CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Excise Appeal No.40626 of 2019

(Arising out of Order-in-Appeal No.3 & 4/2019- TRY (C.Ex) dt. 09.01.2019 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s.Hitech Arai Pvt. Ltd., Unit V, : **Appellant**
No.110, Trichy-Chennai Main Road,
Kuthoor,
Trichy 620 020.

VERSUS

The Commissioner of GST and Central Excise **: Respondent**
Trichy II Division,
No.1, Williams road, Cantonment,
Tiruchirappalli 620 001.

WITH

Excise Appeal No.40627 of 2019

(Arising out of Order-in-Appeal No.3 & 4/2019-TRY (C.Ex) dt. 09.01.2019 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s.Hitech Arai Pvt. Ltd., Unit V, : **Appellant**
No.110, Trichy-Chennai Main Road,
Kuthoor,
Trichy 620 020.

VERSUS

The Commissioner of GST and Central Excise **: Respondent**
Trichy II Division,
No.1, Williams road, Cantonment,
Tiruchirappalli 620 001.

E/40626/2019
E/40627/2019

APPEARANCE:

Ms. G. Vardhini Karthik, Advocate
For the Appellant

Ms. T. Usha Devi, DC (AR)
For the Respondent

CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 40500-40501 / 2020

DATE OF HEARING: 21.02.2020

DATE OF DECISION: 21.02.2020

PER SULEKHA BEEVI C.S

Brief facts of the case are that the appellants are engaged in manufacture of oil seals and moulded rubber products for which they have obtained Central Excise registration. On verification of records, it was noticed that for the period April 2011 to June 2017 (covered in both the appeals), appellant had availed cenvat credit of the service tax paid on Goods Transport Agency Services used for outward transportation of finished goods from the factory to their buyer's premises. Department was of the view that the credit is not eligible for which show cause notices were issued to the appellant. After due process of law, the original authority confirmed the demand, interest and imposed penalty against which the appellants preferred appeals before the Commissioner (Appeals). Vide the impugned order herein, the Commissioner (Appeals) upheld the demand, interest but however set aside the penalties. Aggrieved by such confirmation of demand and interest, appellants are now before the Tribunal.

2. On behalf of the appellant, Ld. Counsel Ms. G. Vardhini Karthik appeared and argued the matter. She submitted that the finished products in the nature of oil seals are customer specific and sensitive products for which they undertake to deliver the goods at the buyer's premises. They have not collected separate freight as can be seen from the purchase orders. The charges for delivery of the goods to the buyer's premises has been included in the price for which the appellant has discharged the Central Excise duty; that for this reason, the buyer's premises becomes place of removal as per the decision of Hon'ble Apex Court in the case of *Roofit Industries Ltd.* - 2015 (319) ELT 221 (SC); that the decision of the Hon'ble Apex Court in the case of *Ultratech Cements Ltd.* - 2018 (9) G.S.T.L 337 (SC) would not be applicable to the facts of the present case since the factory gate is not place of removal. She prayed that the appeals may be allowed.

3. Ld.A.R Ms. T. Usha Devi appeared and argued for the department. She submitted that the place of removal is the factory gate and therefore the disallowance of credit of service tax paid under GTA service is correct and proper.

4. Heard both sides.

5. Ld. Counsel has produced before me sample invoice / purchase orders to contend that they have paid Central Excise duty after

including freight charges; that it is also argued by her that since the goods have been delivered at the buyer's premises without collecting freight charges from the customer and the same is borne by the appellant, they are eligible for credit of service tax paid on the freight charges upto the buyer's premises. I find that to peruse the documents relating to the issue under consideration it is best to remit the case back to the adjudicating authority who shall look into the documents furnished by the appellant to determine the place of removal. If the appellant has included the freight charges in the transaction value while discharging the excise duty, they would be eligible for the credit of service tax paid on freight charges incurred by them upto the buyer's premises. The decision in the case of *Roofit Industries Ltd.* (supra) would then apply. From the above, I hold that the impugned order is set aside and the appeals are remanded to the adjudicating authority for fresh consideration after giving an opportunity to the appellant to furnish documents.

(Dictated and pronounced in open court)

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

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