

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 51427 OF 2022

[Arising out of the Order-in-Appeal No. 250-251 (CRM) CE/JDR/2021 dated 14.09.2021 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur.]

M/s Ambuja Cements Limited

...Appellant

Elegant Business Park, MIDC Cross Road B,
Off Andheri – Kurla Road, Andheri (E),
Mumbai – 400 059.

Versus

Commissioner (Appeals),

....Respondent

Central Goods & Service Tax, Central Excise,

G-105, Road No. 5, New Industrial Area,
Basni, Opp. Diesel Shed,
Jodhpur, Rajasthan – 342 003.

APPEARANCE:

Shri Hemant Bajaj, Advocate for the appellant

Shri Bhagwat Dayal, authorised representative for the
department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 59447/2024

DATE OF HEARING : 04.11.2024

DATE OF DECISION: 19.11.2024

P.V. SUBBA RAO

The Order in Appeal dated 14.9.2021¹ passed by the Commissioner (Appeals), Central Excise and CGST is assailed by M/s. Ambuja Cement Ltd.² in this appeal. By the impugned order, the Commissioner (Appeals) dismissed the appellant's appeal and upheld the Order in Original dated 29.1.2021 passed by the Additional Commissioner disallowing the

1. Impugned order

2. Appellant

CENVAT credit of the service tax paid on the goods transport agency (GTA) services received by the appellant to transport the cement from its factory to the buyer's premises sold on FOR (free on road) destination basis and ordered its recovery along with interest and imposed penalties.

2. The appellant manufactures and sells cement and clinker. These are excisable goods and the appellant is registered with the department and pays central excise duty on these final products.

3. **CENVAT Credit Rules, 2004³** provide for a manufacturer of excisable goods or provider of taxable service to take CENVAT credit of excise duty paid on the inputs and service tax paid on input services and utilise it to pay the excise duty on the final products or service tax on the services.

'Input service' is defined in Rule 2(I) of CCR as follows:

(I) **"input service" means any service, -**

(i) used by a provider of output service] for providing an output service; or

(ii) **used by a manufacturer,** whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products **upto the place of removal,**

and includes *****

4. The term 'place of removal' is defined in Rule 2(qa) of CCR as follows:

(qa) "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 a consignment agent or **any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;**

5. The appellant cleared and sold goods on FOR destination basis, i.e., the goods were sold for delivery at the buyer's premises. The question is if in such a sale, the place of removal shifts to the buyer's premises where the sale takes place or it will continue to be the appellant's factory. If the place of removal shifts to the buyer's premises, the services availed to transport the goods from the factory upto the buyer's premises will fall under the definition of "input service" under Rule 2(I) of CCR and CENVAT credit will be available on the GTA services availed for transporting goods upto the buyer's premises. This is the position of the appellant.

6. On the other hand, the position of the Revenue is that the place of removal continues to be seller's factory and therefore no CENVAT credit of the service tax paid on the GTA services availed by the appellant to transport the goods up to the buyer's premises where the goods are sold on FOR destination basis is available to them.

7. Since there were conflicting views, the issue was referred to the Larger Bench in **Ramco Cement** versus **CCE**⁴. The Larger Bench decided that where the goods are sold on FOR destination basis and the ownership of the goods gets transferred at the customer's premises, the place of removal shifts to the buyer's premises.

8. In this case, there is no dispute that the goods were sold on FOR destination basis and so the place of removal gets shifted at the buyer's premises. Therefore, following the decision of the Larger Bench, it is held that the 'place of removal' shifts to the buyer's premises and the appellant is entitled to CENVAT credit of the service tax paid on GTA services availed to transport the goods to the buyer's premises.

9. In view of the above, we set aside the impugned order and allow the appeal.

(Order pronounced in open court on 19/11/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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