

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court - I

APPEAL No. E/30418/2018

*(Arising out of **Order-in-Appeal** No. HYD-EXCUS-SC-AP2-0173-17-18-ST, dated 09.01.2018 passed by Commissioner (Appeals-II), GST&CE, Hyderabad)*

PRECISION ELECTRONIC COMPONENTS .. APPELLANT
MANUFACTURING COMPANY
Vs.

CCT, SECUNDERABAD GST .. RESPONDENT

Appearance

Shri P. Venkata Prasad, Chartered Accountant for the Appellant.
Shri A.V.L.N. Chary, Superintendent /AR for the Respondent.

Coram:

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

Date of Hearing: 04.12.2018
Date of Decision: 21.12.2018

FINAL ORDER No. A/31590/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No. HYD-EXCUS-SC-AP2-0173-17-18-ST, dated 09.01.2018.
2. Heard both sides and perused the records.
3. The relevant facts that arise for consideration, after filtering out unnecessary details are appellants are manufacturers of Wire Wound Resistors and Potentiometers; were availing the CENVAT credit of the duty

paid on inputs, capital goods and input services as per the provisions of CENVAT Credit Rules, 2004; during an audit it was noticed that appellants had availed irregular CENVAT credit of the service tax paid on parcel services which were utilised for exports beyond the place of removal and service tax paid under "Goods Transport Agency Services". The said CENVAT Credit was availed during the period December 2011 to October 2016; show cause notice dated 04.01.2017 was issued for demand of recovery of an amount of Rs. 11,89,045/- on the ground that CENVAT Credit is ineligible as being towards the goods exported and for the services rendered beyond the place of removal and does not fit into the definition of "input service" as credit. Appellants contested the show cause notice on merits as well as on limitation. Adjudicating authority, after following due process of law, confirmed the demands raised along with interest and also imposed penalties, holding that the place of removal in the case in hand is the factory premises and the responsibility of the appellant ceases the moment cargo is handed over to the carrier/shipping agency. On an appeal, the first appellate authority also held the same view.

4. On careful consideration of the submissions made by both sides, I find that identical issue came up before the Bench of the Tribunal in the case of CCE vs. Imperial Auto Industries [2017-TIOL-2446-CESTAT-CHD]. The entire judgment of the Tribunal is reproduced.

“ The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent is engaged in the manufacture of motor vehicles parts. During the course of scrutiny of the records, it was observed that the respondent availed credit on courier/freight services used for delivery/transportation of the goods from port of export to foreign buyers premises. Thereafter, the show cause notice issued to deny the credit to the respondent. The adjudication took place and the demand was confirmed along with interest and penalty was also imposed. On appeal, the Commissioner (Appeals) has held that the goods have been sold by the appellant on Delivered Duty Paid (DDP) basis which means that the seller bear all the cost and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all Customs formalities. It is clear that the ownership of the goods remained with the appellant till delivery of these goods to the buyer relying on the judgement of the Hon'ble Punjab & Haryana High Court in the case of Ambuja Cements Limited vs. Union of India-2009 (236) ELT 431 (P&H) = **2009-TIOL-110-HC-P&H-ST** and CBEC circular **No.97/08/2007** dt.23.8.2007 dropped the demand and allowed the credit availed by the respondents. Aggrieved from the said order, the Revenue is before me.

3. Learned AR submits that in any case of exports, the port of export is the place of removal of the goods and the credit is available to the respondent upto the place of export and not beyond that. He has relied on the CBEC circular **No.999/6/2015-Cx** dt.28.2.2015 and the decision of the Tribunal in the case of Khanna Industrial Pipes Pv.Ltd.-2016 (43) STR 209 (Tri.-Mum.).

4. On the other hand, learned Counsel for the respondent opposed the contention of the learned AR and submits that the case of Khanna Industrial Pipes Pv.Ltd. is not relevant to the facts of the present case as in that case, the assessee took the credit on business support service, namely, terminal handling charges and documentation charges. In the said case, it is not coming out whether the goods have been delivered to the destination of the buyer or not and delivered the goods upto the premises of the buyers. The ownership remains with the seller or not. Therefore, the said decision is not applicable to the facts of this case. She further submits that in the case of Ambuja Cements (Supra), the Hon'ble High Court has relied on the CBEC circular **No.999/6/2015-Cx** dt.28.2.2015 wherein it has been stated that if the cost of service has been included by the assessee, the ownership of the goods remained with the seller and the insurance charges have been paid by the seller. In this case, the place of removal can be extended to the place of buyer. Admittedly the ownership of the goods remained with the seller and the respondent has paid service tax on the courier/transportation charges, in that circumstance, the respondent is entitled to avail the credit. She also relied on the decision of the Hon'ble Karnataka High Court in the case of Madras Cements Limited vs. CCE- **2015-TIOL-1682-HC-KAR-CX** and submits that the CBEC circular **No.999/6/2015-Cx** dt.28.2.2015 is not applicable to the facts of this case.

5. Heard both sides and considered the submissions.

6. The Revenue has filed this appeal on the ground that in the case of export of the goods, place of removal is port of export and to that extent, they have relied on para 4 of the circular dated 28.2.2015. which reads as under:

4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the

factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to be determined.

7. It is clarified in the above circular that if the seller does not reserve its right for delivery of the goods then destination in the case is the port of export is place of removal of the goods. The same is not in the case in hand. In fact, the respondent has sold the goods on Delivered Duty Paid basis which means that the seller bear all the cost and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all Customs formalities. The ownership right of the goods remains with the respondent. Therefore, CBEC circular is not relevant to the facts and decision in the case of Khanna Industrial Pipes Pvt.Ltd. is not relevant to the facts of the present case.

*8. Further, in the case of Ambuja Cements (Supra), the Hon'ble Punjab & Haryana High Court has examined the issue and held that the circular **No.97/6/2007-ST** dated 23.8.2007 lays down three conditions, namely, (a) the ownership of goods and the property of the goods remained with the seller of the goods till the delivery of goods in acceptable condition to the purchaser at his door step (b) the seller bore the risk of loss or damage to the goods during transit to the destination and (c) the freight charges were integral part of the price of goods.*

9. Admittedly, the respondent has complied with these conditions, in that circumstance, I hold that the Commissioner (Appeals) has rightly allowed the credit on courier and transportation charges to the respondent for transportation of the goods to the foreign buyer premises. It is not disputed that the respondent has not paid service tax. Therefore, I do not find any infirmity in the impugned order and the same is upheld and the appeal filed by the Revenue is dismissed.”

5. It can be seen from the above reproduced order that the facts in the case in hand and the facts in that case are the same. Since the facts and circumstances of this case being the same, impugned order is set aside and appeal stands allowed.

(Pronounced in open court on 21.12.2018)

**(M.V. RAVINDRAN)
MEMBER (JUDICIAL)**