IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 10/10/2017.
DATE OF DECISION : 10/10/2017.

Excise Appeals No. 50388 of 2015, 50052 and 50069 of 2016

[Arising out of the Order-in-Original No. JAI-EXCUS-001-COM-049-14-15 dated 20/10/2014 and No. UDZ-EXCUS-000-COM-0032-0033-15-16 dated 28/09/2015 both passed by The Commissioner, Central Excise, Udaipur.]

M/s Mangalam Cement Ltd. Appellant

Versus

CCE & ST, Jaipur – I Respondent

Appearance

Shri Rahul Lakhwani, Advocate - for the appellant.

Shri R.K. Mishra, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 57208-57210/2017 Dated : 10/10/2017

Per. B. Ravichandran :-

These three appeals are on common subject of dispute and accordingly are taken up together for disposal. The main dispute in these appeals are relating to the admissibility of Cenvat credit of service tax paid on GTA services by the appellants. The appellants paid tax on such services on reverse charge basis for clearance of their final product to the customer's premises either directly or through depot. The Revenue held a view that they are not eligible for such input service credit as the 'place of removal' should be considered factory gate and any expenses incurred thereafter will not be eligible for credit. In two appeals, the matter is coming up now on second round of litigation. Earlier, the Tribunal vide final order No. A/54483-54484/2014 – EX (DB) dated 17/11/2014 remanded the matter to the Original Authority for a fresh look at the admissibility of the credit based on the decision of Hon'ble High Court of Chhattisgarh in **Ultratech Cement Ltd.** case. Two impugned orders now in appeal are on such remand directions. The Original Authority examined the issue afresh and held that the 'point of sale' and 'place of delivery' are different in the present case and referring to the provisions of Sale of Goods Act and Board Circular dated 20/10/2014, held that the appellants are not eligible for credit of service tax paid on GTA. The third impugned order is passed on the similar lines denying the credit. One more issue is regarding eligibility of the appellant for a credit of Rs. 5,511/- paid towards availing auction services for disposing of the scrap in the factory on payment of excise duty.

2. The learned Counsel appearing for the appellant reiterated the grounds of appeal and submitted that the impugned order clearly self-contradicted on the findings as can be seen from para 18 of the finding with reference to contradiction in para 20. The learned counsel submitted that the purchase order the

transaction with the customer clearly indicate that the risk and reward on the finished goods always lies with the appellant till safe and satisfactory delivery of the same to the customer in their premises. It is very clear that the place of removal should be equated to point of sale and in this case both are at the premises of the customer upon safe delivery of the excisable goods.

3. On the credit availability on auction services, the learned Counsel relied on the assessee's own case vide Final order No. 52766 of 2016 dated 11/07/2016 of the Tribunal.

4. The learned AR reiterated the findings of the impugned orders.

5. We have heard both the sides and perused the appeal record. We note that the Tribunal gave clear remand directions for the Original Authority to examine the applicability of the decision of Hon'ble High Court of Chhattisgarh in **Ultratech Cement Ltd.** (supra) to the facts of the present case. However, the Original Authority after categorically recording that "the point of sale as per the terms of contract (purchase)/PO) between the assessee and the client is the destination/client's premises as the sale is on FOR destination basis", proceed and arrived at a contrary decision. In fact, he attempted to make a distinction between 'place of delivery' and 'place of sale' by relying on the Board Circular dated 20/10/2014 and the provision of Sale of Goods Act, 1930. On careful consideration of his analysis, we find

that the Original Authority mis-directed himself in making such distinction after having recorded the factual position in para 18 of the impugned order dated 28/09/2015. In the face of such factual finding there could be no further interpretation to distinguish the place of delivery from point of sale. We find no justification for further analysis on this as made by the Original Authority to arrive at a contrary decision. The case laws relied upon by the appellant are squarely on this issue. These are :-

(i) M/s Mangalam Cement Ltd. vs. CCE & ST, Jaipur – I vide final order No. 54544 of 2017 dated 03/07/2017 ;

(ii) M/s Mangalam Cement Ltd. vs. CCE, Jaipur – I vide final order No. 54085-54088 of 2016 dated 14/10/2016 ;

(iii) M/s Mangalam Cement Ltd. vs. CCE, Jaipur vide final order No. 55457-55458 of 2016 dated 08/08/2016 ;

(iv) M/s Mangalam Cement Ltd. vs. CCE, Jaipur – I vide final order No. 52766 of 2016 dated 11/07/2016 ;

(v) CCE, Jaipur – I vs. M/s Mangalam Cement Ltd. vide final order No. 52384 of 2016 dated 30/06/2016 ; and

(vi) M/s Mangalam Cement Ltd. vs. CCE & ST, Jaipur – I – 2015 (38) S.T.R. 635 (Tri. – Del.).

6. In the appellant's own case it has been, more than once, held that they are eligible for credit of tax paid on GTA.

7. On the input service credit of auction services we note in appellant's own case hereinabove they were allowed to avail the

credit. The learned counsel submitted that they are not pressing the issue of their eligibility of credit on rent a cab service which was denied.

8. In view of the above discussion and analysis, we find no merit in the impugned orders on these credits and accordingly with reference to denial of these credits the same are set aside. The appeals are allowed to that extent.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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