IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. E/88542/14

(Arising out of Order-in-Appeal No. 536/PD/14 dated 23.04.2014 passed by Commissioner of Central Excise & Service Tax (Appeals), Mumbai)

Remi Elektrotechnik Ltd. **Appellant**

Vs.

Respondent

Commissioner of Central Excise
Thane II

Appearance:

Shri D.H. Nadkarni, Advocate for appellant
Shri S.J. Sahu, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing & Decision: 13.03.2018

FINAL ORDER NO. A/85844/2018

Per: M.V. Ravindran

This appeal is directed against order-in-appeal No. 536/PD/14 dated 23.04.2014.

2. The relevant facts in brief that arise for consideration are the appellant herein is manufacturer of instruments & equipments and filed refund claim of Rs.89,965/- on the ground that they have by mistake reversed CENVAT Credit of service

tax paid on outward transportation services during the period January 2005 to March 2008. Show-cause notice was issued for rejection of such refund claim. Adjudicating authority after following due process of law, rejected the refund claim. On appeal, first appellate authority has also recorded the reasoning that the appellant being not able to produce sales invoice or purchase order, hence the refund claim stand rejected, is correct.

3. Learned Counsel brings to my notice that during the relevant period that the service tax liability on the Goods Outward Transportation charges was under reverse charge mechanism and they have paid service tax and availed CENVAT Credit. He submits that law is settled upto 31.03.2008, CENVAT Credit can be availed on the service tax paid on the services of outward transportation of goods as per the judgement of Hon'ble Apex Court in the case of *Commissioner of Cus, CE and ST, Guntur v. The Andhra Sugars Ltd. – 2018-TIOL-45-SC-CX* and unreported judgement in the case of *Ultra Teck Cement Ltd. in Civil Appeal No.11261 of 2016.*

4. Learned D.R. on the other hand, submits that the appellant has not given required documents to conclusively prove that the refund which has been claimed pertains to the transportation of

the finished goods manufactured by them despite being informed to them to produce the said document.

5. On careful consideration of the submissions made by both sides, I find that there is no dispute as to the fact that the appellant is eligible to avail CENVAT Credit of the service tax paid on outward transportation of finished goods upto 31.03.2008. In the case in hand, the show-cause notice specifically states that the appellant had taken the credit of the service tax paid on the goods outward transportation for the period January 2005 to May 2009 and reversed part of the amount under protest as directed by the department officers. It would indicate that Revenue authorities were aware that the refund of Rs.89,965/- in respect of service tax paid on outward transportation charges. It is also on record that the appellant had produced the original GAR-7 challans under which service tax was paid by them before the Superintendent of Central Excise for verification. Reports indicate that they had discharged the amount to the Government. In such factual matrix, the finding recorded by the lower authorities that the appellant has not produced the sales invoice and purchase order to show that the service tax liability has been paid in respect of outward transportation does not hold good as the show-cause notice itself supports on a premise that the appellant had availed ineligible CENVAT Credit on the service tax paid on GTA service.

6. In view of the foregoing, I hold that the impugned order is unsustainable and liable to be set aside and I do so. Impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Order dictated in Court)

(M.V. Ravindran)
Member (Judicial)

nsk