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

**APPEAL NO: E/86323/2016**

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-0280-15-16 dated 26.02.2016 passed by the Commissioner (Appeals-I), Central Excise, Pune.]

Commissioner of Central Excise Pune-I — ***Appellant***

*versus*

Chevrolet Sales India Pvt. Ltd. — ***Respondent***

*Appearance:*

Shri Sanjay Hasija, Superintendent (AR), for appellant

Shri, Rajesh Ostwal, Advocate for respondent

**APPEAL NO: E/86372/2018**

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-96-17-18 dated 30.05.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune-I]

Lear Automotive India Pvt. Ltd. — ***Appellant***

*versus*

Commissioner of Central Excise Pune-II. — ***Respondent***

*Appearance:*

Shri Rajesh Ostwal, Advocate for appellant

Shri Sanjay Hasija, Superintendent (AR) for respondent

**CORAM:**

**Hon'ble Shri S.K. Mohanty, Member (Judicial)**

**Date of hearing: 13/07/2018**
**Date of decision: 11/01/2019**

**ORDER NO: A/85049-85050/2019**

*Per: S.K.Mohanty*

The issue involved in these appeals relates to denial of Cenvat Credit of Service Tax paid on the taxable services namely, Courier Agency Service/Goods Transport Agency Service for outward transportation of the finished goods for delivery at the customer’s premises. In the case of respondent-assessee M/s. Chevrolet sales India Pvt. Ltd., the appeal was allowed by the Learned Commissioner (Appeals) vide impugned order dated 26.02.2016, holding that the phrase ‘place of removal’ defined under Rule 2 of the Cenvat Credit Rules, 2004 should be read with the provisions of Section 4(3)(c) of the Central Excise Act, 1944 for ascertaining the true meaning and scope. Accordingly, it was held that since the goods were delivered at the buyer’s premises, such place should be considered as place of removal and service tax paid for outward transportation of goods should be admissible as Cenvat Credit to the manufacturer. Further in the case of appellant-assessee M/s. Lear Automotive India Pvt. Ltd., the appeal was disallowed by the Learned Commissioner (Appeals) vide impugned order dated 30.05.2017 on the ground that the appellant had failed to produce any evidence to show that the goods were delivered at the buyer’s premises and thus, the benefit of Cenvat Credit should not be available on the service tax paid for transportation of the goods. Feeling aggrieved with the above impugned orders, the assessee- appellant and the Revenue have preferred these appeals before the Tribunal.

2. The Learned Advocate appearing for the appellant/respondent submitted that cost of input service was included in the assessable value of the final product, on which excise duty liability was discharged by the assessee. Thus, he submitted that credit of service tax paid on such disputed service should be available. In this context, he has placed reliance on the decision of this Tribunal, in the case of CCE Vs. Jamuna Auto Industries Ltd.-2013 (31) STR 587 (T) and Palco Metals Ltd. Vs. CCE-2012 (280) ELT 299 (T). Further, he has also referred to the circular no. 988/12/2014-Cx dated 20.10.2014 issued by the CBEC, to state that service tax paid on GTA/Courier service for outward transportation should be allowed inasmuch as freight paid for such transportation has formed part of the price, on which duty was paid by the assessee.

3. On the other hand, the Learned DR appearing for the Revenue submitted that the issue arising out of the present dispute is no more *res integra*, in view of the recent judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Ultra Tech Cement Ltd.-2018 (9) G.S.T.L. 337 (S.C.) and the decision of this Tribunal, in the case of Endurance Technologies Pvt. Ltd. Vs. Commissioner of Central Excise, Pune I- 2018-TIOL-1481-CESTAT-MUM. Thus, he contended that the assessee should not be eligible for the Cenvat Credit in respect of service tax paid on the disputed taxable service for transportation of goods for delivery at the buyer's premises.

4. Heard both sides and perused the records.

5. I find that the issue arising out of the present appeals is no more open of any debate, in view of the judgment of Hon'ble Supreme Court in the case of Ultra Tech Cement Ltd. (supra), wherein the law is well settled that service tax paid on GTA service availed for transport of goods from place of removal to buyer's premises is not admissible for Cenvat benefit. Further, vide paragraph 12 in the said judgment, it has also been observed that if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2(l) of the Cenvat Rules and such situation cannot be countenanced.

6. In view of the above judgment of Hon'ble Supreme Court, I do not find any merits in the appeal filed by the assessee-appellant and accordingly, the same is dismissed. On the contrary, ratio of said judgment is squarely applicable for deciding the appeal in favour of Revenue. Accordingly, by setting aside the impugned order, I allow the appeal in favour of Revenue.

7. Both the appeals are disposed of in above terms.

*(Pronounced in Court on 11/01/2019)*

**(S.K. Mohanty)**
***Member (Judicial)***

*HK*