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

Division Bench - Court No. – I

Excise Appeal No. 30523 of 2018

(Arising out of **Order-in-Appeal** No.GUN-EXCUS-000-APP-199-17-18, dated 14.02.2018 passed by Commissioner of Central Tax (Audit) Guntur, stationed at Visakhapatnam)

Andhra Cements Ltd., .. **APPELLANT**
Durga Cement Works,
Srinagar (Post),
Dachepalli (Mandal), Guntur (Dist),
Andhra Pradesh – 522 414.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Guntur – GST Commissionerate
P.B.Bo. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

Appearance

Shri G. Prahlad, Advocate for the Appellant.
Shri V R Pavan Kumar, Superintendent for the Respondent.

Coram: **Hon'ble Mr. ANIL CHOUDARY, MEMBER (JUDICIAL)**
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30889/2020

Date of Hearing:05.03.2020
Date of Decision:12.06.2020

[ORDER PER: P.V. SUBBA RAO]

1. Heard both sides and perused the records.

2. The present appeal has been filed by the appellant against Order-in-Appeal No.GUN-EXCUS-000-APP-199-17-18, dated 14.02.2018.

3. After hearing both sides and perusing the records, we find that the short issue to be decided is in a case where goods (cement) is sold by the assessee to their customers on FOR destination basis, if the appellant can claim CENVAT credit on the outward transportation of goods from their premises to the buyers premises or otherwise. It is the case of the appellant that when they sell goods on FOR (buyer's premises) basis, the "place of removal" shifts to the buyer's premises as held by the Hon'ble Apex Court in the case of Roofit Industries [2015 (319) ELT 221 (SC)] as the sale takes place only at the buyer's premises. Therefore, they are entitled to the benefit of the CENVAT credit on the outward transportation of goods up to the buyer's premises. It is the case of the Revenue that the buyers' premises can never be the place of removal as has been decided by the

Hon'ble Apex Court in the case of Ispat Industries [2015 (324) ELT 670 (SC)]. Therefore, no CENVAT credit is admissible on the outward transportation of goods from the assessee's premises to the buyer's premises even though the sale of goods is on FOR destination basis.

4. We find that an identical matter was before the Hon'ble Apex Court in the case of CCE and ST Vs Ultra Tech Cement [2018 (9) GSTL 337 (SC)]. It has been decided by the Hon'ble Apex Court that no CENVAT credit is admissible for transport of goods by the assessee to the buyer's premises.

5. Briefly, the appellant is a manufacturer of cement and also avails the benefit of CENVAT credit under CENVAT Credit Rules, 2004. CENVAT credit is available on the inputs and input services which are used in the manufacture of the product. Rule 2(ℓ) of CENVAT Credit Rules, 2004 defines input service and it was amended w.e.f. 11.03.2008 as follows:

(l) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of the provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

Prior to 01.03.2008 the words used in this definition were "outward transportation from the place of removal". Thus upto 01.03.2008 all assessees were entitled to claim CENVAT credit on outward transportation of goods. After 01.03.2008 they were entitled to claim benefit of CENVAT credit only on goods transport agency service up to the place of removal and not beyond. The term "place of removal" is defined in Section 4 of Central Excise Act, 1944 as follows:

(c) "place of removal" means —

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place on premises wherein the excisable goods have been permitted to be deposited without 3[payment of duty;

(iii) a depot, 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;] from where such goods are removed.

The same definition was introduced in CENVAT Credit Rules post 11.07.2014. The appellant's appeal is on the following grounds:

a) Service on outward transportation used by the appellant qualifies as input service in terms of the definition of input service
b) The value of services of outward transportation is included in the value of excisable goods and thus not allowing CENVAT credit thereon would be against the scheme of the CENVAT credit
c) The "includes" part of the definition of the input service cannot restrict the "means" part of the definition
d) CENVAT credit on outward transportation services is admissible as the sale is on FOR basis.

6. We find that this issue is no longer Res integra. It has been settled by the Hon'ble Apex Court in the case of Ultra Tech Cement (supra) and the issues were identical. In that case, the original adjudicating authority namely the Assistant Commissioner had denied the benefit of CENVAT credit on the outward transportation of the goods from the factory to the buyer's premises when the sale was on FOR destination basis. The assessee challenged the order of the original authority and the Commissioner (Appeals), relying on the Board Circular dated 23.08.2007 has held that the appellant is entitled to the benefit of CENVAT credit on the outward transportation of goods up to the buyer's premises. This order of the Commissioner (Appeals) was also upheld by the Hon'ble CESTAT, Bangalore and Hon'ble High Court of Karnataka. The approach of these courts has been held to be untenable by the Hon'ble Apex Court and it has been held that no CENVAT credit is admissible.

Paras 8, 9 and 13 of this judgment are as follows:

8.The aforesaid order of the Adjudicating Authority was upset by the Commissioner (Appeals) principally on the ground that the Board in its Circular dated August 23, 2007 had clarified the definition of 'place of removal' and the three conditions contained therein stood satisfied insofar as the case of the respondent is concerned, i.e. (i) regarding ownership of the goods till the delivery of the goods at the purchaser's door step; (ii) seller bearing the risk of or loss or damage to the goods during transit to the destination and; (iii) freight charges to be integral part of the price of the goods. This approach of the Commissioner (Appeals) has been approved by the CESTAT as well as by the High Court. This was the main argument advanced by the learned counsel for the respondent supporting the judgment of the High Court.

> **9.**We are afraid that the aforesaid approach of the Courts below is clearly untenable for the following reasons :
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> **13.**The upshot of the aforesaid discussion would be to hold that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible to the respondent. Accordingly, this appeal is allowed, judgment of the High Court is set aside and the Order-in-Original dated August 22, 2011 of the Assessing Officer is restored.

7. We further note that after the aforesaid judgment a review petition was filed by the assessee which was disposed of by the Hon'ble Apex Court with the following words:

> "Delay condoned.
>
> The instant Review Petition is filed against the order dated 1-2-2018 whereby the aforementioned appeal was allowed.
>
> We have carefully gone through the Review Petition and the connected papers. We find no error much less apparent in the order impugned. The Review Petition is, accordingly, dismissed."

Thus, we find that after considering all aspects, in the original judgment, as well as in review petition, the Hon'ble Apex Court has laid down that where the goods are sold on FOR destination basis i.e., where the ownership of the goods gets transferred only at the buyer's premises also no CENVAT credit is admissible for transportation of goods to the buyer's premises.

8. Respectfully following the judgment of the Hon'ble Apex Court, we hold that no CENVAT credit is admissible to the appellant. Accordingly, the appeal is rejected.

(Order pronounced on 12.06.2020 in open court)

(ANIL CHOUDARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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