CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

EXCISE APPEAL NO. 53967 OF 2023

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-47-2022-23 dated 30.11.2022 passed by the Commissioner (Appeals), Indore (M.P.)]

Pinnacle Industries Limited **....Appellant**
Plot No. 190-191, Industrial Estate,
Sector- 1, Pithampur – 454775,
Madhya Pradesh.

VERSUS

The Commissioner, **....Respondent**
CGST and Central Excise,
Division – I
Pithampur, Dhar

APPEARANCE:

Shri Shrenik R. Gandhi, Advocate for the Appellant

Shri Ratnesh Kumar Mishra, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 27.03.2025
DATE OF DECISION: 05.08.2025

FINAL ORDER NO. 51126/2025

JUSTICE DILIP GUPTA:

This appeal has been filed by Pinnacle Industries Limited[1] to assail the order dated 30.11.2022 passed by the Commissioner (Appeals) by which the appeal that was filed by the appellant to assail the order dated 14.07.2021 passed by the Assistant Commissioner that confirms the demand of Central Excise duty under section 11A of the Central Excise Act, 1944[2] with interest and penalty by including the freight amount in the assessable value. The Assistant Commissioner also noted

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1. **the appellant**
2. **the Central Excise Act**

that the amount towards sales of scrap had not been reversed. The Commissioner (Appeals) has upheld the demand of duty on the amount of freight collected by the appellant over and above the assessable but the demand of duty on the clearance of scrap has been set aside.

2. The appellant is engaged in the business of manufacture of seating systems, various automobile parts and accessories[3]. The factory of the appellant is situated at Pithampur in District Dhar. In the said factory, the appellant undertakes manufacture of the goods. In the present case, the appellant arranged the delivery of the goods at premises of the buyer on Freight on Road[4] basis.

3. The appellant contends that the place of removal cannot be the premises of the buyer even though the sale on FOR destination basis may have been completed at the premises of the buyer. According to the appellant, the place of removal in such a situation would continue to be the factory gate.

4. During the course of audit of the records of the appellant for the period 2013-14 to 2017-18, it was found that the appellant had delivered the goods to customers at the designated locations/doorsteps as per the customers delivery condition. Thus, the supply was on FOR basis. It was also noticed that the amount of freight collected by the appellant over and above the sale value was not included by the appellant in the assessable value on which central excise duty was paid by the appellant.

5. Accordingly, a show cause notice dated 05.03.2019 was issued to the appellant. The Assistant Commissioner, by order dated 14.07.2021, confirmed the demand of duty on the freight amount and the scrap

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3. the goods
4. FOR

amount not included by the appellant in the assessable value, with interest and penalty.

6. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals). This appeal which was disposed of by order dated 30.11.2022 and the relevant portion of the order is reproduced below:

> "9. **I observe that the Appellant had cleared goods during the period 2013-14 to 2017-18 (up to June 2017) on FOR destination basis from the factory to the place of removal i.e. buyer's premises and the cost of transportation received from the buyer was being not included in the transaction value for the purpose of determining Central Excise duty liability by the Appellant.**
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> xxxxxxxxxxx
>
> 11. xxxxxxxxxxx. Thus place of removal has to be determined mainly with reference to above definition and the determination of 'place of removal' in general has been laid by the Hon'ble Supreme Court of India in the case of CCE V/s. Ispat Insustries Ltd. reported in 2015 (324) ELT 670 (SC). xxxxxxxxxxx.
>
> 12. I also rely on the case of CCE Vs. Roofit Industries reported in 2015 (319) ELT 221 (SC) wherein the Hon'ble Supreme Court specifically noted that place of removal is the buyer's premises in following words-
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> xxxxxxxxxxxx
>
> **Following the ratio of above judgment of Hon'ble Apex court and Circular dated 08.06.2018 issued by CBIC, I hold that in the instant case where the contract for sale is FOR contract and the ownership, risk in transit, remained with the Appellant till goods were accepted by buyer on delivery and till such time of delivery, Appellant alone remained the owner of goods retaining right of disposal, it would be manifest that the**

> **sale of goods did not take place at the factory gate of the Appellant but took place at the place of the buyer on the delivery of the goods in question.**
>
> xxxxxxxxxx
>
> 14. **Now coming to the next issue it has been alleged that during the period 2014-15 to 2016-17 the Appellant had cleared scrap/non excisable goods from their factory premises but had failed to reverse an amount as required under provisions of Rule 6(3) of the Cenvat Credit Rules 2004. The appellant submitted that the scrap being sold was in relation to the plastic packaging material received by the Appellant and has not arisen from the manufacturing activity as the company is engaged in manufacturing of Automobile Seats, Parts and accessories of four wheelers etc. only.**
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> xxxxxxxxxx
>
> 15. The ratio of the said order of Hon'ble CESTAT is squarely applicable to the facts of the case. In view of the above, **I set aside the demand of Rs. 1,24,469/- along with interest and penalty.**"
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> **(emphasis supplied)**

7. This appeal has been filed to assail that part of the order passed by the Commissioner (Appeals) that has upheld the demand of duty on the freight amount received by the appellant from the buyer when the sale was on FOR basis.

8. Shri Shrenik R. Gandhi, learned counsel for the appellant placed reliance upon the decision of the Tribunal in **Jindal Tubular (India) Ltd.** vs. **Principal Commissioner, CGST and Central Excise, Ujjain**[5] to contend that the freight amount is not required to be included in the

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5. (2023) 4 Centax 3 (Tri.-Delhi)

assessable value. Learned counsel also placed the Circular dated 08.06.2018 issued by the Central Board of Indirect Taxes and Customs.

9. Shri Ratnesh Kumar Mishra, learned authorized representative appearing for the department, however, supported the impugned order and submitted that the cost of transportation from the factory to the location of the buyer would have to be included in view of the decision of this Tribunal in **M/s. H.D. Wires Pvt. Ltd.** vs. **The Chief Commissioner of CGST & Central Excise, Indore (M.P.)**[6].

10. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

11. It is not in dispute that the appellant had charged the freight amount from the buyer in respect of a sale which was on FOR basis. The ownership of the goods was transferred at the premises of the buyer where the sale actually took place. The 'place of removal', therefore, would be the premises of the buyer for the purpose of section 4 of the Central Excise Act. It makes no difference whether the buyer had selected the transporter so long as the payment was made by the buyer.

12. The issue that arises for consideration of this appeal is whether this amount can be included in the assessable value for the purpose of determining the duty payable.

13. The word 'place of removal' assumes importance. According to the appellant, the 'place of removal' would be the factory gate, while according to the department it will be the premises of the buyers as the sale is on FOR destination basis.

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6. Excise Appeal No. 55526 of 2023 (DB) decided on 08.08.2024

14. It also needs to be noted that 'place of removal' was not defined in the CENVAT Credit Rules, 2004[7] prior to 11.07.2014. Rule 2(t) of the 2004 Rules, however, provides that words and expressions used in the 2004 Rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts. The said rule 2(t) is reproduced below:

> "**2(t)** words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts."

15. Section 4(3)(c) of the Central Excise Act defines 'place of removal' as follows:

> **"(c)** "place of removal" means-
> (i) a factory or any other place or premises of production or manufacture of the excisable goods;
> (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited 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.

16. Thus, in view of rule 2(t), the definition of 'place of removal' in section 4(3)(c) of the Central Excise Act would apply to the 2004 Rules also.

17. According to the appellant, since the 'place of removal' is the factory, the cost of transportation of the goods upto the premises of the

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7. the 2004 Rules

buyer would not be included in determining the transaction value of the goods for the purpose of payment of excise duty.

18. The department, however, believes that since the 'place of removal' is the premises of the buyer, the cost of transportation of the goods upto the premises of the buyer would be included in determining the transaction value.

19. It also needs to be noted that the Central Board of Indirect Taxes and Customs issued a Circular dated 08.06.2018. In the said Circular the general principles for determination of 'place of removal' were laid down in paragraph 3, and paragraph 4 provided for exceptions to the principles contained in paragraph 3. The Circular points out that, in general, the 'place of removal' is required to be determined with reference to 'point of sale' in terms of the principles laid down by the Supreme Court in **Commissioner of Cus. & C. Ex., Nagpur** vs. **Ispat Industries Ltd**[8].

20. It would, therefore, be appropriate to reproduce the relevant portion of the Circular dated 08.06.2018 and it is as follows:

> "**Circular No. 1065/4/2018-CX., dated 8-6-2018**
>
> F. No. 116/23/2018-CX-3
>
> Government of India
> Ministry of Finance (Department of Revenue)
> Central Board of Indirect Taxes & Customs, New Delhi
>
> **Subject: 'Place of Removal' under Section 4 of the Central Excise Act, 1944, the CENVAT Credit Rules, 2004 and the CENVAT Credit Rules, 2017 - Regarding.**
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> Attention is invited to Boards circular no. 97/8/2007-CX dated 23.08.2007, 988/12/2014-CX dated 20.10.2014 and 999/6/2015-CX dated 28.02.2015. Attention is also

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8. 2015 (324) E.L.T. 670 (S.C.)

invited to the judgment of Hon'ble Supreme Court in the case of CCE vs M/s Roofit Industries Ltd. 2015 (319) ELT 221 (SC) = 2015-TIOL-87-SC-CX, CCE vs Ispat Industries Ltd 2015 (324) ELT 670 (SC) = 2015-TIOL-238-SC-CX, CCE, Mumbai-III vs Emco Ltd 2015 (322) ELT 394 (SC) = 2015-TIOL-163-SC-CX and CCE & ST vs. Ultra Tech Cement Ltd dated 1.2.2018 in Civil Appeal No. 11261 of 2016 = 2018-TIOL-42-SC-CX. In this regard, reference have been received from field formations seeking clarification on implementation of aforesaid circulars of the Board in view of judgments of Hon'ble Supreme Court.

2. In order to bring clarity on the issue it has been decided that Circular no. 988/12/2014-CX dated 20.10.2014 shall stand rescinded from the date of issue of this circular. Further, clause (c) of para 8.1 and para 8.2 of the circular no. 97/8/2007-CX dated 23.08.2007 are also omitted from the date of issue of this circular.

3. **General Principle: As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.) may be applied. Apex Court, in this case has upheld the principle laid down in M/s. Escorts JCB (supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer.** The observation of Hon'ble Court in para 16 in this regard is significant as reproduced below:

> "16. It will thus be seen where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be normal value thereof. Sub-clause (b)(iii) is very important and makes it clear that a depot, the 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 are all places of removal. What is important to note is that each of the premises

> is referable only the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place of premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the sub-section. **The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer.** If we were to accept contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises."

4. **Exceptions:**

(i) The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE v. M/s. Roofit Industries Ltd. 2015 (319) E.L.T. 221 (S.C.). To summarise, in the case of FOR destination sale such as M/s. Emco Ltd. and M/s. Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.

(ii) Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular No. 999/6/2015-CX., dated 28-2-2015 as the judgments cited above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India.

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> 6. **Facts to be verified:** This circular only bring to the notice of the field the various judgments of Hon'ble Supreme Court which may be referred for further guidance in individual cases based on facts and circumstances of each of the case. Past cases should accordingly be decided.
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> **(emphasis supplied)**

21. As the aforesaid Circular refers to the decisions of the Supreme Court in **Ispat Industries** and **Commr. of Cus. & Ex., Aurangabad** vs. **Roofit Industries Ltd.**[9], it would be useful to reproduce the relevant portions of the judgment of the Supreme Court in the aforesaid two decisions.

22. In **Roofit Industries,** the Supreme Court noticed that the 'place of removal' becomes a determinative factor for the purpose of valuation and it has to be seen at what point of time sale is effected, namely whether it is on the factory gate or a later point of time when the delivery of goods is effected to the buyer at the premises of the buyer. The Supreme Court observed that the charges which are to be added have to be upto the stage of transfer of the ownership in as much as once the ownership in goods stands transferred to the buyer, any expenditure incurred, thereafter, has to be on the account of the buyer and cannot be a component which would be included while ascertaining the valuation of goods. In this connection the Supreme Court made the following observations:

> "**13.** In the present case, we find that most of the orders placed with the respondent assessee were by the various Government authorities. One such order, i.e., order dated 24-6-1996 placed by Kerala Water Authority is on record. **On going through the terms and conditions of the said order, it becomes clear that the goods were to be delivered at the place**

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9. 2015 (319) E.L.T. 221 (S.C.)

of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, Central Excise duty, loading, transportation, transit risk and unloading charges, etc. **Even transit damage/ breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier namely the assessee.** As per the 'terms of payment' clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. **From the aforesaid, it would be manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.**

14. The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of Sale of Goods Act, the property in goods was transferred at that time only. Section 19 reads as under:

> "19. 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.
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> (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.
>
> **15.** These are clear finding of facts on the aforesaid lines recorded by the Adjudicating Authority. However, the CESTAT did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in the case of Escorts JCB Ltd. Obviously the exact principle laid down in the judgment has not been appreciated by the CESTAT."
>
> **(emphasis supplied)**

23. In **Ispat Industries,** the issue involved was whether by virtue of a transit insurance policy in the name of the manufacturer, excise duty is liable to be recovered on freight charges incurred for transportation of goods from the factory gate to the buyer's premises, treating the buyer's premises as the place of removal. The Supreme Court noticed the earlier decision of the Supreme Court in **Roofit Industries** in paragraph 31 of the decision and made the following observations in paragraph 32.

> "**32. It will be seen that this is a decision distinguishing the Escorts JCB's case on facts. It was found that goods were to be delivered only at the place of the buyer and the price of the goods was inclusive of transportation charges. As transit damage on the assessee's account would imply that till the goods reached their destination, ownership in the goods remained with the supplier, namely, the assessee, freight charges would have to be added as a component of excise duty.** Further, as per the terms of the payment clause contained in the procurement order, payment was only to be made after receipt of goods at the premises of the buyer. **On facts, therefore, it was held that the sale of goods did not take place at the factory gate of the assessee."**
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> **(emphasis supplied)**

24. However, the Supreme Court in paragraph 33 noticed that the factual position was different from the factual position emerging in **Roofit Industries** as the goods manufactured were sold at the factory gate and the relevant observations are as follows:

> "**33.** xxxxxxxxxx. When the goods were handed over to the transporter, the respondent had no right to the disposal of the goods nor did it reserve such rights inasmuch as title had already passed to its customer. On facts, therefore, it is clear that Roofit's judgment is wholly distinguishable.**"**

25. The Karnataka High Court in **Bharat Fritz Werner Ltd. and Mapal India Private Limited** vs. **The Commissioner of Central Tax, Bangalore**[10] also considered the judgment of the Supreme Court in **Commissioner of Central Excise and S.T.** vs. **Ultra Tech Cement Ltd.**[11] and the Circular dated 08.06.2018 of the Board and held that what is important to notice is that the title of the goods had passed from the seller to the buyer at the place of destination, which was the address of the buyer. The relevant portion of the judgment is as follows:

> "**13. The CESTAT, in the case of Bharat Fritz Werner Ltd. v. C.C., C.E. & S.T-Commissioner of Central Tax [CEA 56/2019], has recorded in paragraph No. 5 that as per the purchase orders, appellant was required to supply the goods at the buyer's premises and the price of goods would include 'outward freight'.** Similarly, in the case of MAPAL India Pvt. Ltd. [CEA 71/2019], the CESTAT has recorded a similar finding.
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> **16.** This Court in the case of Madras Cements Ltd., has held as follows:
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> > "11. **From the facts of the present case, it is clear from the invoices that title of the**

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10. 2022 (7) TMI 352 – Karnataka High Court
11. 2018 (9) G.S.T.L. 337 (S.C.)

> **goods had passed on from seller to buyer only at the place of destination, which is the address of the buyer. As such, the buyer had no right over the goods till delivered to it. The Tribunal has not considered this aspect and has only relied on the amendment made to the definition of "input service" with effect from 1-4-2008 and rejected the claim of the appellant-assessee after that date.** No further reason has been given by the Tribunal nor any finding has been recorded with regard to place of completion of sale of the goods.
>
> 12. **Since we are of the opinion that the sale had concluded only after the delivery of the goods was made at the address of the buyer, in the facts of the present case the appellant-assessee would be entitled to the benefit of Cenvat credit on Service Tax paid on outward transportation of goods by the assessee even after 1-4-2008. The appellant-assessee would thus be entitled to such benefit for the period 1-4-2008 to 31-7-2008 which has been denied to it by the authorities below.**
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> 13. For the forgoing reasons, this appeal stands allowed. The question of law is answered in favour of the assessee and against the Revenue. The order of the Tribunal to the extent of disallowing Cenvat credit to the appellant for the period after 31-3-2008 is quashed."

17. The Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs, New Delhi, has issued Circular dated 8-6-2018 and clarified the definition, 'Place of Removal'. In Para 5 of the Circular, the Ministry has referred to the judgment in the case of CCE & ST v. Ultra Tech Cement Ltd. [Civil Appeal No. 11261 of 2016, dated 1-2-2018] [2018 (9) G.S.T.L. 337 (S.C.)] and stated that, in that case, the Apex Court has held

> that Cenvat credit on GTA Service from the place of removal to the buyer's premises is not admissible.
>
> **18. In the instant cases, the place of removal is buyer's premises. Therefore, the authority in the case of Madras Cements Ltd., is applicable to the facts of this case and these appeals merit consideration.** Hence, the following:
>
> xxxxxxxxxxxx"
>
> **(emphasis supplied)**

26. Learned counsel for the appellant has however placed reliance upon a division bench decision of this Tribunal in **Jindal Tubular** that was rendered on 26.07.2022. The observations are:

> "**23.** Having considered both the submissions, we find that the issue is now settled by the Supreme Court in the case of Ispat Industries that the place of removal in every case has to be only the place relatable to the seller and it cannot be the buyer's premises even though the sale may be completed at the buyer's premises when goods are sold on FOR destination basis. The "place of removal" continues to be the seller's premises whether it be the factory gate or depot or any other place relatable to the seller. In terms of Section 4 of the Central Excise Act, value of the goods is the transaction value of the goods for delivery at the time and place of removal. The freight incurred from the place of removal to the buyer's premises cannot, therefore be includible in the assessable value. Consequently, the demand on this count also needs to be set aside."

27. Subsequently, in view of the two Larger Bench decisions of this Tribunal in **The Ramco Cements Limited** vs. **The Commissioner of Central Excise**[12] and **Sweety Industries** vs. **Commissioner of CGST & Central Excise**[13], a Division Bench of the Tribunal in **M/s. Hindustan Zinc Ltd.** vs. **The Commissioner, Central Excise & CGST**

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12. Central Excise Appeal No. 40575 of 2018 decided on 21.12.2023
13. Excise Appeal No. 12738 of 2018 decided on 14.02.2024

Commissionerate[14] examined the issue at length and held that the cost of transportation from the factory premises to the premises of the buyer when the sale is on FOR basis would have to included in the transaction value. The division bench extensively referred to the Circular dated 08.06.2018 and the decision of the Supreme Court in **Roofit Industries**. The decision of the Tribunal in **Hindustan Zinc** is based on the two Larger Bench decisions of the Tribunal in **The Ramco Cements** and **Sweety Industries**.

28. Another division bench of the Tribunal in **H.D. Wires** also was held:

> "**11.** We now consider the facts of the present case. **It is not disputed that the appellant had collected the amount towards freight from the customers but have not included the same in the transaction value and hence, no central excise duty was paid on the said amount. The ownership of the goods was to be transferred at the buyers' premises, where the sale actually took place and, therefore, the 'place of removal' for the purpose of valuation under Section 4 was the buyers' premises. It is also noticed that along with the ownership of the goods, risk in transit, remained with the appellant till goods were accepted by the buyer on delivery, until such time the delivery was made, the appellant remained the owner of the goods. These facts clearly show that the point of sale was where the ownership of goods was transferred to the buyers or customers, and, therefore, all the expenses incurred and collected by the appellant till the buyers' premises shall be part of the assessable value under Section 4 of the Act.**"
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> **(emphasis supplied)**

29. The division bench also referred to the Circular dated 08.06.2018 and observed as follows:

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14. Excise Appeal No. 51652 of 2021 decided on 18.04.2024

"**13.** xxxxxxxxxxxx. In the present case, it is an admitted position that the contract was on FOR basis and, therefore, no reliance could be placed on the principles provided in paragraph-3. Further, para-5 of the Circular provides, specifically for credit on GTA services in view of the decision of the Apex Court in Ultra Tech Cement Ltd., whereby the appeal filed by the Revenue was allowed, holding that CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer‟s premises was not admissible for the relevant period. **Lastly, para-6 of the Circular is relevant as it provides for the facts and circumstances of each case to be verified. In view thereof, the contention of the appellant has no substance and needs to be rejected.**"

(emphasis supplied)

30. Ultimately the division bench held as follows:

"**15. In view of our discussion above in the light of the various decisions of the Apex Court, we are of the view that the freight charges of outward transportation of excisable goods have been rightly included in the assessable value of goods for the purpose of discharging the central excise duty by the impugned order and hence the same needs to be affirmed.** The demand towards excise duty having been affirmed, the levy of statutory interest under Section 11AA of the Act is automatic and hence the same is rightly imposed.

16. Here, the non-payment of central excise duty was notice by the Departmental Audit Team during the course of audit, which clearly shows that the appellant suppressed the facts with intent to evade the payment of central excise duty by suppressing the value of excisable goods in their ER-I monthly returns. Though the law was settled by the Apex Court in Ultra Tech Cement, yet the appellant resorted to unlawful deduction of freight from the assessable value. Thus, they are liable to pay penalty under Section 11 AC of the Act which the

> Commissioner (Appeals) has reduced to 25%. Accordingly, the same is upheld."
>
> **(emphasis supplied)**

31. In regard to the extended period of limitation, both the Assistant Commissioner and the Commissioner (Appeals) have held that though the legal position was clear but still the appellant did not include the freight value in the assessable value and deliberately suppressed this fact from the department so as to evade payment of duty and this fact came to the notice of the department only during the audit.

32. In similar circumstances, the division bench of this Tribunal in **H.D. Wires** held that the appellant has suppressed facts with intent to evade payment of central excise duty.

33. There is, therefore, no error in the order passed by the Commissioner (Appeals) upholding the invocation of the extended period of limitation as the appellant had suppressed material facts from the department to evade payment of duty.

34. There is, therefore, no merit in this appeal. It is, accordingly, dismissed.

(Order Pronounced on **<u>05.08.2025</u>**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Jyoti