IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal Nos. 41346 and 41347 of 2013

(Arising out of Order-in-Appeal No. 84 -92/2013 (M-II) dated 20.3.2013 passed by the Commissioner of Central Excise (Appeals), Chennai)

Commissioner of GST & Central Excise **Appellant**
Chennai Outer Commissionerate
Newry Towers, No. 2054,
12th Main Road,
Anna Nagar, Chennai – 600 040.

Vs.

M/s. Nelcast Limited **Respondent**
Madhavaram Village
Ponneri, Chennai – 601 204.

<u>APPEARANCE:</u>

Smt. Anandalakshmi Ganeshram, Supdt. (AR) for the Appellant
Shri P.C. Anand, Chartered Accountant for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. **40109-40110 / 2023**

Date of Hearing : 06.03.2023
Date of Decision: 06.03.2023

Per Ms. Sulekha Beevi,

Brief facts of the case are that the respondents are engaged in manufacture of castings. On verification of accounts, it was noticed that they have availed credit on the service tax paid on freight charges for outward transportation of goods upto port for export of the same. The respondent had also availed credit of service tax paid on the CHA charges. The Department was of the view that the said credit is not admissible for the reason that the factory gate is the place of removal.

Show Cause Notice was issued proposing to deny the credit and to recover the same along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand along with interest and imposed penalty. On appeal, Commissioner (Appeals) set aside the order holding that the respondent is eligible to avail the credit. Aggrieved by such order, the department has now preferred these appeals.

2. The learned AR Smt. G. Anandalakshmi reiterated the grounds of appeals. She submitted that the issue whether credit can be availed on freight charges upto the port has been referred to the Larger Bench of the Tribunal as per Interim Order No. 40002/2020 dated 8.6.2020.

3. The learned consultant Shri P.C.Anand appeared and argued for the respondent. It is submitted that the said reference made to the Larger Bench is not applicable to the respondent's case as the goods were exported. In the case of export, the place of removal is the port from where the goods are exported. The learned consultant relied upon the Board Circular No. 999/6/2015-CX dated 28.2.2015 to support his argument.

4. Heard both sides.

5. The issue is whether the respondent is eligible to avail credit on input services on freight charges and CHA services availed upto the port for export of goods. The Board vide Circular stated supra has clarified as under:-

> *"5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant exporter.*
>
> *6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export*

> *Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."*

The learned AR appearing for the department has argued that the issue has been referred to the Larger Bench. On perusal of the interim order dated 8.6.2020, we find that the issue that is referred to the Larger Bench is whether the factory gate or the buyer's premises can be considered as the place of removal for the purposes of availing credit on outward transportation charges. In the present case, the goods having been exported, there is no doubt that the place of removal is the port of export as clarified by the Board circular.

6. In the result, we find no grounds to interfere with the impugned order passed by the Commissioner (Appeals). The appeals filed by the department are dismissed accordingly.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

Rex