CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51959 of 2019-SM

(Arising out of order-in-appeal No. 401 (CRM) CE/JDR/2019 dated 25.04.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur).

M/s Agrawal Woven Polymers **Appellant**
Khasra No. 4912 to 4917
Jhamer Kotra Road, Umarda
Pratapnagar, Udaipur-313001.

VERSUS

Commissioner, Central Goods and Service Tax, **Respondent**
142-B, Hiran Magri, Sector-11
Uaipur (Raj.) – 313001.

APPEARANCE:

Shri Bipin Garg, Advocate for the appellant
Shri Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51861/2021

DATE OF HEARING/DECISION: 21.09.2021

ANIL CHOUDHARY:

Heard the parties.

2. The dispute in this appeal relates to disallowance of cenvat credit on outward transport where the appellant delivered the goods on FOR destination basis to the factory/ plant side of the buyer, and the rate is inclusive of transportation, but excluding excise duty and education cess.

3. The dispute relates to the period January, 2016 to June, 2017. The appellant have availed cenvat credit of Rs. 1,35,657/- being cenvat credit of service tax paid on outward transportation of their goods, delivered to the premises of the buyer on FOR destination basis, excluding excise duty and education cess.

4. In the course of audit, Revenue objected the taking of such credit on outward transportation. It appeared to Revenue that in the facts of the case, assessee is entitled to cenvat credit of transport charges upto the place of removal. It further appeared to Revenue that place of removal is the factory gate of the appellant. Accordingly, show cause notice dated 31.07.2018 was issued. It was proposed in the show cause notice to disallow cenvat credit and further penalty was also proposed.

5. The show cause notice was adjudicated vide Order-in-original dated 10.01.2019 by the Assistant Commissioner, who upheld the show cause notice on merits. However, he *suo motu* applied the provisions of Section 11AC (1)(d) of the Central Excise Act and declared the proceedings as concluded, taking notice that the appellant has deposited the tax in dispute alongwith interest and 15% penalty, within thirty days of the issue of show cause notice.

6. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), inter alia agitating that they have not applied/ proposed conclusion of the proceedings under the provisions of Section 11AC(1)(d) of the Act, and prayed for a decision on merit. Learned Commissioner (Appeals) decided the

issue against the appellant and rejected the appeal. Being aggrieved, the appellant is before this Tribunal.

7. Learned Counsel appearing for the appellant submitted that they are manufacturer of PP Woven sacks, PP tape & PP fabric. They usually sell their goods to cement plant(s). It is demonstrated from the purchase order dated 03.05.2016, issued by Shree Cement Ltd., wherein the order is for 3 lakh bags @ Rs. 6.53 per bag. It is further mentioned that the rates are on FOR destination/ delivery basis at the plant of the buyer, inclusive of transportation, but excluding excise duty, cess, VAT, as applicable. Learned Counsel draws my attention to excise invoice dated 07.05.2016, raised on their buyer M/s Shree Cement Ltd., which is for sale of bags @ Rs.6.53 each bag and have further added the excise duty and VAT and have not charged any amount towards transportation. No mention of any amount incurred by the appellant by way of transportation, on the invoice. Learned Counsel further submitted that in the facts and circumstances, the place of removal is factory gate of the buyer. Further, evidently the said price on which excise duty is paid includes the element of transportation. Accordingly, he prays for allowing the appeal with consequential benefits.

8. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

9. Having considered the rival contentions, I find that in the aforementioned facts and circumstances, the place of removal is not the factory gate, but the premises of the buyer. Admittedly the

goods have been sold on FOR destination basis and sale price includes element of transportation.

10. Accordingly, I hold that appellant is entitled to cenvat credit on the outward freight / transportation. Thus, the appeal is allowed. The impugned order is set aside. The appellant is entitled to consequential benefits. The Adjudicating Authority is directed to refund the amount of tax, interest and penalty deposited on 29.08.2018 alongwith interest @ 12% p.a. from the date of deposit till the date of disbursal. A Division Bench of this Tribunal in the case of **Parle Agro** have held that interest is payable @ 12% p.a. under Section 35EE of the Act. Thus, the appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant