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

E/40288/2019

[arising out of Order-in-Appeal No.179/2018, dated 13.11.2018 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore]

M/s. HARITA FEHRER LTD. APPELLANT

Versus

COMMISSIONER OF GST & CENTRAL EXCISE, SALEM RESPONDENT

Appearance:

For the Appellant	Shri V. Ravindran, Adv.
For the Respondent	Ms. T. Ushadevi, DC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)

Date of hearing/decision **02-07-2019**

FINAL ORDER NO. **40894 / 2019**

Brief facts are that the appellants are engaged in the manufacturer of Seat Foams and Seat Assembly for two wheelers and four wheelers. They are registered with the Central Excise department and are also availing Cenvat credit of Central Excise duty and service tax paid on inputs and input services as per Cenvat Credit Rules, 2004. During the course of audit, it was noticed that the appellants have availed credit of service tax paid on outward freight incurred for transportation of finished goods to the customer's premises during the period from July, 2015 to November, 2016. The department was of the view that the place of removal being the factory gate, the appellants are not eligible for the credit. Show-cause notice was issued proposing to recover the wrongly availed credit along with interest and also imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, the learned counsel Shri V. Ravindran appeared and argued the matter. He submitted that the goods were delivered at the customer's premises since the agreement was F.O.R. destination. The appellant has, therefore, included the freight charged in the assessable value for discharging the excise duty. When freight charges are included in the assessable value and the sale is on F.O.R. basis, the place of removal is the buyer's premises as decided by the Hon'ble Apex Court in the case of *Commissioner of Central Excise Vs M/s. Roofit Industries Ltd.* reported in *2015 (319) E.L.T.221 (S.C.)*. The said aspect has been clarified by the department in their recent Circular No.1065/4/2018-Cx., dated 08.06.2018. He adverted to page 42 of the appeal memo and submitted that the details of the freight charges paid by the appellant for the disputed period was furnished by the appellant, which is attached to the show-cause notice. In this table, it is very much clear that the price includes freight charges. The appellant has thus adduced sufficient evidence to establish that freight charges having been included in the assessable value, the sale has taken place only at the buyer's premises. Therefore, the place of removal is the buyer's

premises. In such circumstances, the appellant is eligible for the credit of service tax paid on outward transportation of goods upto the place of removal. He also relied upon the Division Bench decision of the Tribunal in the case of *M/s. Ultratech Cement Vs Commissioner of Central Excised, Kutch (Gandhidham)* reported in *2019 (2) TMI 1487 – CESTAT – Ahmedabad*. Referring to the decision of the Hon'ble Apex Court in the case of *Commissioner of Central Excise & Service Tax Vs M/s. Ultratech Cements Ltd.,* in Civil Appeal No.11261 of 2016, the learned counsel pointed out that in the said case, the Hon'ble Apex Court had decided that the outward transportation is eligible only upto the place of removal, when the place of removal is the factory gate.

3. The learned Authorised Representative for the Revenue Ms. T. Ushadevi, DC (AR) appeared and argued on behalf of the department. She supported the findings in the impugned order. She argued that the place of removal will be the buyer's premises only on satisfying three conditions. The ownership of the goods should remain with the appellants till it reaches the buyer's premises. Secondly, freight charges have to be borne by the manufacturer and thirdly, the insurance/risk of the goods should remain with manufacturer till it reaches buyer's premises. The appellants have not established these three conditions. Therefore, the place of removal cannot be considered to be the buyer's premises and the decision in the case of *M/s. Roofit Industries* (supra) will not apply. Thus, the authorities have rightly held that the place of removal is the factory gate. The appellants are not eligible for the credit of service tax paid on outward transportation of goods upto the buyer's premises.

4. Heard both sides.

5. On perusal of records, it is seen that the authorities below have rejected the claim of credit of service tax paid on freight charges holding that the place of removal is the factory gate and not the buyer's premises. In the present case, as pointed out by learned counsel the table attached to the show-cause notice shows that the appellants have incurred the freight charges and has included the freight charges in assessable value on which excise duty has been discharged. This being so, the ownership of the goods remain with the appellant till it reaches the buyer's premises and the conditions for F.O.R. sale as elucidated in the case of *M/s. Roofit Industries* (supra) stands discharged by the appellant. In case, where the freight charges are not included and the excise duty is discharged on ex-works price, the place of removal will the factory gate as laid in the case of *Commissioner of Central Excise Vs M/s.Ispat Industries Ltd.,* reported in *2015 (324) E.L.T.670 (S.C.)*. In the present case, as the freight charges have been included in the assessable value on which excise duty has been discharged, I have no hesitation to conclude that the decision in *M/s. Roofit Industries* (supra) will apply to decide the place of removal. The decision of the Hon'ble Supreme Court in the case of *M/s. Ultratech Cement Ltd.,* (supra) reported in *2018 (9) G.S.T.L.337 (S.C.) is to be* understood that the credit on GTA for outward transportation is eligible only upto the place of removal. The said aspect has been clarified by the Board in their Circular dated 08.06.2018. Further, the Tribunal in the case of *M/s. Ultratech Cements Ltd.* reported in *2019 (2) TMI 1487 – CESTAT – Ahmedabad* has considered all these legal positions and held that the credit will be eligible when the place of removal is the buyer's premises. Following

the said decision of the Tribunal as per the discussions made above, I am of the view that the rejection of credit is unjustified and requires to be set aside, which I hereby do. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL)

ksr
03-07-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	02.07.2019			
Draft Order - Date of typing	2.07.2019			
Fair Order Typing	03.07.2019			
Date of number and date of dispatch	03.07.2019			