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

Division Bench – Court No. – I

Excise Appeal No. 30076 of 2016

(Arising out of Order-in-Appeal No. HYD-EXCUS-001-APP-033-15-16 dt.23.11.2015 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

Pawan Power & Telecom Ltd
Plot No.141, IDA Bollaram, Jinnaram Mandal,
Medak District, Telangana – 502 325
......Appellant

VERSUS

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

with

Excise Appeal No. 31086 of 2017

(Arising out of Order-in-Appeal No. HYD-EXCUS-001-APP-54 & 55/17-18 dt.21.06.2017 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

Pawan Power & Telecom Ltd
Plot No.141, IDA Bollaram, Jinnaram Mandal,
Medak District, Telangana – 502 325
......Appellant

VERSUS

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

and

Excise Appeal No. 31087 of 2017

(Arising out of Order-in-Appeal No. HYD-EXCUS-001-APP-54 & 55/17-18 dt.21.06.2017 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

Pawan Power & Telecom Ltd
Plot No.141, IDA Bollaram, Jinnaram Mandal,
Medak District, Telangana – 502 325
......Appellant

VERSUS

Commissioner of Central Tax
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......Respondent

Appearance

Shri Lalit Mohan Chandna, Advocate for the Appellant.
Shri V.R. Pavan Kumar & Shri B. Sangameshwar Rao, ARs for the Respondent.

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

FINAL ORDER No. A/30181-30183/2025

Date of Hearing: 06.05.2025
Date of Decision: 16.05.2025

[Order per: A.K. JYOTISHI]

M/s Pawan Power & Telecom Ltd (hereinafter referred to as the appellant) are in appeals against the Orders of the Commissioner (Appeals) dated 23.11.2015 and 21.06.2017 (impugned orders). The appellants are manufacturers of PVC/HDPE/XLPE insulated & PVC sheathed aluminium copper cables and AAA conductors and are clearing their goods to various Electricity Boards in terms of various contracts/Purchase Orders (PO). The Department felt that since the appellants was selling their products on FOR destination basis/ for delivery at the stores of customers by road and responsibility/ liability of the appellant included packing, forwarding and payment of unloading charges/ transit insurance, etc., the ownership of the goods rests with the appellant during the transit and till the goods are delivered at the customers' premises and therefore, sale will be completed only upon the delivery of the goods at customers' site. The department has gone by various clauses of the Purchase Orders issued by buyers as detailed in the SCN dt.07.01.2014.

2. Learned Counsel for the appellant has submitted that in their case, the sale is ex-works as the price has been clearly arrived at ex-works and not on FOR destination basis. His further submissions are that the title in the goods was transferred at the factory itself, whereas, the freight charges were quoted separately as a commercial understanding with the buyer and though there is a mention of insurance to be borne by them, they had not actually paid any insurance charges because of the short distance between their factory and the destination. He has heavily relied on the judgment of Hon'ble Supreme Court in the case of CC & CE, Nagpur Vs Ispat Industries Ltd [2015 (324) ELT 670 (SC)], wherein, it was clearly held that the place of removal continues to be seller's premises, whether it is the factory gate or depot or any other place relatable to the seller and the place of removal in every case has to be only the place relatable to seller and cannot be buyer's premises even though sale may be completed at buyer's place when goods are sold on FOR destination basis. He has relied on the judgment of

Coordinate Bench in the case of Jindal Tubular (India) Ltd Vs Principal Commissioner, CGST & CE, Ujjain [2023 (4) CENTAX 3 (Tri-Del)].

3. On the other hand, learned AR has pointed out various clauses of one of the purchase orders placed by Eastern Power Distribution Company and explained that the sale was actually completed at the destination and in terms of various terms and conditions of the purchase order, it cannot be considered as ex-works sale. He has highlighted following clauses of purchase order:

> *(1) Clause 2 – The prices noted above are variable FADS and are inclusive of Excise duty &Cess, Freight & Insurance and VAT.*
>
> *(2) Clause 6 – 100% payment will be arranged on or after 30 days from the date of Form-13 i.e., receipt of material / equipment in good condition at the destination / stores duly certified by the consignee or after Approval of Test Certificates or after submission of bill in complete shape or acceptance of Performance Bank Guarantee to the extent of 10% of the contract price in a prescribed proforma from a Nationalized Bank covering a period of 2 months over and above the period of performance guarantee whichever is later. Payment for the material supplied will be made through Real Time Gross Settlement system only.*
>
> ***NOTE: i. The date of delivery would be the date on which the stores officer signs the form-13 acknowledging receipt of material at stores and certified the receipt of goods in good condition.***
>
> *(3) Clause 8 Loss or Damage*
>
> *a. Supplier is responsible for the safe delivery of the goods in good condition at destination stores.*
>
> *b. External damages or shortages that are prima facie the result of rough handling in transit or due to defective packing will be intimated within a fortnight of the receipt of the material. Internal defects, damages or shortages or any internal parts which cannot be ordinarily be detected on a superficial visual examination thought due to bad handling in transit or receipt of these articles. In either cases the damaged or defective materials should be replaced by you free of cost to the APEPDCL.*
>
> *(4) Clause 20, IT MAY BE NOTED THAT:*
>
> *a. …*
>
> *b. Delivery Free at destination store*
>
> *c. …*
>
> *d. **The ownership of the material would rest with you till they are received at destination in good condition.***
>
> *e. Freight charges shall be prepaid*
>
> *f . The materials may be duly insured at your cost*
>
> *From the above it is clear that the contract is a contract wherein the clearance of goods is against FOR basis and Transportation and Insurance are prepaid.*

4. He has also relied on various case laws including Larger Bench decision in the case of The Ramco Cements Ltd Vs CCE, Puducherry [Interim Order No.40020/2023 dt.21.12.2023], wherein, the Larger Bench has examined the judgments passed in the cases of Ispat Industries Ltd (supra), CCE, Mumbai-III Vs Emco Ltd [2015 (322) ELT 394 (SC)] and CCE Vs Roofit Industries Ltd [2015 (319) ELT 221 (SC)]. They have also relied on other judgments including the case of Principal Commissioner CGST & CE Vs Unique Structures & Towers Ltd [Final Order No.51254/2019 dt.24.09.2019 (Tri-Del)], Schneider Electric India Pvt Ltd Vs CCT, Medchal-GST [Final Order No.A/30105/2025 dt.18.03.2025 (Tri-Hyd)] and Toshiba Transmission & Distribution System India Pvt Ltd Vs CCT, Medchal-GST [2025 (3) TMI 953 – CESTAT Hyderabad].

5. Heard both sides and perused the record.

6. The core issue to be decided is whether in this case the sale is on ex-works basis or at buyer’s premises. Various arguments have been put forth by the learned Advocate including commercial understanding and confirmed ex-works price and payment of VAT to prove that the title in the goods has been transferred at the factory gate itself. However, we find from the factual matrix that the appellant has included both freight and insurance in the ex-works price for the purpose of discharging their VAT liability. On going through various clauses, it is obvious that though there is a separate ex-works price, which has been termed as fixed price and freight separately, a holistic perusal of all this terms and conditions would clearly indicate that the goods are accepted only when they reach the destination in good condition and liability for their transport including pre-payment of transport is on the appellants themselves. Therefore, in the factual matrix it is obvious that sale has got concluded only at the destination of the buyer and not at the factory gate. We also note that while the appellant has placed reliance on the judgment of Ispat Industries Ltd (supra), the department has placed reliance on various judgments of the Tribunals including Larger Bench decision in the case of Ramco Cements Ltd (supra). The issue which needs to be decided is as to what would be the place of sale in the given factual matrix. This would obviously be based on various terms and conditions and only then one can arrive at definite conclusion whether sale has taken place ex-factory or actually it is getting concluded at the destination of the buyer.

As far as various judgments are concerned, all these judgments have been considered by different Tribunals to arrive at a particular conclusion in a given factual matrix about the place of sale. In the case of Schneider Electric India Pvt Ltd Vs CCT, Medchal-GST (supra), this Bench has examined this issue in a given factual matrix. The relevant para is reproduced below:

> *"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."

7. Therefore, in view of the factual matrix of the case, as also relevant case laws cited by both the sides, we find no infirmity in the impugned orders and therefore, they are upheld.

8. Accordingly, the appeals are dismissed.

(Pronounced in the Open Court on 16.05.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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