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

Regional Bench - Court No. – I

Excise Appeal No. 31344 of 2017

(Arising out of Order-in-Appeal No.HYD-EXCUS-004-APP-022-17-18 dt.21.06.2017 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

M/s Schneider Electric India Pvt Ltd
Sy No.215, Building No.2, 24/1,
Medak Road, Gagilaapuram Village,
Quthabullapur (M), Telangana – 500 043

......Appellant

VERSUS

Commissioner of Central Tax
Medchal - GST
Kendirya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

......Respondent

Appearance:-

Shri Ch. Sumanth, Advocate for the Appellant.
Shri V.R. Pavan Kumar, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30105/2025

Date of Hearing: 18.03.2025
Date of Decision: 18.03.2025

[Order per: A.K. JYOTISHI]

M/s Schneider Electric India Pvt Ltd (hereinafter referred to as the appellant) are in appeal against the Order-in-Appeal dt.21.06.2017 passed by the Commissioner of Customs & Central Excise (Appeals) (impugned order). The Commissioner (Appeals) has upheld the Order of the Original Adjudicating Authority with the modification that duty payable shall be the amount payable after treating the differential value as cum-duty price.

2. The issue, in brief, is that five SCNs were issued to the appellant alleging non-inclusion of freight charges collected from the customers in the

assessable value of the goods delivered at the buyer's premises during the period April, 2007 to November, 2015. Commissioner (Appeals) has in the impugned order, after going through the defence submissions as well as various case laws and circulars relevant to the issue, came to the conclusion that the place of removal under the provisions of section 4 of the Central Excise Act, 1944, in the instant case, would be the buyer's site and therefore, the appellant is required to pay excise duty on assessable value inclusive of freight charges as applicable up to the buyer's premises. Commissioner (Appeals) has gone throught the statutory provisions under section 4 of the Act, as also in terms of section 19 of Sale of Goods Act, 1930 and the facts of the case to decide as to what would be the place of removal. In order to do so, he has examined the purchase orders from which it was observed that there is requirement of supply of goods at customer's site with the responsibility of such goods resting on the supplier till their receipt in good condition at the customer's destination. He has gone through various conditions stipulated in the purchase orders as detailed in Para 7 of the impugned order to come to the conclusion that goods have been appropriated to the contract only at the stage of delivery and installation at customer's site despite the understanding to the effect that price would be ex-works.

3. Insofar as the appellant's contention that property has passed to the buyers when the goods were sold at the factory premises and therefore, any payment thereafter in terms of transportation charges, etc., were immaterial. He has examined the provisions under section 20 of Sale of Goods Act, 1930. In the impugned order, it was observed that in terms of section 20 of Sale of Goods Act, passing of property in the goods takes place only when there is an unconditional contract for sale of specified goods in a deliverable state. Whereas, in the instant case, the contracts were not unconditional as there were conditions specified for acceptance of goods. He has also relied on the judgment of Hon'ble Supreme Court in the case of CCE, Aurangabad Vs Roofit Industries [2015 (319) ELT 221 (SC)] and in the case of CCE, Mumbai-III Vs Emco Ltd [2015 (322) ELT 394 (SC)] in support that in the given facts of the case, the sale actually has taken place at the buyer's premises. He has also distinguished the case of CCE, Nagpur Vs Ispat Industries Ltd [2015 (324) ELT 670 (SC)] and thereafter considered that in the facts of the case, the judgment of Hon'ble Supreme Court in the

case of Roofit Industries (supra) and Emco Ltd (supra) are relevant and the ratio of the said decisions is applicable.

4. Learned Advocate for the appellant submits that the place of removal cannot be the buyer's premises in terms of the judgment of Hon'ble Supreme Court in the case of Ispat Industries (supra). He has also relied on the judgment of Coordinate Bench at Ahmedabad in their own case vide Final Order No.11164-11165/2024 dt.04.06.2024, wherein, it was held that in case of ex-factory sale, the freight charges collected from the customers over and above the sale price is not includable in the assessable value. They are also relying on the judgment of this Bench in the case of Ion Exchange India Ltd & Ors Vs CCE & ST, Hyderabad [2019 (7) TMI 55 – CESTAT Hyderabad], wherein, it was held that buyer's premises can never be the place of removal. Similarly, in the case of Vijay Electricals Ltd Vs CCE & ST, Hyderabad [2019 (11) TMI 301 – CESTAT Hyderabad], it was held that freight and insurance charges are not required to be included in the assessable value and the same judgment was further affirmed in Vijay Electricals Ltd Vs CCE, C & ST, Hyderabad-I [2020 (7) TMI 318 – CESTAT Hyderabad]. Learned Advocate is also relying on the judgments in the case of Parasakti Cement Industries Ltd Vs CCE, Guntur [2020 (3) TMI 1430 – CESTAT Hyderabad], CCE, Allahabad Vs M/s Sarthek Enterprises Ltd [2016 (8) TMI 443 – CESTAT Allahabad] and also in the case of M/s GP Petroleums Ltd Vs CCE & ST, Gujarat [2019-TIOL-1664-CESTAT-Ahm], wherein, inter alia, it was held that even if the goods are cleared from the factory for sale on FOR basis, the place of buyer cannot be the place of removal and clearly interpreted that the factory gate will become the place of removal. Learned Advocate is also relying on certain definitions including that of 'sale' under section 2(h) of the Central Excise Act, where 'sale' means any transfer of the possession of goods by one person to another in the ordinary course of trade or business and it is not necessary to transfer the risk or ownership and therefore, bearing of risk on behalf of the buyer does not indicate that seller has retained ownership. The possession in goods is passed when the assessee hands over goods to the transporter of goods.

5. Further, they are also relying on the judgment of Hon'ble Supreme Court in the case of Ispat Industries (supra), wherein, at para 33, it was

held that goods are transferred to the buyer at the factory gate on payment of VAT.

6. Learned AR reiterates the findings of the Commissioner (Appeals) in the impugned order and submits that in the facts of the case, the Commissioner (Appeals) has rightly held that the judgment of Hon’ble Supreme Court in the case of Ispat Industries (supra) is not applicable and instead the judgments in the case of Roofit Industries (supra) and Emco Ltd (supra) are relevant. He further submits that it is settled matter that in the case of delivery on FOR basis, the amount of freight and insurance is required to be added to the transaction value and the place of delivery would be the customer’s premises. He is submitting that the issue is no longer res integra in the sense that Larger Bench of this Tribunal in the case of Ramco Cements Ltd Vs CCE, Puducherry [Interim Order No.40020/2023 dt.21.12.2023] has considered both judgments i.e., Roofit Industries (supra) and Ispat Industries Ltd (supra), to come to the conclusion that for FOR sale, place of removal would be buyer’s premises. Since in this case, the facts are clearly showing that goods were meant for delivery at the buyer’s premises, relying on the judgment in the case of Roofit Industries (supra) and Emco Ltd (supra), the demand is sustainable as rightly upheld by the Commissioner (Appeals).

7. Heard both sides and perused the records.

8. We find that the issue to be decided is whether transportation charges incurred by the appellant for transportation of the finished goods to the buyer’s premises, which is mentioned separately in the invoice, are includable in the assessable value and thereby chargeable to duty or otherwise. It has been alleged in the SCN that appellants are required to deliver goods at the buyer’s premises as per the terms of agreement with the buyer and that the risk and ownership of the goods during the transportation lies with the appellant. We find that the issue regarding inclusion of cost of transportation in the assessable value has been dealt with by various judicial forums and is covered by various judgments passed by Hon’ble Supreme Court, High Courts and Tribunals.

9. In the present appeal, the Adjudicating Authority has perused some of the sample purchase order copies furnished by the appellant and has

observed that it is nowhere mentioned that the price specified is ex-factory price. As an example, he has perused Purchase Order Nos. 3200025874, 3200025884 & 3200022309-1 placed by NDPL, where at Sl.No.1, it was mentioned that after installation, testing and commissioning of RMU, test reports shall be submitted to the site in-charge along with the bills and as per the general conditions of contract, the payment terms specify that 90% payment shall be made within one month of receipt of bills and the remaining 10% shall be released on complete installation, testing and commissioning. It was also noted that the appellants were charging separately for transportation and delivery of goods in good condition and therefore, it was considered that the ownership of goods remained with the appellant till the goods reach the buyer's premises. We have perused various terms and conditions as detailed in the OIO at para 17.2. We note that the terms and conditions of the sale, which also specifies scope of work, includes (a) supply of such items required for due performance of the entire contract to NDPL's satisfaction, (b) unloading at site, storage, preservation, security and handling of items at work places till handing over, (c) obtaining statutory clearances like electrical inspectorate, local bodies, etc., in respect of execution and handing over the works, (d) all risks comprehensive insurance for entire works for total contract value till handing over and third party liability insurance. Therefore, holistic reading of contract as a whole would indicate that sale in this case is on FOR basis and it is actually effected at the buyer's premises. In other words, point of sale is at the buyer's premises.

10. On the issue of the includability of freight, insurance, etc., there are catena of judgments passed by Hon'ble Supreme Court, High Courts and Tribunals. Essentially, one set of judgments has relied on the judgment of Hon'ble Supreme Court in the case of Ispat Industries (supra), whereas, another set of judgments has relied on the judgment of Hon'ble Supreme Court in the case of Roofit Industries (supra) and Emco Ltd (supra). While, as per Ispat Industries (supra) judgment, buyer's premises can never be the place of removal but as per the judgment in Roofit Industries and Emco Ltd (supra), the place of removal has to be determined on the basis of factual matrix including the point at which sale has actually taken place. Therefore, when the sale is clearly on FOR basis, following the judgments in the case of Roofit Industries and Emco Ltd (supra), the place of removal will be at the

buyer’s premises and obviously the cost of transportation, insurance, etc., if any, incurred by the assessee are required to be included in the assessable value. However, it is always important to decide as to what shall be the place of removal having regards to the factual matrix and relevant documents. Therefore, in case it is clearly established that the sale has not taken place at the factory and it has been effected only at the buyer’s premises then such costs would be includable in the assessable value. We find that in the case of Ramco Cements Ltd Vs CCE, Puducherry (supra), the Larger Bench of this Tribunal, inter alia, examined the issue of eligibility of Cenvat credit of Goods Transport Agency services on outward transportation. After going through catena of judgments including Hon’ble Supreme Court’s judgment in the case of Roofit Industries (supra) and Emco Ltd (supra) as well as Ispat Industries (supra), it was held that wherever the clearance of goods is against FOR contract basis, the authority needs to ascertain the place of removal by applying the judgment of Hon’ble Supreme Court in the case of Roofit Industries (supra) and Emco Ltd (supra). In the case of M/s HD Wires Pvt Ltd Vs CCGST & CE, Indore [Final Order No.57985/2024 dt.08.08.2024], the Coordinate Bench at Delhi, inter alia, examined the applicability of judgment of Roofit Industries and Emco Ltd (supra) in a similar factual matrix where the appellant had not included the freight charges in the transaction value. The Tribunal also relied on the judgment of Hon’ble Supreme Court in the case of CCE & ST Vs Ultra Tech Cement [2018 (9) GSTL 337 (SC)], to come to the conclusion that in the given set of facts, point of sale was where the ownership of goods was transferred to the buyer or customer and therefore, all the expenses incurred and collected till the buyer’s premises shall be part of the assessable value.

11. We find that both in the OIO as well as in the impugned order, based on the factual matrix, it has been brought out that the contract was on FOR basis, as thus the factual matrix was more clearly covered by the judgment in the case of Roofit Industries (supra) and Emco Ltd (supra). Similarly, we find that in the case of Principal Commissioner, Raipur Vs M/s Unique Structures & Towers Ltd [Final Order No.51254/2019 dt.24.09.2019], the factual matrix was almost identical to the present appeal. The Tribunal considered various judgments including Ispat Industries (supra), Roofit Industries (supra) and M/s Ultra Tech Cement (supra) and distinguished the

judgment in the case of Ispat Industries (supra) by observing that the findings of the Hon'ble Supreme Court were only in reference to the context of the fact that once the goods have been sold at the factory gate with an agreement to have the payment after 30 days of delivery, the amount of insurance risk as borne by the transporter is part of the transportation charges and therefore, Hon'ble Apex Court, after observing that delivery of goods in this case was post sale, the value paid for transportation including the cost of insurance cannot be part of the transaction value. Thus, placing reliance on these judgments, we find that the Commissioner (Appeals) has rightly held that in the given factual matrix, the judgments in the case of Roofit Industries (supra) and Emco Ltd (supra) are relevant and not that of Ispat Industries (supra) as clearly the price is not ex-works. We, therefore, do not find any infirmity in the impugned order passed by the Commissioner (Appeals) insofar as merit is concerned.

12. Insofar as the issue of invocation of extended period and imposition of penalty under section 11AC(1)(b) is concerned, in respect of SCNs dt.29.05.2012 and 17.01.2013, we find that the issue whether the freight charges can be included or otherwise was subject matter of various decisions of the Hon'ble Supreme Court and High Courts, Tribunals, etc., and there were different views on this issue especially in terms of the judgment of Hon'ble Supreme Court in the case of CCE Vs India Carbon Ltd [2011 (269) ELT 6 (SC)], Escorts JCB Ltd Vs CCE (supra), Prabhat Zarda Factory Ltd Vs CCE [2002 (146) ELT 497 (SC)], Aditya Birla Insulators Ltd Vs CCE [2008 (226) ELT 377 (Tri-Kol)], etc. Moreover, the Board has also to come out with certain clarificatory circular in 2018 to clarify as to how to determine the place of removal both for the purpose of allowing credit on outward transportation as well as for inclusion of outward transportation charges, etc., in the assessable value. Thus, adopting a method suitable or beneficial to appellant would be on account of their understanding of various judgments and is clearly an interpretational issue. We also find that in the facts of the case, there is no other positive evidence on record suggesting that the appellants have deliberately chosen not to pay Excise Duty on freight charges and suppressed any information with intent to evade the payment of duty. Therefore, the invocation of extended period and imposition of penalty under section 11AC(1)(b) are not sustainable. Therefore, the impugned order to the extent of invoking extended period or

imposition of penalty under section 11AC(1)(b) is not tenable and is accordingly, set aside.

13. Accordingly, Appeal allowed partly.

(Dictated and pronounced in the Open Court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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