CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 87527 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/533/18-19 dated 28.02.2019 passed by the Commissioner of GST & Central Excise (Appeals), Nagpur)

Wheels India Ltd. **Appellant**
Plot No.3, MIDC, Deoli,
Wardha, Maharashtra 442 101.

Vs.

Commissioner of Central Excise, Nagpur **Respondent**
GST Bhavan, 81, Civil Lines,
Telangkhedi Road, Nagpur 440 001.

Appearance:

Shri P.R. Renganath, Advocate, for the Appellant
Shri P.K. Acharya, Superintendent, Authorised Representative for Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 08.10.2024
Date of Decision: 18.11.2024

FINAL ORDER NO. 86857/2024

Brief facts of the case are that the appellant is manufacturer of motor vehicle parts falling under Chapter 84 of Schedule to Central Excise Tariff Act, 1985. Appellant is also availing facility of cenvat credit. During the period from April 2012 to June 2017, appellant availed cenvat credit of Rs.35,67,071/- of service tax paid on GTA services which were utilized for movement of manufactured goods from the factory to the customer's premises for delivery of the goods at customer's place. It appeared to Revenue that the said cenvat credit is not admissible to the appellant. Therefore, the appellant was issued with five show cause notices covering the above stated period for recovery of cenvat credit of Rs.35,67,071/-. All the above stated five show cause notices were adjudicated through a common order-in-original dated 28.09.2018. Before the original authority, the appellant in their reply to show cause notice stated that they were removing excisable goods and the contract was for FOR destination and the property of goods remained with the manufacturer till the destination i.e. place of buyer, and the goods are sold at the premises of the buyer. They have contended that since the custody of the goods was with the manufacturer till the delivery of the goods at the purchaser's premises, the GTA service utilized from manufacturing premises to the customer's premises was input service. Learned original authority in his order-in-original has held in para 24 that service tax paid on services of outward transportation is not admissible as cenvat credit even in the situation where the goods are cleared on FOR destination basis. By holding so, he has denied the said cenvat credit and ordered for recovery of the same along with interest and penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) upheld the said order-in-original through the impugned order-in-appeal. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that learned Commissioner (Appeals) in para 11 of his order-in-appeal has reproduced the grounds of appeal before him, wherein it was stated that the invoices were FOR destination, no separate freight charges were included in the invoice, the property in the excisable goods remained with the manufacturer till the delivery to the customer and the property was transferred to the customer only at the customer's premises. Learned counsel has further submitted that after recording these grounds, learned Commissioner (Appeals) did not dispute them through his impugned order-in-appeal. He has further submitted that, therefore, it is undisputed fact that the appellant was having custody and ownership of the goods after removal from the manufacturing premises till the goods were delivered at the place of customer and the appellant was transporting those goods and was paying charges towards transportation and service tax for the said transportation on GTA services. He has further submitted that the said issue as to whether cenvat credit of service tax paid on GTA services till the goods are delivered on FOR basis at the customer's premises was subject matter of Larger Bench decision in the case of Ramco Cements Ltd. and

the same is decided by the Larger Bench through Interim Order No.40020/2023 dated 21.12.2023 and the same is reported at 2023 (12) TMI 1332 – CESTAT Chennai-LB. He has further submitted that in para 35 of the said interim order pronounced by the Larger Bench, it has been directed that cenvat credit on GTA service is admissible upto the place of removal and the place of removal is to be ascertained by applying the judgments of Hon'ble Supreme Court in the case of Emco and Roofit Industries and also by taking into consideration the decision of Hon'ble Karnataka High Court in the case of Bharat Fritz Werner and the Board circular dated 08.06.2018. He has submitted copies of the said Board circular, copy of Hon'ble Supreme Court judgment in the case of Emco Ltd. as reported at 2015 (322) ELT 394 (SC), a copy of Hon'ble Supreme Court decision in the case of Roofit Industries Ltd. as reported at 2015 (319) ELT 221 (SC) and the said decision of Hon'ble Karnataka High Court decision as reported at 2022 (7) TMI 352 – Karnataka High Court. He has further submitted that on combined reading of all these decisions and circular, the appellant is eligible for cenvat credit of service tax paid on GTA services utilized for removal of manufactured goods from factory premises upto the customer's premises when the contract is for FOR destination sale.

3. Heard the learned AR. Learned AR has relied on the Larger Bench decision in the case of Ramco Cements Ltd. (supra), Hon'ble Supreme Court decision in the case of Ultra Tech Cement Ltd. reported at 2018 (9) GSTL 337 (SC) and Hon'ble Supreme Court decision in the case of Ispat Industries Ltd. reported at 2025 (324) ELT 670 (SC) and the Board circular dated 08.06.2018 (supra). Learned AR has submitted that the cenvat credit of service tax paid on transportation of goods beyond the place of removal is not admissible.

4. I have carefully gone through the record of the case and submissions made. I note that it is undisputed fact that the appellant is under contract for delivery of the goods on FOR destination at the customer's premises and the goods remained in the ownership of the appellant till the goods reached customer's premises and that the sale takes place at the customer's premises and the property or ownership of the goods

is transferred to the customer at the customer's premises. It is settled law that cenvat credit of service tax paid on transportation of goods till the place of removal is admissible to a manufacturer. Now it is to be decided in the present case as to whether customer's premises is place of removal. I note that in the case of Roofit Industries Ltd. (supra), Hon'ble Supreme Court in para 12 has held that the charges which are to be added for arriving at the value of the excisable goods will have to be put up to the stage of the transfer of the ownership of the goods from the manufacturer to the buyer. In para 13 of the said order, it was observed that in that case the sale of goods did not take place at the factory gate of the assessee, but at the place of the buyer on the delivery of the goods. In the case of Emco Ltd., Hon'ble Supreme Court has relied on its decision in the case of Roofit Industries Ltd. (supra). Further, in para 4 of the said CBEC circular dated 08.06.2018 it has stated that in case the sale is for FOR destination where the ownership and risk in transit remained with the manufacturer till the goods are accepted by the buyer on delivery and till such time of delivery the seller alone remains the owner of the goods retaining the right of disposal, then the place of removal is buyer's premises. In the present case the fact on record is that the ownership of the goods remained with the appellant till such time the goods were delivered at the buyer's premises. Therefore, in the present case the place of removal is buyer's premises. It is settled law that input service credit is admissible upto the place of removal. Therefore, in the present case the appellant was eligible for the said cenvat credit.

5. I, therefore, set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 18.11.2024)

(Anil G. Shakkarwar)
Member (Technical)

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