CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

EXCISE APPEAL NO. / 50888 / 2020

[Arising out of Order-In-Appeal No. IND-EXCUS-000-APP-212-19-20 dated 22.1.2020 passed by the Commissioner of Central Excise (Appeals) Indore]

MAHILE ENGINE COMPONENTS INDIA PVT LTD.
Pithampur, Dhar

APPELLANT

Vs.

COMMISSIONER, CENTRAL EXCISE, INDORE

RESPONDENT

APPEARANCE:

Shri D K Tyagi, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Department

CORAM:
HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: December 21, 2021

FINAL ORDER No. 52119/2021

PER RACHNA GUPTA

The appellants herein are engaged in the manufacture of C I casting and engine parts. They are also availing Cenvat Credit on inputs, capital goods and input service used in or in relation to the manufacture of their final products under the provisions of Rule 3 read with Rule 4 of CENVAT Credit Rules, 2004. The department formed an opinion that the factory of the appellant is the place of removal as the appellants are not having any depots or any warehouse and the procedure of sale of goods by the appellant is completely at the factory gate. Accordingly, the availment of CENVAT Credit on Service tax paid on outward transportation of the goods by the appellant is opined to be incorrect. Resultantly a Show Cause Notice No. 2821 dated 20.11.2017 was served upon the appellant proposing to recover the CENVAT Credit on GTA service tax of Rs.5,74,354/- alleging the same to have wrongly claimed. Imposition of penalty was also proposed upon the appellant. The proposal was rejected by Order in Original No. 01/2019-20 dated 18.09.2019. Department filed an appeal against the said order, which has been allowed vide Order in Appeal No. 212-19-20 dated 22.01.2020. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri D K Tyagi, learned Counsel for the Appellant and Shri Mahesh Bhardwaj, learned Authorised Representative for the Department.

3. It is mentioned by the learned Counsel that while adjudicating the said notice, the proposal therein was rejected by the Order in Original. However, Commissioner (Appeals) while allowing the department's appeal has accepted the proposal of the impugned show cause notice. Being aggrieved the appellant is before this Tribunal.

4. It is mentioned by the learned Counsel for the appellant that the appellant has supplied goods to its buyers on FOR basis. Not only that the buyers had option to inspect the goods at his premises before making payment and was even entitled to reject the same before having the goods accepted / concluding the sale thereof. It is impressed upon that this particular fact is sufficient to hold that sale of the goods manufactured and cleared by the appellant took place at the buyers premises which become the place of removal. Since as per the present definition of inputs any service availed up to the place of removal is eligible for CENVAT Credit the transportation services availed by the appellant to the buyers place being the place of removal is therefore, eligible input service. The Original Adjudicating Authority has allowed the credit

dropping the proposed demand of Show cause notice. However, Commissioner (Appeals) has failed to appreciate the aforementioned fact of the present case. Learned Counsel has relied upon the decision of Hon'ble Apex Court in the case of **Commissioner vs Managalam Cement Ltd.** reported as [2018 (16) GSTL J 168 (SC)]. The learned Counsel has laid emphasis on the purchase orders and on the terms and conditions mentioned in the said order. All these purchase orders not only supply the goods on FOR basis with the entitlement of buyers to inspect the goods and to accept / nore subject to said inspection. The order is therefore prayed to be set aside and appeal is prayed to be allowed.

5. To rebut the submissions, learned Departmental Representative impressed upon rationality of the Order under challenge. It is submitted that the Commissioner (Appeals) has appreciated the decision of Hon'ble Apex Court in the case of **Ultra Tech Cement Ltd.** reported as [2018 (9) GSTL 337 (SC)]. It is submitted that based upon the said decision, Hon'ble High Court has also rejected the appellant's appeals on the same issue, however, for a different period. Impressing upon that there is no infirmity in the Order under challenge, the appeal is prayed to be dismissed.

6. After hearing both the sides, rival contentions and perusing the entire record, I observe and hold as follows:

7. The moot question to have been decided in the impugned appeals is:- Whether in the facts of the case, the place of buyer has to be treated as the place of removal or the factory of the appellant is the place of removal of goods, as used in the definition of the input service. The definition of input service at the relevant time reads as under:

Rule 2(l) "input service means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry; security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes,-

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) ofsection 66E of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by –

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetics and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;"

[Emphasis Supplied]

8. From this definition it becomes clear that all services received by the manufacturer directly or indirectly in relation to the manufacture of final products upto the place of removal are admissible for availment of Cenvat Credit on the Service Tax paid

for such services. Accordingly, the definition of place of removal acquires importance. Section 4 of the Central Excise Act, 1944 defines the same as follows:-

> “**Place of removal means**
>
> (i) A factory of any other place or premises of production or manufacture of the excisable goods;
>
> (ii) A warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty;
>
> (iii) A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;
>
> From where such goods are removed.”

9. The Hon“ble Apex Court in the case of **M/s. Escorts JCB Ltd. & others Vs. Commissioner of Central Excise Delhi, II** (2003) 1 SCC 281 has held that the place of removal has to be determined with reference to the point of „sale“. Section 19 of Sale of Goods Act says that the “property in goods stands transferred only when it is intended to be so transferred”.

Section 19 reads as under:

> “**Property passed when intended to pass.**
>
> (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
>
> (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
>
> (3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.”

10. Hon'ble Apex Court even in the case of **CCE & CU Vs. Rooflt Industries Ltd. [**2015 (319) ELT 221 (SC)] held as under:

> "12. The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time, i.e. when the delivery òf the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges Which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning Which has to be assigned to Section 4 read with Valuation Rules."

11. Coming to the facts of the present case I observe that the goods are being cleared by the appellants to their buyers on FOR basis and all liabilities in respect of transportation of goods or even damage to goods were on account of the appellants/manufacturer. It is the appellants who were liable for safe delivery of goods up to their customer's door steps. Thus, present becomes the case were the service of GTA was availed for the goods to be supplied to buyers at their door steps under FOR delivery system was taken. These admitted facts are sufficient to hold that the sale in the present case gets complete only at the door steps of buyers. It becomes clear that when the goods are cleared on FOR basis the freight paid on outward transportation would definitely qualify as input service, and thus shall be admissible for Cenvat.

12. Coming to the other facts of the present case, as apparent from various purchase orders, following appear to be the purchase conditions (interpreted):-

vii) Material on arrival at Maruti Factory would be inspected by Maruti inspection department and their decision in the matter

> shall be considered final. Maruti reserves the right to check /inspect raw material, in process inspection and trial testing of the products being done by the VENDOR at the works, in view of the self certification scheme for quality being practiced at Maruti (for may parts), vendor are requested to ensure 100% quality check at its works to eliminate quality rejections at Maruti's end.
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> III. Quality Acceptance criteria:
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> all supplies are subject to final acceptance by us. We have the right to reject goods found defective or during subsequent use.

Perusal makes it abundantly clear that the goods will be received/ collected only after the inspection of goods at the buyers place. Hence in the present case it was at the buyer's place that the property in goods in question got transferred from appellant to its buyers. It was buyer's place where sale got concluded. Hence as per Section 4(iii) of Central Excise Act, 1944 place of removal, in the present case was buyer's place.

13. Hon'ble Apex Court earlier in the case of **CCE & CU Vs. Rooflt Industries Ltd.** (supra). Though there stand subsequent decision of Apex Court viz. in the case of **CCE vs. Ultra Tech Cement Ltd.** [2018 (2) SCC 721] but as apparent that the said decision is being directed to be appreciated in terms of facts of individual case. Hon'ble Apex Court in the case of **Mangalam Cement vs. CCE** [2020 (32) GSTL 156 (SC)] has held that High Courts as well as Tribunal ought to have rely on relevant facts and contentions raised in the said appeal on its merits and ought not to have decide the same by the general observations. It makes abundantly clear that the demands of hat cases did not require discussion about the place of collection of sale. Since appellants are providing service only up to the place of removal are eligible

input service for CENVAT Credit in **Ultra Tech Cement**, the place of completion of sale was the factory gate, as such the factory gate was place of removal in that case. The facts of the present case are different from the said decision and the since the clearance of goods in the present case are on FOR basis that too subject to acceptance by the buyer after inspecting the goods. Hence, I am of the opinion that decision of **Ultra Tech Cement** (supra) cannot be applied to the facts of the present case.

14. In the light of the above discussions, in present case, the buyer was retaining the right even to reject the goods with the cumulative reading of definition of place of removal under Rule 4 of Central Excise Rules with the definition of inputs as already discussed above, the buyer's place in the present case is held to be the place of removal. Accordingly, it is held that GTA services availed by the appellant till the buyers place are eligible input service for availment of Cenvat Credit as was already appreciated by the Original Adjudicating Authority. Findings of the Commissioner (Appeals) in paragraph 8 of the Order under challenge are held to be not applicable to the facts of the present case. The decision of Ultra Tech Cement (supra) is held to have been wrongly applied by Commissioner (Appeals).

15. In view of the entire above discussions, the order of Commissioner (Appeals) is hereby set aside and appeal stands allowed.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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