# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## MUMBAI
## WEST ZONAL BENCH

**Excise Appeal No. 86628 of 2019**

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-611/18-19 dated 22.01.2019 passed by the Commissioner of GST & Central Tax (Appeals-I), Pune)

**M/s Varroc Lighting Systems (India) Pvt. Ltd.** .....**Appellant**
S.No. 270, Village: Mann,
Hinjewadi, Pune

*VERSUS*

**Commissioner of Central Excise & Service Tax, Pune I** .....**Respondent**
41-A, ICE House, Pune

WITH

**Excise Appeal No. 86426 of 2022**

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/132/2020-21 dated 25.03.2021 passed by the Commissioner of Central Excise & CGST (Appeals), Nashik)

**M/s Varroc Engineering Pvt. Ltd.** .....**Appellant**
Plot no. b-22/1, Five Star Indl. Area,
MIDC Shendra, Auranagabad

*VERSUS*

**Commissioner of Central Excise & CGST, Nashik** .....**Respondent**
Kendriya Rajaswa Bhawan,
Gadkari Chowk, Nashik

**APPEARANCE:**

Shri Prakash Shah, Senior Advocate with Shri Vikas Poojari, Advocate for the appellant
Shri Ranjan Kumar (AR) for the respondent

**CORAM:**
**HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER No: 85217-85218/2026**

DATE OF HEARING : 31.07.2025
DATE OF DECISION : 29.01.2026

**Per: AJAY SHARMA**

These appeals have been filed challenging the Orders-in-appeal dated 22.1.2019 & 25.3.2021 respectively by which the appeals filed by the appellants were rejected by the Commissioner (Appeals). Since the issue involved is identical, therefore I am deciding both the Appeals by this common order.

2. The facts are stated in brief as follows. The appellants are engaged in the manufacture of excisable goods namely lighting system products such as head lamps, tail lamps, fog lamps and were availing Cenvat credit of the duty paid on Inputs & Capital goods. They were also registered under the service tax for services such as Goods Transport Agency (GTA) services, business support service, works contract service etc. and were discharging service tax liability. For input services, they were availing Cenvat credit in terms of the provisions of Cenvat Credit Rules, 2004.

3. During the course of audit it had been observed by the department that the appellants had availed Cenvat Credit on the service tax paid on Outward transportation i.e. GTA under reverse charge mechanism which, according to them, was

beyond the '*Place of Removal'* as defined under the Cenvat Credit Rules, 2004 and hence not covered in terms of definition of '*input service'* u/r. 2(l) ibid.

4. Two show cause notices issued to the appellants, denying the Cenvat credit of ₹22,44,852/- and ₹34,26,420/- for the periods October, 2014 to June, 2017 and August, 2016 to June, 2017 respectively and proposing its recovery alongwith interest and penalty, culminated in the Orders-in-Original dated 9.10.2018 & 10.6.2020 respectively confirming the recovery of the inadmissible Cenvat credit with interest and equal penalty. The Appeals filed by the Appellants before the Commissioner (Appeals) were rejected, leading to the present Appeals.

5. Learned Senior Counsel appearing for the appellants submit that the goods were sold to the customers on '*FOR destination basis*', under which the appellants bore the freight and transportation charges up to the customer's premises. It is contended that in such contracts, the sale is completed only upon delivery of goods at the buyer's premises and the risk of loss or damage to the goods remains with the seller till such delivery. Learned Senior counsel further submits that the freight charges form part of the assessable value and excise duty was paid on a value inclusive of transportation charges, therefore, the "place of removal" in the present case is the buyer's premises and not the factory gate. Consequently, the GTA service availed for outward transportation up to the customer's

premises qualifies as *'input service'* u/r. 2(l) of the Cenvat Credit Rules, 2004, and the Cenvat credit was rightly availed.

6. Per contra, the learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned orders and prayed for dismissal of appeals. He submits that as per the definition of *'place of removal'* and in light of various CBEC Circulars issued from time to time, credit of service tax paid on outward transportation beyond the factory gate is not admissible. Reliance was also placed by learned Authorised Representative on the judgment of the Hon'ble Supreme Court in the matter of *CCE & ST v. Ultra Tech Cement Ltd., 2018 (9) GSTL 337 (SC)*.

7. I have heard learned Senior Counsel for the appellant and learned Authorised Representative on behalf of revenue and perused the case records including written submission and case laws placed on record. The sole issue for determination is whether the appellant is entitled to avail Cenvat credit of service tax paid on GTA service used for outward transportation of finished goods from the factory gate up to the customer's premises when the sale is on FOR destination basis. Learned Commissioner (Appeals), while rejecting the appellant's claim, has proceeded on the premise that factors such as who bears the freight charges or whether the assessable value includes transportation charges are irrelevant for determining the *'place of removal'*. In my considered view, this approach does not

reflect the correct legal position. He was mainly influenced by circulars of 2014 and 2015 issued by CBEC and also relied upon the decision of the Hon'ble Supreme Court in the matter of *Ultra Tech Cement Ltd. (supra)* while rejecting the appeals.

8. Identical issue came up for consideration before the Larger Bench of the Tribunal in *M/s. The Ramco Cements Ltd. vs. CCE, Puducherry; 2023(12) TMI 1332- CESTAT Chennai- LB*, wherein the Larger Bench, after comprehensively examining the statutory provisions, the decision of the Hon'ble Supreme Court in *Ultra Tech Cement Ltd. (supra) on the issue of admissibility of Cenvat credit on GTA service i.e. outward transportation of finished goods upto the place of delivery in the light of definition of input service u/r.2(l) ibid* and the circulars issued by CBEC from time to time, has held that '*in a case where clearance of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgments of the Supreme Court in Emco and Roofit Industries, the decision of Karnataka High Court in Bharat Fritz Werner, and the Circular dated 08.06.2018 of the Board to determine the admissibility of Cenvat Credit on the GTA service upto the place of removal'.*

9. It is not disputed by Revenue that the sales were on FOR destination basis. As per the invoices produced it is clear that the freight element was included in the sale value and the excise duty was discharged on the value inclusive of freight. The freight charges borne by the appellant has also not been disputed.

10. Recently the same issue was examined by this Tribunal in the matter of *U.B. Stainless Ltd. vs. Commr. CGST & CE; 2025(1) TMI 1319- CESTAT MUMBAI* wherein after analyzing the law laid down by the Hon'ble Supreme Court in *Ultratech Cement Ltd. (supra)* and the circulars issued by CBEC from time to time upto 2018, it was held where the sale is on FOR destination basis and ownership and risk remain with the seller till delivery, the buyer's premises constitutes the 'place of removal' and not the factory gate. Consequently, the credit of service tax paid on GTA service for outward transportation upto such place of removal was held to be admissible. The relevant paragraphs of the said decision are extracted as under:-

> *"xxx xxx xxx*
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> *5. According to the learned Counsel for the appellant, the terms of purchase order or the invoice concerning the transaction between the appellant and the purchaser, made it clear that the appellant was under obligation to deliver the goods upto the customer's premises and ownership in the goods gets transferred only at the customer's premises and the risk during the transit from the factory upto to the customer's premises i.e. the destination point, was borne by the appellant. He further submits that the freight charges also form part of the price of finished products and no separate freight was charged by the appellant. According to learned Counsel, as per CBEC circulars dated 23.8.2007 and 20.10.2014 respectively in the instant matter the customer's premises is to be treated as 'place of removal' and therefore the lower*

*authorities erred in denying the credit in issue to the appellant. Learned Counsel also submits that in normal course of business when the goods are sold at factory gate or from the depot, ownership of goods transferred from the factory or depot as the case may be and in such cases the 'place of removal' is the factory gate or the depot. Whereas where the manufacturer was under contractual obligation to deliver the goods at the customer's premises, the ownership of the goods and property get transferred to the customer only on delivery of goods at the customer's premises and in such case, the customer's premises is to be treated as the 'place of removal'.*

*6. 'Place of removal' was not defined under Cenvat Credit Rules initially and w.e.f. 11.7.2014, the term 'place of removal' has been added under Rule 2 (qa) ibid which inter alia includes "------a depot, premises of a consignment agent or any other place or premises from where the excisable goods are sold after their clearance from the factory."*

*7. While rejecting the claim of the appellant, the authorities below have also referred the law laid down by the Hon'ble Supreme Court in the matter of Commissioner of Central Excise & S.T. vs. Ultratech Cement;2018 (9) GSTL 337 (SC) and the circular dated 08.06.2018 issued by the CBEC as well. I have gone through the aforesaid decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court while allowing the appeal filed by Revenue therein has recorded the finding that the credit has been allowed to the appellant relying on Board's circular dated 23.08.2007 for a post amendment case while applying the amended definition of 'input service', which could not have been done. The* *relevant extracts of the judgement of the Hon'ble Supreme Court are as under:-*

> *11………. However, the important aspect of the matter is that cenvat credit is permissible in respect of 'input service' and the Circular relates to the unamended regime. Therefore, it cannot be applied after amendment in the definition of 'input service' which brought about a total change. Now, the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal. It is this amendment which has made the entire difference. That aspect is not dealt with in the said Board's circular, nor it could be.*
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> *12. Secondly, if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2 (l) of Rules, 2004 and such a situation cannot be countenanced."*

*8. Subsequent to the decision of Hon'ble Supreme Court in the matter Ultratech Cement (supra), Board issued a circular dated 8.6.2018 considering the law laid down by the Hon'ble Supreme Court on the issue and clarified the position of law relevant to 'place of removal'. Sum and substance of the said circular is that the past cases to be decided by the authorities on the facts of each case after taking into consideration various judgements of Hon'ble Supreme Court referred to in that circular.*

*9. On similar issue, Hon'ble Karnatka High Court in the matter of Bharat Fritz Werner Ltd. vs. CCT, Bangalore; 2022 (66) GSTL 434 (Kar.) after considering the decision of Hon'ble Supreme Court in the matter of Ultratech Cement (supra) and also the circular dated 8.6.2018, has held that from the facts of the case, it is clear that the title of the goods has passed on from seller to the buyer only on the place of destination,* *which is the address of the buyer. In the said decision, 'place of removal' has been held to be buyer's premises.*

*10. Similarly, Larger Bench of the Tribunal in Central Excise Appeal No.40575/2018 titled as M/s.The Ramco Cements Limited vs. The Commissioner of Central Excise, Puducherry on similar issue, vide Interim Order No.40020/2023 dated 21.12.2023 has held as under:-*

> *"35. In the result, in a case where clearance of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgements of the Supreme Court in Emco and Roofit Industries, the decision of the Karnataka High Court in Bharat Fritz Werner, and the Circular dated 08.06.2018 of the Board to determine the admissibility of CENVAT credit on the GTA service upto the place of removal."*

*In the case of FOR destination sale such as in the matters of CCE, Mumbai vs.Emco Ltd.;2015 (322) ELT 394 (SC) and CCE vs.M/s.Roofit Industries Ltd.,2015 (319) ELT 221 (SC) where the ownership, risk in transit remained with the seller till the goods are accepted by buyer on delivery and till such time seller alone remained the owner of the goods, benefit to avail Cenvat credit has been extended by the Hon'ble Supreme Court.*

*11. Now coming to the facts of the present case. The authorities below have recorded that they did not find any documentary evidence to establish that the transfer of property had taken place on reaching premises of buyer. I have seen purchase orders and tax invoices placed on record by the appellant as annexures to the appeal and noticed that no separate amount has been charged by the appellant from its customer for delivery of the goods upto the customer's place. Purchase orders contained terms like 'Freight: paid by the supplier', 'Freight: inclusive' or 'Freight:N.A;. In the tax invoices and the challans, the mode of despatch has*

> *been mentioned as 'by road' without reference to any separate amount of freight or transportation. Learned Counsel drew my attention to various certificates issued by different customers of the appellant which clearly mentioned about the contractual obligation on the part of appellant to deliver the goods at customer's premises at its own cost and that no separate charges were paid to the appellant for transportation and also that sales prices are inclusive of delivery upto the customer's premises.*
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> *12. Taking into consideration of the entire documentary evidence produced on record on behalf appellant, the law laid down by the Hon'ble Supreme Court and the decision of the Hon'ble High Court, I am of the considered view that in the facts of the case herein, 'place of removal' is the premises of buyer and not the factory gate of the appellant. Therefore, the appellant is entitled to take credit of Service Tax paid on GTA service for outward transportation of the goods. The impugned order is accordingly set aside and the appeal filed by the appellant is allowed."*

In this decision (supra) the law laid down by the Hon'ble Supreme Court in *Ultratech Cement Ltd. (supra)* has also been discussed in detail.

11. It is also pertinent to note that none of the aforesaid decisions (supra) have been stayed or set aside by any higher judicial forum.

12. In view of the foregoing discussions and settled legal position I am of the view that, in the facts and circumstances of

the present case, the customer's premises constitutes the *'place of removal'.* Accordingly, the GTA service availed for outward transportation of finished goods up to the customer's premises qualifies as 'input service' under Rule 2(l) ibid. The appellant has therefore rightly availed Cenvat credit of service tax paid on GTA services.

13. Accordingly the impugned orders are set aside by allowing the appeals with consequential relief if any, in accordance with law.

(Pronounced in open Court on 29.01.2026)

**(Ajay Sharma)**
**Member (Judicial)**

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