CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No.41013 of 2019

(Arising out of Order-in-Appeal No.CMB-CEX-OOO-APP-087-19, dated 02.05.2019 passed by the Commissioner of GST & CE (Appeals), Coimbatore)

M/s.Sakthi Auto Ancillary P. Ltd., **: Appellant**
Idigarai Road,
NGGO Colony,
Coimbatore – 641 022.

VERSUS

Commissioner of Central Excise & GST, **: Respondent**
No.6/7, ATD Street,
Race Course Road,
Coimbatore 641 018.

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Shri B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)

FINAL ORDER NO. 41266/2019

DATE OF HEARING: 04.11.2019

DATE OF DECISION: 04.11.2019

Brief facts are that the appellants who are engaged in manufacture of steel castings etc., were availing the facility of Cenvat credit of duty paid on capital goods, inputs and credit of service tax paid on input services. It was observed by the department that they had availed credit of service tax paid on freight charges and the same was not eligible for outward transportation of goods from the factory gate till the buyer's premises. Show-cause notice was issued for the period Aug.'14 to Jun.'17 proposing to disallow the credit and also for recovery of the wrongly availed credit along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand for the normal period only, however, giving the benefit of setting aside the demand for the extended period. In appeal, the Commissioner (Appeals) upheld the demands confirmed. Aggrieved, the appellants are now before the Tribunal.

2. On behalf of the appellant, the learned counsel Shri M.N. Bharathi appeared and argued the matter. He submitted that as per the agreement entered between the customers, the appellant was obligated to deliver the goods at the buyer's premises. The cost of such transportation was included in the assessable value for which the appellant has to discharge excise duty. He referred to para 15 of the order passed by original authority and submitted that the Assistant Commissioner after perusal of the purchase order has observed that cost of transportation has been included in the price of the goods. Referring to the purchase orders, the learned counsel submitted that the goods have to be delivered at the buyer's premises at the cost of the appellant and the ownership is transferred to the buyer only at the buyer's premises. That therefore applying the decision in the case of *M/s. Roofit Industries Ltd.,* reported in *2015 (319) E.L.T.221 (S.C.)*, the credit of service tax on freight charges is eligible to the appellant. It is pointed out by him that the Hon'ble Apex Court in the case of *M/s. Ultratech Cements Ltd.,* has not considered the situation whether the buyer's premises is the place of removal. That therefore the application of the said decision by the authorities below is erroneous. He also relied upon the Final Order No.4087/2019, dated 14.03.2019.

3. Shri B. Balamurugan, AC (AR) appeared on behalf of the department. He submitted that the authorities below rightly relied upon the decision in the case of M/s. Ultratech Cements Ltd.

4. Heard both sides.

5. In para 15 of the order passed by the original authority, it has been observed that the purchase orders show that the goods have to be delivered at the buyer's premises and also that the cost of transportation has been included in the price of the goods. Thus, the appellants have discharged the excise duty including the freight

charges. In such circumstances, the decision of the Hon'ble Apex Court in the case of *M/s. Roofit Industries Ltd.,* (supra) would apply. The buyer's premises therefore being the place of removal, I am of the considered opinion that the credit is eligible. Tribunal vide the above stated final order have analysed the very same issue and allowed the credit.

6. Appreciating the facts of the case as well as the position of law, the demand cannot sustain. The impugned order is set aside and appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
04-11-2019