



आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),



केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद 380015.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलीफैक्स 07926305136

DIN : 20220264SW000005780D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXD/43/2021 / 6134 - 38
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-99/2021-22**
दिनांक Date : **09-02-2022** जारी करने की तारीख Date of Issue 14.02.2022
- आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original No. **Kalol/DC/D.Khatik/33/CEX/2020-21** दिनांक: **15.02.2021**
issued by Deputy Commissioner, CGST & Central Excise, Division Kalol, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address:

Appellant : The Deputy Commissioner,
CGST, Division Kalol, Gandhinagar
2nd Floor, Janta Super Market, Kalol-382721

Respondent: M/s Ranasariya Poly Pack Pvt Ltd
Plot No. 727/C, Village-Moti Bhoyan,
Kalol-Khatraj Road, Taluka-Kalol,
Dist-Gandhinagar

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौधी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2ndमाला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (10) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

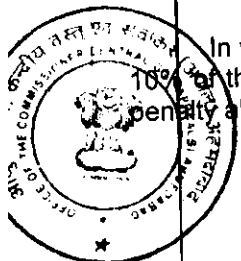
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xiii) amount determined under Section 11 D;
- (xiv) amount of erroneous Cenvat Credit taken;
- (xv) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by the Deputy Commissioner, Central GST & Central Excise, Kalol Division, Commissionerate- Gandhinagar (hereinafter referred to as the appellant), on the basis of Review Order No. 01/2020-21 dated 28.04.2021 passed by the Commissioner, Central GST & Central Excise, Gandhinagar Commissionerate in terms of Section 84 of the Finance Act, 1994, against Order in Original No. KALOL/DC/D.KHATIK/33/CEX/2020-21 dated 15.02.2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST & Central Excise, Kalol Division, Commissionerate- Gandhinagar [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Ranasariya Poly Pack Private Limited, Plot No. 727/C, Village : Moti Bhoyan, Kalol-Khatraj Road, Taluka : Kalol, District : Gandhinagar [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that the respondent was issued a periodical show cause notice bearing F.No. ARII/KLL/SCN/Ranasaria/2018-19/37 dated 13.07.2018 (for the period July, 2016 to June, 2017) in terms of Section 11A (7A) of the Central Excise Act, 1944 for wrong availment of cenvat credit amounting to Rs.7,84,718/- on Outward Freight and Courier Services beyond the place of removal on the grounds that the same did not qualify the test of input services as defined under Rule 2 (1) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). The said SCN was adjudicated vide the impugned order wherein the adjudicating authority allowed the cenvat credit in respect of 'Outward Freight, Travelling and Courier Services' and dropped the proceedings initiated against the respondent.

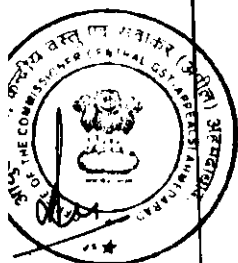
3. Being aggrieved with the impugned order, the appellant department has filed the instant appeal on the following grounds:

- i) The term 'place of removal' has been defined under Section 4 of the Central Excise Act, 1944 which provides for valuation of excisable goods. Earlier, the definition of place of removal was not present in



the CCR, 2004. Rule 2 (t) of the CCR, 2004 provided for assignment of the definitions of words (used but not defined in the CCR, 2004) from the Central Excise Act, 1944 or the Finance Act, 1994. From a plain reading, it is clear that if the goods are removed from the manufacturer's premises, then the place of removal would be the manufacturer's factory gate and not the buyer's premises, as arrived at by the adjudicating authority.

- ii) In the case of Escorts JCB Limited Vs. Commissioner of Central Excise, Delhi-II – 2002 (146) ELT 31 (SC), the Hon'ble Supreme Court held that the delivery of goods to the carrier is prima facie delivery of goods to the buyer. Even though the transit insurance was in the name of the manufacturer, the risk and rewards of the goods were on the buyer from the time the goods left the factory. Thus, the ownership of goods being transferred to the buyer at the factory gate, the factory gate would be the place of removal.
- iii) The above principle was upheld in the case of Prabhat Zarda Factory Ltd Vs. Commissioner of Central Excise – 2002 (146) ELT 497 (SC). Consequently, the CBIC issued Section 37B Order No.59/1/2003-CX dated 03.03.2003 to clarify that the place of removal would have to be determined based on this principle for the purpose of valuation of goods. The CBIC also issued Circular No. 97/8/2007-ST dated 23.08.2007 to provide clarity on eligibility of cenvat credit on outward transportation of goods.
- iv) The definition of place of removal was inserted in the CCR, 2004 vide Notification No. 21/2014-CE (NT) dated 11.07.2014. In light of the amendment, the CBIC issued Circular No.988/12/2014-CE dated 20.10.2014 and stated that the place of removal has to be ascertained in terms of the provisions of the Central Excise Act, 1944.
- v) The Hon'ble Supreme Court also analysed the place of removal in case of FOR sales in the case of Roofit Industries Limited – 2015 (319) ELT 221 (SC) and Emco Limited – 2015 (322) ELT 394 (SC). In these cases, the Hon'ble Supreme Court held that in case of FOR sales, since the responsibility of the goods was of the manufacturer till delivery to the buyer's premises, the transfer of property in goods



to the buyer happens at the buyer's premises and not at the factory gate. Thus, the place of removal would be the buyer's premises.

- vi) The Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Ispat Industries Limited – 2015 (324) ELT 670 held that the place of removal has to be with reference to the manufacturer of the goods and not the buyer. Thus, the Apex Court held that the buyer's premises can never be the place of removal for a manufacturer.
- vii) The Hon'ble Supreme Court decided the eligibility of Cenvat Credit on outward transportation in the case of CCE Vs. Ultratech Cement Limited – 2018 (9) GSTL 337 (SC) and held that w.e.f. 01.04.2008, cenvat credit of outward transportation from the place of removal to the buyer's premises would not be eligible. The review petition filed by Ultratech Cement Limited was dismissed on 24.04.2018 - 2018 (13) GSTL J101 (SC).
- viii) The adjudicating authority has while passing the impugned order relied upon judgments, which are prior to the judgment of the Hon'ble Supreme Court in the case of Ultratech Cement Limited. The adjudicating authority has erred in not considering the said judgment of the Hon'ble Supreme Court and has preferred to rely upon OIA No. AHM-EXCUS-003-APP-114-15-16 dated 22.03.2016, which was issued prior the the judgment of the Supreme Court.
- ix) The adjudicating authority has inappropriately dropped the demand and by allowing the cenvat credit of Outward Freight has committed gross error of law.

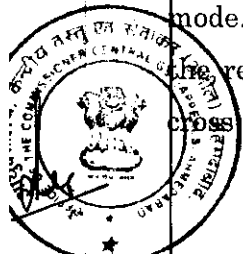
4. The respondent filed their cross-objections on 28.12.2021, inter-alia, submitting that :

- The SCN, which was adjudicated vide the impugned order, was a periodical SCN which related to the subsequent period. They were earlier issued two SCNs on similar issue which was adjudicated by the Additional Commissioner, Central Excise and Service Tax, Ahmedabad-III and it was held that credit is admissible on outward transportation.



- Another SCN against which they had filed appeal before the Commissioner (Appeals), Ahmedabad was decided in their favour vide OIA No. AHM-EXCUS-003-APP-54/2021-2022 dated 11.11.2021.
- They had submitted before the adjudicating authority that they had sold the goods on FOR basis and the sale price is inclusive of transportation and other charges. In support they had submitted copy of invoices and purchase orders. They had also submitted that service tax was borne and paid by them under reverse charge o the outward transportation.
- The matter is already decided in their favour in respect of the earlier SCN as well as by the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-003-APP-54/2021-2022 dated 11.11.2021.
- The Review Order passed by the Commissioner is not signed by him and, therefore, does not have any validity and should not be accepted. The Review Order also does not have DIN and hence should not be accepted.
- The goods under reference have been sold to customers at FOR destination. The sale price is inclusive of transportation and other charges. Whatever damages and risk of the goods upto the delivery of the goods to the customer's premises is to be borne by them. The ownership of the goods delivered and handed over to the customer's at their premises is theirs. Therefore, it can very well be said that the goods have been sold at the customer's premises. Therefore, the place of removal is the place where the goods are delivered to the customers.
- The eligibility to avail credit of service tax paid on the transportation during removal of excisable goods would depend upon the place of removal. They claim that the sale has taken place at the destination point because of the terms used in the sale contract/agreement. This fact is not disputed by the adjudicating authority in his findings. Therefore, the credit of the service tax paid on transportation upto such place of sale would be admissible.

5. Personal Hearing in the case was held on 28.12.2021 through virtual mode. Shri Pradeep G. Tulsian, Chartered Accountant, appeared on behalf of the respondent for the hearing. He reiterated the submissions made in the cross objection.



6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and materials available on records. The issue before me for decision is whether the respondent are eligible for Cenvat Credit in respect of the service tax paid on Outward Freight in connection with transportation of their finished goods and courier/travelling expenses. I find that the present appeal arises out of a periodical SCN, covering the period from July, 2016 to June, 2017 issued to the respondent under Section 11A (7A) of the Central Excise Act, 1944. I further find that the respondent was also issued another periodical SCN dated 11.08.2016 for the period from August, 2015 to June, 2016, which was decided against them by the adjudicating authority. On appeal by the present respondent, this authority had decided the case in favour of the present respondent vide OIA No. AHM-EXCUS-003-APP-54/2021-2022 dated 11.11.2021. The relevant part of the said OIA is reproduced as under :

“5.3 In terms of the definition of input service as per Rule 2 (l) of the CCR, 2004, Cenvat credit is admissible in respect of the service used in relation to the clearance of the finished goods ‘upto the place of removal’. It, therefore, is relevant to determine the place of removal. The appellant have submitted copies of some purchase orders issued by their buyers and on examination of the same, I find that terms of delivery are FOR buyers destination. The appellant have also submitted copies of their sales Invoice corresponding to the purchase orders and on comparing these documents, I find that the price in the invoices are as per the purchase orders, which is price on FOR buyers destination basis. Therefore, there is no ambiguity as regards the fact that the goods sold by the appellant are on FOR buyers destination. However, the adjudicating authority, has rather than accepting the facts evident from these documents rejected the appellant’s contentions on the frivolous grounds that there is no break up of the price showing the basic price, freight and other charges, if any.

5.4 During the appeal proceedings, the appellant have submitted five sets of purchase orders and corresponding sales invoice. I have perused these documents and find them to be as under :



- (I) Purchase Order No. JSL/Su/2015-16/PO 846 dated 22.12.2015 of M/s.Jamkhandi Sugars Ltd, Bagalkot, Karnataka as per Freight is stated as FOR – JSL Factory site at Hirepadasalagi. Part of the goods against this purchase order were cleared under Invoice No. 1006/04-01-2016. I find that the rate per piece in the invoice and purchase orders is the same.
- (II) Purchase Order No. MSL/PU1/RC-1/844/15-16 dated 18.11.2015 of M/s.Madras Sugars Limited, Coimbatore as per which the delivery point is stated as FOR Thirukovilur. The goods against this purchase order were cleared under Invoice No. 803/19-11-2015. I find that the rate per piece in the invoice and purchase orders is the same.
- (III) Purchase Order No. PU3/RC-1/923/15-16 dated 17.11.2015 of M/s. Bannari Amman Sugars Limited, Coimbatore as per which the delivery point is stated as FOR Kollegal. The goods against this purchase order were cleared under Invoice No. 800/10-11-2015. I find that the rate per piece in the invoice and purchase orders is the same.
- (IV) Purchase Order No. PU2/RC-1/2710/15-16 dated 22.03.2016 of M/s. Bannari Amman Sugars Limited, Coimbatore as per which the delivery point is stated as FOR Nanjangud. Part of the goods against this purchase order were cleared under Invoice No. 1304/29-03-2016. 1044/10-01-2016 and 1034/09-01-2016. I find that the rate per piece in the invoice and purchase orders is the same.
- (V) Purchase Order No. 4500165108 dated 30.12.2015 of M/s.Godavari Biorefineries Limited, Bagalkot, Karnataka as per which the delivery is at their factory premises in Bagalkot Karnataka. Part of the goods against this purchase order were cleared under Invoice No. 1288/18-03-2016. 1044/10-01-2016 and 1034/09-01-2016. I find that the rate per piece in the invoice and purchase orders is the same.

5.5 Hence, it is apparent that the terms of sale in respect of consignments in question are FOR sales at buyer's place. Since the sale of the finished goods by the appellant is on FOR buyers destination, the place of removal would be the buyers destination, where the ownership of the goods changes from the appellant to the buyer. Therefore, the services used for clearance of the finished goods till the buyers destination would qualify as input service as per Rule 2 (I) of the CCR, 2004 discussed above.



5.6 I find that the adjudicating authority has in the impugned order referred to the decision in the case of CCE vs. Ultratech Cement Ltd reported in 2018 (9) GSTL 337 (SC) wherein the Hon'ble Supreme Court had held that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible.

5.7 I find that subsequent to the above judgement of the Hon'ble Supreme Court, the Hon'ble Tribunal, Ahmedabad had in the case of Sanghi Industries Ltd Vs. Commissioner of C.Ex., Kutch (Gandhidham) reported in 2019 (369) ELT 1424 (Tri.-Ahmd), involving the same issue, held at para 5 of their judgement that :

"From the above judgment it is thus clear that till the goods are handed over to the buyer, the cost is borne by the assessee or in other words where the goods are cleared on FOR basis the freight paid on outward transportation would qualify as "Input service". As regard reliance placed upon by the Revenue on the judgment of the Apex Court in case of *Ultratech* supra, we find that the Hon'ble Supreme Court was concerned only with the "place of removal" but did not go into the aspect of "Point of sale" or the FOR price destination issue. Hence the said judgment is not applicable in the facts of the present case."

5.8 Consequently the Hon'ble Tribunal held that :

"8. In view of our above findings we hold that the appellants are eligible for the credit of service tax paid on outward freight. Accordingly, the impugned order is set aside. We allow the appeals with consequential reliefs. If any MA (ORS) also stand disposed of."

5.9 The judgement in the above case is that of the jurisdictional Tribunal at Ahmedabad. Further, the order of a higher appellate authority is binding on me. Therefore, following the principles of judicial discipline, I follow the decision of the Hon'ble Tribunal in the case cited supra.

6. I am, therefore, of the considered view that the adjudicating authority has erred in denying Cenvat Credit to the appellant. Consequently, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant."


7. I find that the departmental appeal has been filed by primarily relying upon the judgment of the Hon'ble Supreme Court in the case of CCE Vs. Ultratech Cement Limited - 2018 (9) GSTL 337 (SC). In this regard I find



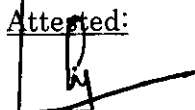
that the jurisdictional Tribunal at Ahmedabad had in the case of Sanghi Industries Ltd Vs. Commissioner of C.Ex., Kutch (Gandhidham) reported in 2019 (369) ELT 1424 (Tri.-Ahmd) held at para 5 of their judgment that "*As regard reliance placed upon by the Revenue on the judgment of the Apex Court in case of Ultratech supra, we find that the Hon'ble Supreme Court was concerned only with the "place of removal" but did not go into the aspect of "Point of sale" or the FOR price destination issue. Hence the said judgment is not applicable in the facts of the present case.*". The Hon'ble Tribunal had held that credit of the service tax paid on outward freight was admissible. The judgment of the jurisdictional Tribunal is binding upon me and therefore, following the principles of judicial discipline, it was held in OIA No. AHM-EXCUS-003-APP-54/2021-2022 dated 11.11.2021 that cenvat credit of the service tax paid on outward freight was held to be admissible. There is nothing on record to indicate that the said judgment of the Hon'ble Tribunal, Ahmedabad in the case of Sanghi Industries Ltd (supra) has been overruled by a higher appellate authority. Therefore, the said judgment is binding upon me. Hence, following my above decision on similar facts as well as the judicial pronouncements cited in the OIA supra, it is held that the cenvat credit of service tax paid on Outward Freight is admissible to the respondent. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant department

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant department stands disposed off in above terms.


 02 February, 2022
 (Akhilesh Kumar)
 Commissioner (Appeals)

Attested:


 (N.Suryanarayanan. Iyer)
 Superintendent(Appeals),
 CGST, Ahmedabad.

Date: 02.2022.



BY RPAD / SPEED POST

To

The Deputy Commissioner,
CGST & Central Excise,
Division- Kalol,
Commissionerate : Gandhinagar

Appellant .

M/s. Ranasariya Poly Pack Pvt Ltd,
Plot No. 727/C, Village : Moti-Bhoyan,
Kalol-Khatraj Road, Taluka : Kalol,
District : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)

4. Guard File.
5. P.A. File.

