(2024) 10 CESTAT CK 1181

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Excise Appeal No.53016 of 2023

M/s.Ambuja Cements Limited @APPELLANT @Hash Principal Commissioner of Central Goods and Service Tax, Central Excise @RESPONDENT

Date of Decision : 01-10-2024

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(l)
Central Excise Act, 1944 — Section 4(3)(c)(iii)
Cenvat Credit Rules, 2002 — Rule 2(l)

Citation : (2024) 10 CESTAT CK 1181

Hon'ble Judges : Binu Tamta, Member (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Hemant Bajaj, Unmesh Kumar

Final Decision : Allowed

Judgement

Binu Tamta, J

1. The issue decided by the impugned order, Order-in-Original No.RPR/EXCUS/000/COM/CEX/19/2022-2023 dated 19.10.2022 relates to admissibility of credit of service tax paid on “Goods Transport Agency Service” GTA availed by the appellant for outward transportation of goods on Free on Road FOR destination basis from the factory gate or depot of the appellant to the premises of the customers under Rule 2 (l) of the Cenvat Credit Rules, 2004, CCR, 2004.

2. The appellant is engaged in the manufacture of ?cement and clinker’ and has been availing cenvat credit on inputs, capital goods and input services under the CCR, 2004. The appellant sells the final product i.e. cement to the customers on FOR destination basis. Show cause notice dated 26.04.2018 was issued to the appellant for the period April, 2016 to June, 2017 alleging that the cenvat credit in respect of “GTA services for outward transportation of cement from factory to the customer’s premises or from depot to the customer’s premises on FOR destination basis has resulted in contravention of the provisions of Rule 2 l and Rule 3(1) of the Rules, 2004 read with Section 4(3)(c)(iii) of the Central Excise

Act, CEA. On adjudication, the entire cenvat credit was disallowed and the same has been affirmed by the Commissioner (Appeals) by the impugned order.

3. Learned counsel for the appellant and the learned Authorised Representative for the Revenue both agree that the issue raised in the present appeal is squarely covered by the decision of the Supreme Court in Commissioner of Customs and Central Excise Vs. Roofit Industries Ltd., 2015(319) ELT 221 (SC) and Commissioner of Central Excise Vs. M/s. Emco Ltd., 2015(8) TMI 200 (SC) and further by the decision of the Larger Bench in Ramco Cement Vs. CCE, Interim Order No.40020/2023 in C.E.Appeal No.40575/2018 and M/s. Sweety Industries Vs. CGST and Central Excise, 2024(2) TMI 1393 (Cestat-Ahmd.-LB). The decision of the Larger Bench has clarified and decided the issue as under:-

"35. In the result, in a case where clearances of goods are against FOR contract basis, the authority needs to ascertain the ?place of removal' by applying the judgmenets of the Supreme Court in EMCO Ltd. and Roofit Industries, the decision of the Karnataka Hihg 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."

4. Here, the Revenue has not disputed that the cement is sold on FOR basis as per the allegations made in the show cause notice. Once the sale is on FOR destination basis, the ownership in the goods gets transferred only at the customer's premises and, therefore, the present appeal needs to be allowed in favour of the appellant in terms of the decision of the Larger Bench referred above.

5. We, therefore, hold that the appellant is entitled to avail the cenvat credit of service tax paid on ?GTA Services' for outward transportation of cement on FOR destination sales from the factory/depot to the customer's premises in terms of Rule 2(l) of Cenvat Credit Rules, 2002, CCR, 2002. The impugned order, therefore, deserves to be set aside and the appeal is accordingly allowed.

[Order pronounced on 1st October, 2024]

