In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/50509/2016
(Arising out of Order-in-Appeal No.02/Commissioner/Dehradun/6 dated 29.01.2016 passed by Commissioner Customs, CST,Dehradun)

M/s Linde India Ltd …Appellant
Vs
CCE & ST Dehradun …Respondent

Appearance:
Present for the Appellant : Shri Gopal Agarwal, CA
Present for the Respondent : Shri R.K. Mishra, DR

Coram:
HON'BLE JUSTICE (DR) SATISAH CHANDRA, PRESIDENT
HON'BLE MR B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing: 10.10.2017
Date of decision: 18.10.2017

Final Order No.57234/2017

Per B. Ravichandran,

The appeal is against order dated 29.01.2016 of Commissioner, Central Excise, Dehradun. The appellants are engaged in the manufacture of Liquid Oxygens, Liquid Nitrogen, Liquid Argon, liable to Central Excise duty. After completion of audit of the record maintained by the appellant, the Revenue entertained a view that the appellants did not discharge Central Excise duty on proper value of their finished goods and also availed certain ineligible credit under Cenvat Credit Rules, 2004. Accordingly, proceedings were initiated against the appellant, by issue of SCN dated 20.02.2015. The various issues raised in SCN were adjudicated by the original authority resulting in the impugned order. Though many issues were raised in the notice and decided in the impugned order, the present appeal is restricted to only two issues. These are (a) Liability of the appellant to pay Central Excise duty on delivery charges of liquid gas and (b) Correctness of denial of Cenvat credit availed on ISD invoices. The ld Counsel during the course of his submission stated that they are restricting their appeal only to these two issues.

2. Elaborating the grounds of appeal, the ld Counsel submitted that they are selling liquid gases on ex-factory basis. The delivery charges are nothing but transport charges in special vehicles owned by the appellant. These charges are separately mentioned in the sales invoice. There is no justification to include such delivery charges in the assessable value for Central Excise duty on gases. The ld Counsel relied on the decision of Hon'ble Supreme Court in Ispat Industries Limited, 2015 (324) ELT 617 SC.

3. On the second issue regarding denial of credit availed based on ISD invoices, the ld Counsels submitted that the impugned order is very cryptic and did not examine each types of input service and the nature of document before arriving at the conclusion to deny the credits.

4. The ld AR reiterated the findings of the impugned order.

5. We have heard both the sides and perused appeal records. On the first issue regarding the excise duty liability on delivery charges, we note that the original authority relied on the special procedure for removal of liquid gases prescribed under Central Excise Manual. He recorded that the

liquid gases were removed in the tanker under a pass-out document containing description, net quantity etc. After the return of the tanker from the customer premises, the provisional entry made at the time of initial clearance, was adjusted and the duty was actually paid as per the actual quantity. Since the buyer pays only for the quantity of gases delivered at their premise and the burden of transit loss and any other loss was on the appellant, it was held that the sale of goods takes place only at the buyer's premises. Examining the scope of the term "place of removal", the original authority held that place of removal is buyer's premises. A reference was made to Section 22 of Sale of Goods Act, 1930. The original authority concluded that the delivery charges are relatable to sales transaction and all elements of transaction value are to be included for excise duty purposes. The appellant's reliance on Apex Court decision in Escorts JCB Limited 2003 (146) ELT 31 SC was referred to. However, he did not further discuss the said decision.

6. We have examined the decision of Hon'ble Supreme Court in Ispat Industries Limited (supra). The Apex Court examined the scope of term "place of removal" for Central Excise valuation purposes, at length. The Apex Court observed as below:

> "16. It will thus be seen that 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 the 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 these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot or the premises of a consignment agent of the manufacturer are obviously places which are referable only 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 stated to be where excisable goods "are to be sold". These are the key words of the sub-section. The place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer. If we are to accept the 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 the buyer's premises.
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> 17. It is clear, therefore, that as a matter of law with effect from the Amendment Act of 29.09.1996, the place of removal only has reference to places from which the manufacturer is to sell goods manufactured by him, and can, in no circumstances, have reference to the place of delivery which may, on facts, to be the buyer's premises.
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> 33. As has been seen in the present case all prices were "ex-works", like the facts in *Escorts-JCB's* case. Goods were cleared from the factory on payment of the appropriate sales tax by the assessee itself, thereby indicating that it had sold the goods manufactured by it at the factory gate. Sales were made against Letters of Credit and bank discounting facilities, sometimes in advance. Invoices were prepared only at the factory directly in the name of the customer in which the name of the Insurance Company as well as the number of the transit insurance Policy were mentioned. Above all, excise invoices were prepared at the time of the goods leaving the factory in the name and address of the customers of the respondent. 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, there fore, it is clear that *Roofit's* judgement is wholly distinguishable. Similarly, in *Commssioner Central Excise, Mumbai-III v. M/s EMCO Ltd.,* this Court re-stated its decision in the *Roofit Industries'* case but remanded the case to the Tribunal to determine whether on facts the factory gate of the asessee was the place of removal of excisable goods. This case again is wholly distinguishable on facts on the same lines as the *Roofit Industries* case."

7. In view of the above ratio of the Hon'ble Supreme Court, we hold that the facts of the present case require re-examination by the original authority with

reference to purchase order, terms of sale, etc. The original authority upon examining the necessary supporting documents to establish the facts regarding existence of ex-factory sale can apply the ratio of Ispat Industries Limited (supra) to arrive at a correct decision.

8. On the second issue, regarding denial of credit which were availed based on ISD invoices, we note that the original authority has denied the credit without any examination of the nature of services and also the various submissions made by the appellant in their defence. In a cryptic order (para 13.5), the original authority denied the credit of Rs.32,46,010/- availed by the appellant on the strength of invoices issued by their registered office in the capacity of input service distributor. No detailed discussion of the reasons for the same have been recorded. We are in agreement with the appellant that the original authority has failed to give reasoned findings before denying the credit.

9. In view of the above discussion and analysis, we set-aside the order with reference to these two issues and remand the matter for afresh decision by the original authority in line with the above observations made by us. The appeal of the appellant is allowed to these limited issues by way of remand.

(Pronounced in Court on 18.10.2017)

(Justice (Dr) Satish Chandra)
President

(B. Ravichandran)
Member(Technical)

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