CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86066 OF 2013

[Arising out of Order-in-Appeal No. BR/359/Th-I/2012 dated 03rd December 2012 passed by Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

APL Applo Tubes Ltd
M-1, Additional MIDC Kudavali
Village, Murbad, Dist. Thane-421401. … ***Appellant***

versus

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

APPEARANCE:

Shri Karthik Dedhia, Advocate for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85025/2024

DATE OF HEARING:	12/09/2023
DATE OF DECISION:	10/01/2024

PER: C J MATHEW

The issue in this appeal of M/s Apollo Tubes Ltd, arising from order[1] of Commissioner of Central Excise (Appeals), Mumbai Zone-I which reversed that of the original authority dropping proceedings initiated in five show cause notices for denial of CENVAT credit of ₹ 35,55,567 availed between February 2005 and December 2010 on the ground of ineligibility of tax paid on utilization of 'goods transportation agency service' for outward movement of manufactured goods, is the determination of scope of 'input service' in relation to domestic clearances up to March 2008 and on goods cleared for export for the period thereafter.

2. It is also submitted by the appellant that credit of ₹ 85,851 pertains to 'sales commission' chargeable to tax under 'reverse charge' for April 2008 and not to 'outward transportation' which was the cavil of the appellant-Commissioner in proceedings before the first appellate authority. Furthermore, it was pointed out that credit of ₹ 26,97,510 for the period from February 2005 to April 2008 was covered in the first of the notices and ₹ 8,58,057 in the remaining four notices.

3. According to Learned Counsel for the appellant, the first appellate authority had chosen to ignore the finding of the original authority, insofar as applicability of the decision of the Hon'ble High Court of Karnataka in *Commissioner of Central Excise & Service Tax, Bangalore v. ABB Ltd [2011 (23) STR 97 (Kar)]* is concerned, on

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[1] [order-in-appeal no. BR/359/T-I/2012 dated 4th December 2012]

erroneous interpretation and on the finding that the said judgement was not only inadequate but also unmindful of decisions of the Tribunal on the same issue. It was further pointed out that, for the subsequent period commencing from March 2009, the first appellate authority had not considered the exclusion from reversal afforded by rule 6 of CENVAT Credit Rules, 2004 as well as paragraph 8.2 of 'master circular' no. 97/8/2007-ST dated 23rd August 2007 of Central Board of Excise & Customs (CBEC), to export goods. Reliance was placed in the decision of the Hon'ble High Court of Punjab & Haryana in *Ambuja Cements Limited v. Union of India [2009 (236) ELT 431 (P&H)]* and of the Tribunal in *Commissioner of Central Excise, Rajkot v. Rolex Rings P Ltd [2008 (230) ELT 569 (Tri-Ahmd)]*.

4. Learned Authorized Representative placed reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise and ST v. Ultra Tech Cement Ltd [2018 (9) GSTL 337 (SC)]* and in *Commissioner of Customs & Central Excise, Nagpur v. Ispat Industries Ltd [2015 (324) ELT 670 (SC)]*.

5. It is evident from the decision of the Hon'ble High Court of Karnataka in *re ABB Limited,* which was affirmed by the Hon'ble Supreme Court in *Commissioner of Central Excise, Belgaum v. Vasavadatta Cements Ltd [2018 (11) GSTL 3 (SC)],* that, for the

period prior to April 2008, that coverage of 'outward transportation' within the definition of 'input service' in rule 2 (l) of CENVAT Credit Rules, 2004 is beyond dispute. It is also evident from the records that the first appellate authority deliberately preferred resort to interpretation afforded by decisions of the Tribunal over the ruling of the Hon'ble High Court. The reversal of the order of the original authority, dropping proceedings for the period prior to April 2008, by the first appellate authority is contrary to law and is, therefore, set aside.

6. That credit had been availed in relation to 'outward transportation' on export of goods for the period after March 2008 is evident from the

> *'32. Now, I turn to examine the eligibility of the assessee to avail Cenvat credit of Service Tax paid on GTA during the period from March 2009 to December 2010 covered in the Show Cause Notices at Sr.No. 1 to 4 of the table at para no 12 above. The assessee has submitted that the credit availed during the above period in dispute relates only to freight incurred on export consignments i.e. from factory to Port of shipment of the goods exported. I find that this fact is also mentioned in Para 8 of the above four Show Cause Notices. Thus the notices seeks to deny the entire Cenvat credit availed by them of the service tax paid on outward transportation of goods up to the port for export. It is alleged in the Show Cause Notice that since the definition of input service includes outward transportation upto the place of removal only, service tax paid on outward transportation*

> *beyond the place of removal i.e. from factory gate to the buyers premises cannot be taken as input service credit. Thus the issue boils down to whether the 'Port of shipment' can be considered as place of removal in respect of export consignments.'*

in the order of the original authority. This fact has not been contested in the appeal before the first appellate authority. The decisions relied upon by Learned Authorized Representative, having been rendered in the context of goods cleared for domestic consumption, would not apply to export of goods.

7. The decision of the Hon'ble High Court of Punjab & Haryana in *re Ambuja Cements Ltd* and that of the Tribunal in *re Rolex Rings P Ltd* relied upon the master circular which was called into question by the Hon'ble Supreme Court in *re Ultra Tech Cements Ltd*. However, the Tribunal in *Kennametal India Ltd v. Commissioner of Central Excise, LTU, Bangalore [2016 (46) STR 57 (Tri-Bang)]* has, by placing reliance on the specific exclusion afforded by circular dated 28th February 2015 of Central Board of Excise & Customs (CBEC), held that

> *'5. I have heard the learned Counsel for both the parties and perused the records. Learned Counsel for the appellant also submitted that vide Circular No. 999/6/2015-CX, dated 28-2-2015 the Central Board of Excise and Customs has clarified the position. In the circular at Para 6, it has been clarified as under:*

> *"6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT credit shall be determined accordingly."*

> *Further judgments relied upon by the learned Counsel for the appellant, I find that the issue is squarely covered in favour of the appellant. Both the authorities have denied the Cenvat credit on the ground that the said service is not an 'input service' as per Rule 2(l) of the Cenvat Credit Rules, 2004 because the service was utilized after the clearance of the goods from the factory. After the clarification by the Board and the judgments cited supra by the appellant, I am of the considered view that the ownership of the goods and the risk related thereto remains with the appellant up to the loading of the goods on the ship at the port of shipment. Further Section 4 of the Central Excise Act, 1944 inter alia states that the 'place of removal' is any other place from where the excisable goods are to be sold after the clearance from the factory. Thus, the 'place of removal' in case of export of goods is port of shipment. CHA services are utilized by the appellant before the goods were loaded on to the ship and therefore, the same falls within the definition of 'input services'. Therefore, keeping in view the circular of the Board and the judgments cited at bar by the learned Counsel for the appellant, I am of the view that the impugned order is not sustainable and the same is set aside by allowing the appeal of the appellant with consequential relief, if any.'*

Furthermore, Government of India in revisionary jurisdiction, while dealing with the dispute in *re Narendra Plastic Pvt Ltd*, also took the view that 'place of removal' would have to be examined for context.

8. We find that none of the decisions cited by the appellant pertains to eligibility of credit on ‘outward transportation’ of export goods. Neither do the decisions relied upon by Learned Authorised Representative exclude entitlement thereto.

9. The eligibility of credit on ‘outward transportation’ in relation to export goods has not been examined by the first appellate authority who has restricted the findings to the applicability of the decision in *re ABB Ltd* which, for the period upto March 2008, has attained finality. We are, therefore, constrained in examining the legality and propriety of the conformation of demand by the first appellate authority for the period after March 2008. This needs rectification and, for that limited purpose, we remand the matter back to the first appellate authority for rendering a finding in accordance with law as settled.

10. Accordingly, the appeal of M/s Apollo Tubes Ltd is allowed by setting aside the impugned order in full for the period prior to April 2008 and for remaining by remand to the first appellate authority as specified *supra*.

(Order pronounced in the open court on 10/01/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*