CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 1440 OF 2011

[Arising out of Order-in-Original No: 24/BR-24/Th-I/2011 dated 20th June 2011 passed by the Commissioner of Central Excise, Thane – I.]

NRC Limited
Mohone, Kalyan, Dist: Thane - 421102 ...***Appellant***

versus

Commissioner of Central Excise
Thane – I
4th Floor, Navprabhat Chambers, Ranade Road
Dadar (W), Mumbai - 400028 ***...Respondent***

APPEARANCE:

None for the appellant

Ms Anuradha S Parab, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 87131 /2021

DATE OF HEARING: 12/11/2021
DATE OF DECISION: 12/11/2021

PER: RAMESH NAIR

This appeal is directed against the order-in-original whereby the CENVAT credit on GTA service was disallowed on the ground that the appellant have availed the CENVAT credit in respect of outward transportation of the goods cleared from the factory to depot and from the factory/depot to customer.

2. The contention of Revenue is that the factory gate is the ‘place of removal’ and any GTA service availed beyond the factory gate is not admissible for CENVAT credit in terms of Rule 2(l) of CENVAT Credit Rules, 2004.

3. None appeared for on behalf of the appellant despite several notices. Therefore, the appeal is taken up for disposal. We have heard Ms. Anuradha Parab, Assistant Commissioner (AR) and also considered the written submissions filed by her.

4. On a careful consideration of the submissions made by Learned Authorised Representative and on perusal of the records we find that the appellant have made categorical submission in the grounds of appeal that the GTA service is only in respect of inward transportation of the inputs from vendors to the factory and for clearance of finished goods from factory to depot. We find that the show cause notice as well as the adjudication order has gone on the premise that GTA service on which CENVAT credit is availed pertains to outward transportation of finished goods from factory to depot and for direct sale from factory/depot to customer. In this position there is a clear contradiction in the facts cited in the show cause notice and narrated by the appellant in the grounds of appeal.

5. We find that if the GTA service in respect of receipt of inputs that will amount to inward transportation and credit is undisputably available in terms of definition of ‘input service’

under Rule 2(l) of CENVAT Credit Rules, 2004. In the case of outward transportation for clearance of finished goods from factory to depot, depot being the 'place of removal', CENVAT credit on GTA service from factory gate to 'place of removal' is clearly admissible. However, there is a dispute on the facts which is the root of the case. Therefore, at this stage, the Tribunal cannot take a conclusive view in absence of clarity on facts. Therefore, the matter needs to be reconsidered on the facts of the case that whether the GTA service on which credit was taken is for outward transportation from factory gate to the customer or it is in respect of inward transportation from vendors/suppliers of inputs place to the appellant's factory.

6. Therefore, we set aside the impugned order and remand the matter to the adjudicating authority to pass a fresh order after verifying the actual facts of the case. Needless to say that the appellant shall be given sufficient opportunity of personal hearing as well as for making their submissions before *denovo* adjudication. Being very old matter, the *denovo* order may be passed within 3 months from this order.

7. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in Open Court on 12/11/2021)

(C J Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

**/as*