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

APPEAL NO: E/85991/2013

[Arising out of Order-in-Appeal No: RPS/101/NSK/2012 dated 10th December 2012 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik.]

Hitesh Plastics Pvt Ltd …***Appellant***

versus

Commissioner of Central Excise, Customs & Service Tax
Nasik ***…Respondent***

Appearance:

Shri D H Nadkarni, Advocate for appellant

Shri Sanjay Hasija, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**12/06/2017**
Date of decision:	**01/05/2018**

ORDER NO: A/ 86277 / 2018

The issue in this appeal of M/s Hitesh Plastics Pvt Ltd against order-in-appeal no. RPS/101/NSK/2012 dated 10th December 2012 of Commissioner of Central Excise (Appeals), Nashik is the disallowance of CENVAT credit of ₹ 2,39,324 availed between

March 2010 and March 2011 on ‘goods transportation agency service’ utilized for outward movement of finished goods, the recovery along with interest thereon, and the imposition of penalty of like amount under section 11AC of Central Excise Act, 1944.

2. According to the original authority, and as confirmed in the impugned order, the definition of ‘input service’ in rule 2(l) of CENVAT Credit Rules, 2004 specifically restricted the availment of credit to such services as were utilized upto the place of removal.

3. Heard Learned Counsel for appellant and Learned Authorized Representative.

4. There is no doubt that the services of ‘goods transport agency’ had been availed by the appellant. Learned Authorized Representative relies upon the decision of the Tribunal in *Maharashtra Scooters Ltd v. Commissioner of Central Excise, Pune - II [2015-TIOL-2016-CESTAT-MUM]* and of the Hon’ble Supreme Court in *Commissioner of Customs & Central Excise, Nagpur v. Ispat Industries Ltd [2015 (324) ELT 670 (SC)]* which have clearly identified the place of removal.

5. According to Learned Counsel for appellant, the duty liability on finished products has been computed on the costs, inclusive of transportation up to the premises of the buyer, and that these are

clearly indicated in the purchase orders and the invoices. It is his contention that the lower authorities have failed to give adequate consideration to these aspects.

6. Undoubtedly, the intention of CENVAT Credit Rules, 2004 is to permit credit of such services as are utilized directly, or indirectly, in the process of manufacture which includes costs up to the place of removal when the liability of discharging central excise duty would arise. However, place of removal is relevant solely for determination of point of levy and for computation of the duty thereon. In view of the contention of Learned Counsel, it is quite possible that place of removal may well be the premises of the buyer and levy would include the entire costs for computation of assessable value. It is also quite apparent that this has not been considered in the proceedings before the lower authorities.

7. To enable that contention of appellant to be subject to ascertainment, the impugned order is set aside and the matter remanded back to the original authority for a fresh determination.

(Pronounced in Court on 01/05/2018)

(C J Mathew)
Member (Technical)

**/as*