CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89655 of 2013

(Arising out of Order-in-Original No. 57 to 63/MAK (57 to 63) COMMR/RGD/13-14 dated 29.08.2013 passed by the Commissioner of Central Excise, Raigad)

M/s. Castrol India Ltd. **.... Appellant**
B/201, Silver Utopia,
Cardinal Gracious Road, Chakala,
Andheri East, Mumbai-400 069.

Versus

Commissioner of Central Excise, Raigad **.... Respondent**
4th floor, Utpad Shulk Bhavan,
Plot No. 1, Sector-17, Khandeshwar,
New Mumbai- 410 206.

Appearance:

Shri Mihir Deshmukh, Advocate for the Appellant

Shri Mahesh Patil, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87613/2024

Date of Hearing: 03.06.2024
Date of Decision: 03.06.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged in the manufacture of lubricating oil and allied preparations, falling under Chapter 27 and 34 of the Central Excise Tariff Act, 1985. The appellants avail CENVAT Credit of Central Excise duty paid on the inputs and Service Tax on the input services. During the disputed period from June 2005 to March 2008, the appellants had availed CENVAT Credit of service tax paid on secondary freight services, incurred for transportation of the final product to the depots/consignment agent's premises, for onward transportation to the final customers. Availment of CENVAT credit on such freight element was disputed by the Department on the ground that as per the definition of input service, contained in Rule 2(l) of the CENVAT Credit Rules, 2004, only the services availed for clearance of final product 'up to the place of removal' should be considered as input service and not otherwise. Since, the appellants had availed CENVAT Credit on the freight element beyond the place of removal i.e., factory gate, the Department had initiated proceedings against the appellants to recover the wrongly availed CENVAT Credit in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944. The show cause notices issued by the Department were adjudicated upon vide the Order-in-Original dated 29.08.2013 (for short, referred to as 'the impugned order'), wherein, learned adjudicating authority has confirmed the proposals made in the show cause notices and also imposed penalties on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. From the appeal memorandum filed in 'Form ST-5' by the appellants, we find that the period involved in this appeal is from May 2005 to March 2008. The 'input service' definition contained in Rule 2(l) *ibid*, included the activity of clearance of the final product from the place of removal, as one of the eligible services, for the purpose of availment of CENVAT credit of service tax paid on such service. The said definition was amended by Notification No.10/2008-C.E.(N.T.) dated 01.03.2008 (with effect from 01.04.2008). The effect of such amendment was that in place of the phrases 'from the place of removal', the phrases 'upto the place of removal' was inserted in the said definition clause. On reading of both the un-amended and amended definition of input service, it transpires that up to the period 31.03.2008, the assessee was permitted to avail CENVAT credit of service tax paid on the outward transportation of goods, irrespective of the place, to which the goods are destined to. However, with effect from 01.04.2008, the place of transportation was restricted up to the place of removal. The term 'place of removal' has not been defined in the CENVAT statute and as such, the said definition contained in clause (c) of Section 4(3) of the Central Excise Act, 1944 is required to be considered for ascertaining the meaning

of such term provided in the CENVAT statute. The said definition contained in the Central Excise statute is quoted herein below:

"place of removal" means—

> *(i) a factory or any other place or premises of production or manufacture of the excisable goods;*
> *(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;*
> *(iii) a depot, premises of consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from their factory,*

from where such goods are removed."

4. The appellants have stated that their case falls under the un-amended definition of 'input service' inasmuch as the period of dispute is from May 2005 to March 2008. We are in agreement with the submissions made by the appellants that the transportation cost including the service tax element thereon, incurred by them for transportation of goods up to the buyer's premises, should be considered as input service, as the CENVAT statute, at the relevant point of time, provided for transportation 'from the place of removal', for consideration, as an input service for the benefit of CENVAT credit. However, on perusal of the impugned order at paragraph 7, we find that the show cause notices dated 31.03.2009, 25.03.2010 07.02.2011, 19.02.2011 and 14.09.2012 referred therein, had mentioned the period of dispute from April 2008 to March 2013. Since, the phrases 'from the place of removal' were amended to consider transportation 'up to the place of removal' (w.e.f. 01.04.2008), we are of the view that such aspect has to be looked into by the original authority for ascertaining the fact, as to whether, the transportation services availed by the appellants should qualify for consideration of the phrase 'place of removal', as per the definition contained in Section 4(3)(c) *ibid*. Therefore, the matter is required to be remanded to the original authority only for such limited purpose. On examination of documents/records, if the original authority is satisfied that the transportation of goods is not confirming to the phrases 'place of removal', as defined in the Central Excise statute, then the appellants should not be eligible for taking CENVAT credit of the service tax amount paid on such transportation activity for the period from April 2008 onwards. However, the appellants should be eligible for the CENVAT benefit of service tax paid on the GTA service for the period, prior to 01.04.2008.

5. In view of the foregoing discussions, the appeal is allowed by way of remand to the original authority for *de novo* adjudication, in line with the observations made in the preceding paragraph. Needless to say that opportunity of personal hearing should be granted to the appellants before deciding the issue afresh.

6. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM