

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Sl. No.	Appeal No.	Appellant (s)	Respondent (s)	Impugned Order
1.	E/2685/2010	M/s Pearl Beverages Ltd.,	CCE, C & ST, Guntur	OIO No. 20/2010-C.Ex dt. 30.09.2010
2.	E/720/2012			OIA No. 56/2011 (G) CE dt. 23.12.2011
3.	E/21912/2014			OIA No. 24,25 & 26/2014 (G) CE dt. 21.04.2014
4.	E/21913/2014			
5.	E/21943/2014			

Appearance

Shri V.M. Doiphode, Advocate for the Appellant.

Shri AVLN Chary, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 08/11/2018

Date of Decision: 20/12/2018

FINAL ORDER No. A/31577-31581/2018

[Order per: P. Venkata Subba Rao]

All these appeals are filed by the appellant against Order-in-Original and Orders-in-Appeal as below:

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2. The appellants herein are manufacturers of beverages and they have appointed distributors/ dealers as per the terms of agreement. The terms and conditions of sale of the product by the appellant to the dealers are that the dealer shall make full advance payment at the time of placing the order or before taking delivery of materials that may be required for the sale of the products. The appellant claimed input service credit on GTA services including the credit of services rendered on transport of goods to the dealers premises which was disallowed by the Revenue on the ground that these services are rendered after the place of removal and in terms of CCR, 2004 the credit of input services is available only up to the place of removal. Learned Counsel for the appellant submits that the place of removal has to be determined in terms of CBEC Circular No. 988/12/2014-CX dated 20.10.2014 which reads as follows:

**Circular No. 988/12/2014-CX Dated 20.10.2014
F.No.267/49/2013-CX.8**

Government of India
Ministry of Finance Department of Revenue
Central Board of Excise and Customs, New Delhi

Subject: Determination of place of removal - reg.

“Attention is invited to Notification No. 21/2014 - CE (NT) dated 11.07.2014 vide which the definition of “place of removal” has been inserted in the CENVAT Credit Rules, 2004 (CCR). Under these rules there are provisions that the credit of input services is available upto the place of removal. As the definition is now provided in the CCR, wherever Cenvat credit is available upto the place of removal, this definition of place of removal would apply, irrespective of the nature of assessment of duty.

2) The second associated issue is regarding ascertainment of place of removal. In this regard there are two circulars of the Board namely 37B order no 59/1/2003 dt 3-3-2003 and circular no 97/8/2007 dt. 23.8.2007. The relevant paragraphs of these two circulars are reproduced below for ease of reference –

(i) Circular dt 3-3-2003 :“ 8. Thus, it would be essential in each case of removal of excisable goods to determine the point of “sale”. As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. 8. The ‘insurance’ of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods. ”

(ii) Circular dt 23-8-2007: “8.2..... it is, therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the ‘place of removal’ does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement

(i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930 occurred at the said place.”

3) The operative part of the instruction in both the circulars give similar direction and are underlined. They commonly state that the place where sale takes place is the place of removal. The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer. This can be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon’ble Tribunal in case of Associated Strips Ltd Vs Commissioner of Central Excise , New Delhi [2002 (143) ELT 131 (Tri-Del)] . This principle was upheld by the Hon’ble Supreme Court in case of M/s. Escorts JCB Limited v. CCE, New Delhi [2002 (146) E.L.T. 31 (S.C.)].

4) Instances have come to notice of the Board, where on the basis of the claims of the manufacturer regarding freight charges or who bore the risk of insurance, the place of removal was decided without ascertaining the place where transfer of property in goods has taken place. This is a deviation from the Board’s circular and is also contrary to the legal position on the subject.

5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act , 1930 which has been referred at paragraph 17 of the Associated Strips Case (supra) reproduced below for ease of reference –

“17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that 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. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and

may be given either before or after the appropriation is made. Subsection (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.”

6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport , inclusion of transport charges in value , payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

7) Difficulty in implementing the circular may be brought to the notice of the Board. Trade may be kept suitably informed. Hindi version will follow.”

Learned Counsel therefore asserts that the place where sale takes place is the place of removal which is the place where the transfer in property of goods takes place from the seller to the buyer in terms of the provisions of the Sale of Goods Act, 1930. It is his assertion that the goods have been transferred to their dealers in all cases at the dealer’s premises and therefore the sale is complete only when the goods reach the dealers’ premises which is the place of removal for their goods. Therefore, they are entitled to the credit of the service tax paid on GTA services for transport of the goods up to the dealer’s premises.

3. Learned Departmental Representative reiterates the findings of the lower authorities and asserts that the sale is complete at the factory gate as the payment has already been made in advance and therefore there is no case for claiming credit after the place of removal.

4. We have considered the arguments on both sides and find that the assertion of the Counsel is that the Board Circular (supra)

which is binding on the officers has not been followed by the adjudicating authority while denying the CNEVAT credit under CENVAT Credit Rules, 2004. Aforesaid Board's circular clearly states that the place of removal is the point where the sale has been completed under Sale of Goods Act, 1930, i.e., the ownership of the goods gets shifts to the buyer. It is the assertion of the Learned Counsel that this transfer of the goods takes place only dealer's premises although they received the payments in advance and hence the dealer's premises are the place of removal. This is a factual aspect to be verified in respect of each of the agreements because we find that some agreements indicate that the delivery will be made by the appellant at the dealer's premises which others are silent on this point.

5. In this factual matrix, we find it is a fit case to remand all these matters back to the Original Adjudicating Authorities to verify as to when sale has to be taken place in terms of the Board's circular (supra) and determine their eligibility of CENVAT credit under CCR, 2004. The appeals are allowed by way of remand to the original adjudicating authorities with a direction to examine the matter in terms of CBEC circular and as per the agreements entered into by the appellants with their dealers and pass orders after following the principles of natural justice.

(Order pronounced on 20/12/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi....