IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
REGIONAL BENCH – COURT NO.2

Excise Appeal Nos. 378/2010 & E/642-643 of 2012

(Arising out of Order-in-Appeal No. 36-38/ST/2010 dated 16.02.2010 passed by Commissioner of Central Excise (Appeals-I), Kolkata).

M/s R. B. Agarwalla & Co.
(Village- Ankurhati P.O.- Salap, Howrah-

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Haldia,
(25, Princep Street, Kolkata-700072)

.. ...**Respondent**

APPERANCE :
None, for the Appellant
Shri B. K. Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER No...76360-76362/2025

DATE OF HEARING : 23.04.2025
DATE OF DECISION : 23.04.2025

PER R. Muralidhar :

The appellant has taken CENVAT Credit for the GTA services which have been used by them for outward transportation of their goods from their factory premises to the port of exports. Without any dispute, the goods in question have been exported. Appellant was issued three Show Cause Notices.

2. The first one was for the period January 2005 to December 2006. The second Show Cause Notice was for the period January 2007 to September 2007, and the third Show Cause Notice was issued for the period October 2007 to April 2008.

3. The Department took the view that the appellant is not eligible for taking the CENVAT Credit in terms of Rule 2(l) of the Cenvat Credit Rules 2004. After due process, the adjudicating authority confirmed the demand. On appeal, the Commissioner (Appeals) dismissed the appeals filed by the appellant. Being aggrieved, the appellant is before the Tribunal.

4. Learned Counsel submits that in the present case, for the period January 2005 to March 2008, the appellant is covered by the definition of Rule 2(l) which was prevailing prior to 31.03.2008. As per the provisions during that period, the appellant was eligible to take the CENVAT Credit for the outward transportation "from the place of removal". Therefore, he submits that irrespective of whether the 'place of removal' in this case is their factory gate or is the port, still they cannot be denied the CENVAT Credit taken by them.

5. In respect of the third Show Case Notice issued for the period October 2007 to April 2008, he submits that for the period till 31.03.2008, the provisions of Rule 2(l) as it was prevailed till 31.03.2008 would be applicable. He takes the same stand as has been taken for the earlier two Show Case Notices.

6. In respect of the last period, April 2008, the Learned Counsel submits that the issue is no more a *res integra*. He cites the case law of **Commissioner of Central Excess v. ADF Foods Ltd., decided by Gujarat High Court, V. 2021, 45 GSTL 265.**

7. In view of the above submissions, the Learned Counsel submits that, prays that their appeal may be allowed.

8. The Learned AR, appearing on behalf of the Revenue, reiterates the findings of the lower authority and justifies the confirmed demand.

9. Heard both sides and perused the appeal papers and the statutory provisions and case laws cited by both the sides.

10. I find that the definition of Rule 2(l) of Cenvat Credit Rule, 2004 was amended with effect from 1.4.2008. Prior to this date, the Rule read as under:

> "[13][(l)] "input service" means any services,-
> (i) Used by a provider of [13a][output service] for providing an output service; or
> (ii) Used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal".

11. It can be seen from the Rule that the assessee would be eligible to take the CENVAT Credit for all the input services which are used "from the place of removal".

Therefore, no case has been made out against the appellant for the period January 2005 to March 2008. On this ground itself, I set aside the impugned order and allow the appeal on merits.

12. Coming to the CENVAT Credit taken in the month of April 2008, after the amendment to Rule 2(l) of Cenvat Credit Rule, 2004, the assessee would be eligible to take the CENVAT Credit for the input

services used "up to the place of removal". The Department has taken the stand that port is not the place of removal. It has been held time and again by the Tribunals and High Courts that when the goods are exported, the port of export would be the place of removal. The Hon'ble Gujrat High Court in the case of **CCE v. ADF Food Ltd. 2021(45)GSTL-265** has held as under:

> "**3.** What had been challenged before the Tribunal in his order of Commissioner (A) allowing the refund of service tax paid on transportation charges upto the port in case of export. It had been challenged by the Revenue that the port is not the place of removal in case of export. But it is factory gate which should be construed as place of removal. Tribunal followed the decision of Larger Bench in case of *ABB Ltd.* reported in 2009-TIOL-830-CESTAT-BANG-LB = 2009 (15) S.T.R. 23 (Tribunal - LB) rejected the appeal of Revenue by holding that in case of export on FOR value, the port is place of removal and not the factory gate. It had been very candidly submitted before this Court that this Bench in Tax Appeal No. 419 of 2010 and allied appeals, the answer of this question is already given in favour of assessee and against the Revenue, where also the question proposed was availability of Cenvat credit on the service tax paid on GTA service on outward transportation of the goods beyond the place of removal in view of the definition contained in Rule 2(l) of the Cenvat Credit Rules, 2004 defining term 'input service'.
>
> **5.** The decision of the Tribunal challenged by the Revenue in the present case is largely covered by the decision of this Court given in case of *Commissioner of Central Excise and Customs* v. *Parth Poly Wooven Pvt. Ltd.* in Tax Appeal No. 419 of 2010 [2012 (25) S.T.R. 4 (Guj.)] and as rightly held by the Tribunal, the service tax paid on transportation charges upto the port in case of exports requires to be held admissible and the place of removal in case of present assessee-respondent would not be factory gate but the same would be the port. Therefore, service tax paid on the transportation charges upto the port in case of exports is rightly held by the

> Tribunal as admissible and therefore, the credit on service tax paid on outward transportation has been held to be admissible required to be upheld.
>
> **7.** In the premise above, the question raised before this Court in the present Tax Appeal is to be held in favour of assessee and against the Revenue upholding the decision of the Tribunal. Therefore, this Tax Appeal is dismissed accordingly."

13. In view of the foregoing, I set aside the impugned order and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

T.K.