adjudication order as per the above guidelines and in accordance with law.

8. Further, I note that the Revenue has not challenged the findings of the First Appellate Authority in the impugned orders as to the deletion of penalty and hence, no interference is called for on this.

9. All the contentions are left open.

10. The appeals are treated as allowed for statistical purposes.

(Order pronounced in the open court on **04.07.2019**)

(P. DINESHA)
MEMBER (JUDICIAL)

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