CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT - I

Central Excise Appeal No. 30199 of 2019

(arising out of order-in-original No. GUN-EXCUS-000-COM-09-08-19/CE dated 30.10.2018 passed by Commissioner of Central Tax, Guntur)

M/s Parasakti Cement Industries Ltd
Jettipalem (V) Rentachintala (M)
Guntur Distt
A.P.

Appellant

Versus

The Commissioner of Central Tax,
GST Bhavan,
Central Revenue Building,
Kannavari thota,
Guntur

Respondent

WITH

Central Excise Appeal No. 30926 of 2016

(arising out of order-in-appeal No. GUN-EXCUS-000-APP-023-16-17 dated 30.06.2016 passed by Commissioner of Customs, Central Excise & Service Tax(Vizag Appeals-II,) Guntur)

M/s Parasakti Cement Industries Ltd
Jettipalem (V) Rentachintala (M)
Guntur Distt
A.P.

Appellant

Versus

The Commissioner of Central Tax,
GST Bhavan,
Central Revenue Building,
Kannavari thota,
Guntur

Respondent

WITH

Central Excise Appeal No. 21646 of 2015

(arising out of order-in-original No. GUN-EXCUS-000-COM-097-14-15-CE dated 11.03.2015 passed by Commissioner of Central Excise & Service Tax, Guntur)

M/s Parasakti Cement Industries Ltd
Jettipalem (V) Rentachintala (M)
Guntur Distt
A.P.

Appellant

Versus

The Commissioner of Central Tax,
GST Bhavan,
Central Revenue Building,
Kannavari thota,
Guntur

Respondent

AND

Central Excise Appeal No. 30243 of 2018

(arising out of order-in-original No. GUN-EXCUS-000-APP-0128-17-18 dated 30.11.2017 passed by Commissioner of Central Tax & Customs (Appeals) Guntur)

M/s Parasakti Cement Industries Ltd
Jettipalem (V) Rentachintala (M)
Guntur Distt
A.P.

Appellant

Versus

The Commissioner of Central Tax,
GST Bhavan,
Central Revenue Building,
Kannavari thota,
Guntur

Respondent

Appearance:

Mr. T. Jagapathi Rao, Adv for the Appellant

Mr.A.V.L.N.Chary, A.R. for the Respondent.

CORAM

HON'BLE Mr Anil Choudhary, Member(Judicial)
HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

FINAL ORDER No. 30878-30881/ 2020

Date of Hearing: 03/03/2020
Date of Decision: 03/03/2020

[ORDER PER: P. VENKATA SUBBA RAO)

Heard both sides and perused the records. The appellants are engaged in the manufacture of cement. During December 2015 to June 2017, they sold cement to various customers mainly Govt agencies on FOR destination basis. Invoices were raised at the factory before the goods were dispatched to the customers indicating the name and address of the customers in the invoice-cum-delivery challans for which CST was paid in all cases. Invoices also contained a condition stating that "our responsibility ceases the moment consignment is handed over to the carrier, claims for delay, damaged or loss of the goods in transit should be made by the buyers against the carriers. Please receive the goods as above and return the endorsed freight voucher." The department was of the opinion that since the goods were sold on FOR destination basis, the place of removal shifts to the buyers' premises and therefore, the cost of transportation of cement to the buyers' premises has to be included in the assessable value of the goods and excise duty needs to be charged accordingly. Show-cause notices were issued and by the impugned orders, the demands were confirmed accordingly along with interest. Penalties were also imposed upon the appellant under Rule 23 (1)(a) of the Central Excise Rules 2002.

2. Aggrieved, the present appeals have been filed by the appellant. Learned counsel for the appellant submits that the short point to be decided is where the goods are sold on FOR destination basis whether the cost of transportation from the sellers premises to the buyers premises can be included in the assessable value of the goods or otherwise. This issue has been settled by the Hon'ble Apex Court in the case of Commissioner of

Customs & Central Excise Nagpur Vs Ispat Industries Ltd [2015(324)ELT 670(S.C.) paras 17,23 and 24 of which are reproduced below:

> "17. It is clear, therefore, that as a matter of law with effect from the Amendment Act of 28-9-1996, 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, be the buyer's premises.
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> 23. It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.
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> 24. It will thus be seen that, in law, it is clear that for the period from 28-9-1996 up to 1-7-2000, the place of removal has reference only to places from which goods *are to be sold* by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods. As a matter of law therefore, the Commissioner's order and Revenue's argument based on that order that freight charges must be included as the sale in the present facts took place at the buyer's premises is incorrect. Further, for the period 1-7-2000 to 31-3-2003 there will be no extended place of removal, the factory premises or the warehouse (in the circumstances mentioned in the Section), alone being places of removal. Under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case."

He would further submit that this judgement of the Hon'ble Apex Court has been followed by this Bench in the case of KJV Alloy Conductors Pvt Ltd & Others disposed of by Final Order No A/30582-305987/2019. He submits that the same ratio may be followed in the present case.

3. Learned A.R. reiterates the findings of the impugned orders and asserts that the demands have been correctly confirmed and penalties have been correctly imposed.

4. We have considered the arguments on both sides and perused the records. The question which falls for consideration is when the goods are sold on FOR destination basis where the property in goods gets transferred to the buyer only at the buyer's premises, has the place of removal for the purpose of Valuation Section 4 of the Central Excise Act, 1944 shifts from the seller's premises to the buyer's premises of otherwise. After examining several previous judgements, the Hon'ble Apex Court has in the case of Ispat Industries Ltd (supra) held very categorically that the place of removal has to be related to the seller of the goods such as factory or any other place or premises of production or warehouse or a place of consignment agent which is relatable to the seller and it cannot be the

buyer’s premises. Once the goods reach the buyer’s premises, there is nothing to be removed or sold and the sale is already complete. Therefore place of removal has to be seller’s premises. For the purpose of valuation under Section 4, the value has to be the transaction value at which the goods are sold by the assessee for delivery at the time and place of removal. Therefore, there is no scope for charging excise duty on the cost of transportation from the seller’s premises to the buyers premises. Respectively following the judgements of the Hon’ble Apex Court in the case of Ispat Industries Ltd (supra) we hold that the demands are not sustainable and impugned orders need to be set aside and we do so. The appeals are allowed and the impugned orders are set aside with consequential relief if any.

(Operative portion of the order pronounced
in open court on conclusion of the hearing)

(Anil Choudhary)
Member (Judicial)

(P. Venkata Subba Rao)
Member (Technical)

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