Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11241 of 2019

(Arising out of OIA-CCESA-SRT-APPEAL-PS-928-929-2018-19 dated 29/03/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Salasar Copper **......Appellant**
Survey No 142/2, Madhuban Dam Road
Silvassa
Silvassa, Dadra And Nagar Haveli

VERSUS

C.C.E. & S.T.-DAMAN **......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat -396191

WITH

Customs Appeal No. 11243 of 2019 - Salasar Copper
Customs Appeal No. 11253 of 2019 - Salasar Copper
Customs Appeal No. 11255 of 2019 - Salasar Copper
Customs Appeal No. 11258 of 2019 - Salasar Copper
Customs Appeal No. 11266 of 2019 - Salasar Copper
Customs Appeal No. 11269 of 2019 - Salasar Copper

APPEARANCE:
Shri Dhaval Shah, Advocate for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11067 - 11073 /2022

DATE OF HEARING: 11.08.2022
DATE OF DECISION: 11.08.2022

RAMESH NAIR

The issue involved is that whether the appellant is entitled for cenvat credit in respect of Outward GTA services .

2. Shri Dhaval Shah, Learned Counsel appearing on behalf of the Appellant submits that in the appellant's own case on the identical facts and of same nature of transaction this tribunal has allowed the appeal on the basis of various judgments. Therefore, following the said order the appeal should be allowed.

3. Shri Vinod Lukose, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. I find that there is no change in the facts in this case and the case in this Tribunal's final order No. A/12601-12602/2021 dated 10.12.2021 wherein the cenvat credit in respect of Outward GTA is allowed. Therefore, being the same facts, following the said decision in the appellant's own case the issue is no longer res-integra. The judgment of this Tribunal is reproduced below:-

> *"04. I have carefully considered the submissions made by both the sides and perused the records. I find that the lower authorities have denied the Cenvat Credit on GTA Services on the sole ground that the appellant have not supplied the CAS4 Certificate to ascertain the cost of product and whether the freight element is included or otherwise. I find that the sale of the goods is on Principle to Principle basis. As per Section 4 of the Central Excise Act, 1944 the transaction value at which the goods are sold has to be taken for the purpose of assessment. In case of the value arrived at, as per Section 4(1)(a) no question can be raised. Moreover, in the facts of the present case the freight is deemed to have been included in the assessable value and on such assessable value excise duty was charged which is evident from the sale invoice which shows that the appellant have not collected the freight separately from the customer. The freight charge was borne by the appellant themselves. In this case the transaction should be considered as FOR sale and accordingly, the buyer's place shall become place of removal as all the expenses up to the delivery of the goods at the buyer's place was borne by the appellant. On this principle, this tribunal has considered the issue of admissibility of Cenvat credit on Outward GTA in the case of ULTRATECH CEMENTS LTD & SANGHI INDUSTRIES LTD (supra) and the credit was allowed. These judgments have been upheld by Hon'ble High Court of Gujarat. Accordingly, following the binding precedent of the hon'ble Gujarat High Court I am of the view that the appellant is entitle for the Cenvat Credit on Outward GTA in the facts of the present case. Moreover, the identical issue in the appellant's own case has been considered and decided in favour of the appellant in the judgment reported at M/S. SALASAR COPPER- 2019 (4) TMI 11 CESTAT-AHMEDABAD. wherein, the following order was passed.*

"This appeal has been filed by M/s. Salasar Copper against denial of Cenvat credit on GTA services availed during the period October 2015 to June 2016.

2. Ld. Counsel pointed out that they had produced Chartered Accountant and Cost Accountant's certificates for the said period clearly stating that goods have been supplied on FOR (Free on Road) basis to their buyers. He pointed out that order-in-original in Para 8.6 has examined the facts regarding the nature of sales on FOR basis or otherwise and held that the sale is on FOR basis. He further argued that impugned order does not go into this aspect and denies Cenvat credit holding that credit would be admissible only up to the place of removal.

3. Ld. AR relied on the impugned order.

4. I find that the observations of the order-in-original that goods are sold on FOR basis has not been challenged and has not been upset by the impugned order. Ld. Counsel pointed that in the case of Sanghi Industries Limited vs. CCE, Kutch (Gandhidham) – 2019 (2) TMI 1488 – CESTAT Ahmedabad, in the similar circumstances, the benefit of Cenvat credit on GTA services was allowed. Similarly, in the case of Ultratech Cement Limited vs. CCE, Kutch (Gandhidham) – 2019 (2) TMI 1487 – CESTAT Ahmedabad where there was no dispute for the sale being FOR basis, credit has been allowed. Also in terms of Board Circular No. 1065/4/2018-CX dated 08.06.2018, there is no dispute on benefit of Cenvat credit if the sale is on FOR basis.

5. In view of the clear pronouncement of law as well as CBEC Circular, credit of service tax paid on GTA services where goods are supplied on FOR basis, Cenvat credit cannot be denied for the reasons that the said service has been availed for the transportation of goods beyond the place of removal. Consequently, the appeal is allowed."

In the above judgment it can be seen that on the basis of CA Certificates produced by the appellant regarding the nature of sale i.e. FOR Sale and also the inclusion of freight charge, this tribunal has taken a view that appellant is entitle for Cenvat Credit. In the present case also there is no dispute that the appellant have produced the CA Certificate wherein, it was certified that the sale is on FOR Basis and the freight is included in the sale value accordingly, the facts of the present case as well as the case cited above are identical.

05. Accordingly, the impugned order is set aside, appeal is allowed. Consequently, the appeal filed by SHRI SUNIL RATHI is also allowed."

5. Considering the above decision which is of the same facts as in the present case the appellant is entitled for cenvat credit in respect of Outward GTA. Hence, the impugned order is set aside. Appeals are allowed.

(Dictated & pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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