

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

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 40255 of 2021

(Arising out of Order-in-Original No. 17/2021-C.Ex.(Commr.) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

M/s. Bata India Limited

Post Box No. 39, No. 73 & 74,
SIPCOT, Phase-I, Hosur – 635 126

: Appellant

VERSUS

The Commissioner of G.S.T. and Central Excise

Salem Commissionerate

No. 1, Foulk's Compound, Anai Road, Salem – 636 001

: Respondent

WITH

(i) Excise Appeal No. 40271/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(ii) Excise Appeal No. 40272/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(iii) Excise Appeal No. 40273/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(iv) Excise Appeal No. 40274/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(v) Excise Appeal No. 40275/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(vi) Excise Appeal No. 40276/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(vii) Excise Appeal No. 40277/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

Appeal. No(s): E/40255/2021-SM
& E/40271-40281/2021-SM

(viii) Excise Appeal No. 40278/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(ix) Excise Appeal No. 40279/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(x) Excise Appeal No. 40280/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

(xi) Excise Appeal No. 40281/2021 (M/s. Bata India Ltd.);

(Arising out of Order-in-Original No. 06-16/2021-C.Ex.(Commr.)(Denovo) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, No. 1, Foulk's Compound, Anai Road, Salem – 636 001)

APPEARANCE:

Shri Raghavan Ramabadran, Advocate for the Appellant

Shri Vikas Jhajharia, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOS. 42472-42483 / 2021

DATE OF HEARING: 13.12.2021

DATE OF DECISION: **17.12.2021**

Order :

These appeals are filed by the appellant against the Orders-in-Original Nos. 06-16/2021-C.Ex.(Commr.) and 17/2021-C.Ex.(Commr.) dated 19.01.2021 passed by the Commissioner of G.S.T. and Central Excise, Salem.

2. The only grievance of the appellant is the denial of CENVAT Credit on transportation of footwear from its Regional Distribution Centres ('RDCs' for short) / Corporate Office to their retail outlets. I find that the very

same issue is required to be addressed in all the appeals of this appellant [Excise Appeal Nos. 40255 of 2021 and 40271 to 40281 of 2021] and hence, the same are clubbed together for the sake of convenience and are being disposed of by this common order.

3. Admittedly, this is the second round of litigation before this forum. The appellant was served with Show Cause Notices / Statements of Demand for various periods from April 2008 to August 2015 and April 2017 to June 2017 proposing to deny the CENVAT Credit distributed by the ISDs on various services, including GTA Services. Vide separate Orders-in-Original, the propositions made in the Show Cause Notices came to be confirmed whereby, *inter alia*, the credit availed on GTA Services was also denied. Aggrieved, the appellant preferred appeals before this forum and this forum vide Final Order Nos. 41784 to 41792 of 2018 dated 05.06.2018, with respect to GTA Services, confirmed the demand following the decision of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise and Service Tax v. M/s. Ultra Tech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C.)]*.

4. The appellant, thereafter, approached the Hon'ble High Court of Judicature at Madras and the Hon'ble High Court allowed the Civil Miscellaneous Appeals (CMAs) of the appellant by remanding the case back to the file of the Adjudicating Authority for fresh adjudication on this specific issue.

5. As a consequence of the directions of the Hon'ble High Court, the impugned orders have been passed, which has resulted in the same result of denial of CENVAT Credit and hence, the present appeals have been filed before this forum.

6. Heard Shri Raghavan Ramabadrn, Learned Advocate for the appellant and Shri Vikas Jhajharia, Learned Assistant Commissioner for the Revenue.

7.1 Learned Advocate for the appellant would submit that the Adjudicating Authority has mis-directed in denying the CENVAT Credit and that the Commissioner has not appreciated the facts of the case properly nor has she examined the facts of the case from the perspective of the directions of the Hon'ble High Court. He would seriously contend that in view of the amended provisions, especially Rule 2(l) read with Rule 2(t) of the CENVAT Credit Rules, 2004, the 'place of removal' is the place from where the goods are sold after their clearance from the factory; that in their case, the goods, which are manufactured in the factory, are stock transferred to their RDCs located at Faridabad, Kolkata, Bangalore and Thane and from these RDCs, the goods are again stock transferred to their retail outlets; till that stage, there would be no sale since there is absolutely no transfer of possession of the goods for a consideration. He therefore submitted that the transfer of possession would take place only at the retail outlets, which is the first point of sale and hence, applying the definition of 'place of removal' and 'sale', the retail outlets should be regarded as the place of removal.

7.2 He also submitted that the decision in the case of *M/s. Ultra Tech Cement Ltd. (supra)* would not alter the position since the above decision was rendered in the context where the factory of the assessee itself was considered as the place of removal from where the goods were sold. In support, he relied on the following decisions:

- (i) *C.C.E., Raipur v. M/s. Lafarge India Pvt. Ltd. [2017 (52) S.T.R. 350 (Tri. - Del.)] [affirmed in 2018 (14) G.S.T.L. 176 (Chattisgarh)]*;

- (ii) *M/s. Metro Shoes Pvt. Ltd. v. C.C.E., Mumbai-I [2008 (10) S.T.R. 382 (Tri. – Mumbai)] [affirmed in 2012 (28) S.T.R. 119 (Bom.)];*
- (iii) *M/s. Sports and Leisure Apparel Ltd. v. Commissioner of Cus., C.Ex. & S.T., Noida [2016 (6) TMI 468 – CESTAT, Allahabad];*
- (iv) *The Commissioner, G.S.T. v. M/s. Ultratech Cement Ltd. [2020 (3) TMI 1206 – Gujarat High Court];*
- (v) *M/s. Ultratech Cement Ltd. v. C.C.E. [2019 (2) TMI 1487 – CESTAT, Ahmedabad];*
- (vi) *M/s. Alkraft Technologies Pvt. Ltd. v. Commr. of Central G.S.T. and Central Excise [2019 (9) TMI 328 – Madras High Court]*

7.3 He would also refer to the following Circulars issued by the C.B.E.C. in support:

- a. Circular No. 988/12/2014-CX. dated 20.10.2014;
- b. Circular No. 1065/4/2018-CX. Dated 08.06.2018

8. *Per contra*, Learned Departmental Representative for the Revenue relied on the findings in the Orders-in-Original.

9. I have considered the rival contentions, have gone through the remand order of the Hon'ble High Court and other decisions referred to during the course of arguments.

10. In the impugned orders, the Commissioner has mainly relied on the judgement of the Hon'ble Apex Court in *M/s. Ultra Tech Cement Ltd. (supra)* to re-confirm the demand of the wrongly availed CENVAT Credit on GTA Services. The facts of this case are different from the facts in the case of *M/s. Ultra Tech Cement Ltd. (supra)* in as much as, as noticed by the Hon'ble Apex Court, the assessee would get the finished goods from its parent

unit on stock transfer basis which were sold in bulk form and packed bags, which means that the assessee's place was the place of removal since the clearance happened at the premises of the assessee therein. The CENVAT Credit of Service Tax paid on transportation services from the factory to the buyer's premises was thereafter claimed by the assessee therein, which was the issue.

11.1 The Hon'ble High court, in its remand order, having observed:

"22. Firstly, the modus operandi of the assessee requires to be examined by the Adjudicating Authority i.e establishment of 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...."

and has thereafter given a specific direction in the following words:

"23.

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.... 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."

11.2 The Hon'ble High Court, thus, has specifically directed the Adjudicating Authority to examine the *modus operandi* of the assessee, which is to be placed on record in the first place and this exercise has not been done by the Commissioner in the impugned orders. The Commissioner has proceeded to apply the law by collating the facts from the earlier orders including that of the CESTAT, which is apparently set aside by the Hon'ble High Court, as far as the issue on hand is concerned.

12. In the light of the above discussion and in the absence of specific examination of facts, as directed by the Hon'ble High Court, I am unable to endorse the demand being re-confirmed in the impugned orders. When the Hon'ble High Court required re-examination into the facts first, the priority of the Adjudicating Authority should have been to ascertain the facts along with supporting documents, hear the appellant and then arrive at a proper conclusion upon such examination. Further, though there is an observation in the impugned orders that the manufacturing activities would cease as soon as the goods were transported to the RDCs / Corporate Office after manufacturing, but however, there is no supporting evidence placed on this to establish that it is at these RDCs / Corporate Office that the clearance of goods in the form of sale took place. Rather, there is nothing placed on record to indicate the basis for such a conclusion.

13. In view of the above, I deem it proper to set aside the impugned orders and remand the matter back to the file of the Adjudicating Authority, who shall examine the issue afresh in the light of the directions of the Hon'ble High Court, keeping also in mind my observations in the

above paragraphs, and then pass a fresh speaking order in accordance with law. All the contentions are left open. It goes without saying that the Adjudicating Authority shall afford reasonable opportunities of being heard to the appellant.

14. Consequently, the impugned orders are set aside and the appeals are allowed by way of remand.

(Order pronounced in the open court on **17.12.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd