Cenvat Credit on GTA outward – SC applies the brake

(G. Natarajan, Advocate, Swamy Associates)

It seems that the Hon'ble Supreme Court has rejected the review petition filed against its decision, reported as CCE Vs Ultratech Cement Ltd – 2018-TIOL-42-SC-CX, holding that cenvat credit of Service Tax paid on Goods Transport Agency services, for transporting the goods upto customers' premises is not entitled for cenvat credit, sending shockwaves throughout the country.

Let us make an attempt to analyse the effect of this judgement.

Prior to 01.04.2008, the term "input service" is defined in Rule 2 (l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as CCR), which read as,

> *"input service" means any service, -*
>
> *(i) used by a provider of taxable service for providing an output service, or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products* ***and clearance of final products from the place of removal,***
>
> *and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and* ***outward transportation upto the place of removal.***

The following amendment has been made with effect from 01.04.2008, vide Notification 10/2008 CE NT Dt. 01.03.2008.

> *in clause (l), for the words "clearance of final products from the place of removal", the words "clearance of final products, upto the place of removal," shall be substituted.*

One of the important services used by manufacturing units is the services of Goods Transport Agencies (GTA) to transport their final products, from their factory of manufacture, to the premises of their depots, consignment agents; from the premises of such depots and consignments to the customers' premises; and transportation from the factory premises to the customers' premises directly, etc. The issue as to whether the service tax paid on such GTA services (which is normally paid by the manufacturer himself under reverse charge) is

entitled for cenvat credit or not has always been engaging the attention of all concerned.

For the period prior to the above amendment, the issue has been settled in favour of the assesses, by many judgements, of which the decision of the Hon'ble High Court of Karnataka in CCE Vs ABB Ltd {201-TIOL-395-HC-Kar-ST }, can be quoted, wherein it has been held, that the expression "clearance of the final products from the place of removal" would cover such transportation services upto the customers' place, and the same cannot be restricted by the expression "outward transportation upto the place of removal". The judgement has also made it clear that the position post 01.04.2008 is not examined in the judgement.

So, when the definition has been amended from 01.04.2008, restricting the credit entitlement only for "clearance of final products upto the place of removal" read with "outward transportation upto the place of removal" it becomes necessary to understand the meaning of the term "place of removal" as credit in respect of transportation services availed only upto such place of removal can be availed.

The term "place of removal" is defined in Section 4 (3) (c) of the Central Excise Act, 1944 as

> *"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.*

Later, the same definition has also been incorporated under Rule 2 (qa) of the CCR, 2004, vide Notification 21/2014 CE NT Dt. 11.07.2014.

The following clarification has been issued vide the Master Circular, bearing No. 97/8/2007 Dt. 23.08.2007

> *(b) **Issue :** Whether a consignee can take credit of the amount paid as service tax either by himself (as consignee) or by the consignor or by the Goods Transport Agency?*

Comments : *As per Rule 3 of the Cenvat Rules, 2004, Cenvat credit of, inter alia, service tax leviable and paid on any 'input services' can be taken. The rule does not distinguish as to who (i.e. the GTA, the consignor or the consignee himself) has paid the aforesaid tax. The only condition required to be satisfied is that the consignee must be a manufacturer of excisable goods or a provider of taxable service and the service must be in the nature of 'input service' for such activity. In case of inward transportation of inputs or capital goods, such service (being specifically mentioned under the definition of 'input service') would qualify to be called as 'input service' and, thus, the service tax paid (by any of the persons mentioned above) on it would be eligible as credit to the receiver if he is either a manufacturer of excisable goods or a provider of taxable service.*

(c) ***Issue :*** *Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?*

Comments : *This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. v. CCE, Ludhiana [2007 (6) S.T.R. 249 (Tri-D)]. In this case, CESTAT has made the following observations :-*

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

Similarly, in the case of M/s. Ultratech Cements Ltd v. CCE., Bhavnagar - 2007 (6) S.T.R. 364 (Tri.) = 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer/consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in Cenvat Credit Rules. In terms of sub-rule (t) of Rule 2 of

the said rules, if any words or expressions are used in the Cenvat Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the Cenvat Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that, -

"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 stored 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."

It is, therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

Thus, if the following three conditions are satisfied, cenvat credit of service tax paid on outward transportation can be availed as cenvat credit, as per this circular.

(i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;

(ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and

(iii) the freight charges were an integral part of the price of goods.

The crux of the above clarification is as to the scope of the term "place of removal". Once the term "place of removal" is thus understood, cenvat credit is entitled for transportation "upto such place of removal" from 01.04.2008. If buyers' place can be considered as place of removal, then credit for GTA services upto buyers' place is entitled.

Since the above clarification has not overcome the practical difficulties in determining the eligibility of cenvat credit of service tax paid on outward transportation, the CBEC came out with another circular No. 988/12/2014 Dt. 20.10.2014. This circular, after dealing with various caselaws and previous circulars, has concluded as below.

> *It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value , payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*

The crux of the above discussions is to the effect that if the transfer of property over the goods happens at the buyers' place, in terms of the provisions of the Sale of Goods Act, 1930, then such buyers' place would be the place of removal and hence any service tax paid on GTA services availed for transporting the goods till the buyers' premises would be entitled to cenvat credit.

Now comes the decision of the Hon'ble Supreme Court in Ultratech case. After taking note of the CBEC Circular dated 23.08.2017, clarifying that the buyers' place can be treated as the place of removal, the Court made the following observations.

> *11. As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd. and M/s. Ultratech Cement Ltd. Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. 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.

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.

13. The upshot of the aforesaid discussion would be to hold that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible to the respondent. Accordingly, this appeal is allowed, judgment of the High Court is set aside and the Order-in-Original dated August 22, 2011 of the Assessing Officer is restored.

It is quite unfortunate that the Hon'ble Apex Court has not noticed that the clarification contained in the circular has got nothing to do with the amendment. The circular only clarifies that the buyers' place can become place of removal if the three conditions are satisfied. If these three conditions are satisfied, then buyers' place would be the place of removal and even after the amendment, credit would be allowed, for clearance of final products **upto** the place of removal" and the GTA services availed for transporting the goods from the factory or depot, to the buyers' place could be covered within the expression "for clearance of final products upto the place of removal". Hence, with due respect, the conclusion of the Hon'ble Apex Court that the said clarification is not relevant after 01.04.2008, appears to be erroneous. Further, it has not been brought to the notice of the Hon'ble Apex Court that the instructions issued on 23.08.2007 were also reiterated on 20.10.2014, i.e. after the amendment made from 01.04.2008.

Now, since the review petition has also been dismissed by the Hon'ble Supreme Court, we have to accept the law of the land that after 01.04.2008 cenvat credit for service tax paid on outward transportation from factory or depot, to the customers' place is not entitled for cenvat credit. Already almost at all places, the department has been issuing demand notices in this regard the issues are pending at various levels and they are bound to be decided against the assesses, by following the above judgement of the Hon'ble Supreme Court in Ultratech, supra.

The only hope is appealing to the Government, to bring in some retrospective amendment allowing such credit. The issue could have been made simple if it is provided that service tax paid on transportation services would be entitled for cenvat credit, wherever such cost of transportation is also part of the assessable value of the goods on which excise duty is paid and the same is not excluded from the assessable value, as per Rule 5 of the Central Excise (Determination of Value) Rules, 2000.

As per Rule 5 ibid, the cost of transportation from the place of removal to the place of delivery can be excluded. In other words, the cost of transportation upto the place of removal is includible in the assessable value and only the cost of transportation from the place of removal to the place of delivery can be excluded. If a composite price is charged for the goods, the said cost of transportation from the place of removal to place of delivery can be excluded for the purpose of determination of assessable value; and if freight is charged separately for transportation from the place of removal to the place of delivery, the same need not be included in the assessable value for payment of excise duty. Wherever no such exclusion has been claimed, it would mean that the place of delivery is treated as place of removal and the freight upto such place is part of the assessable value. If so, there is no reason as to why the service tax suffered on such freight should be denied the benefit of cenvat credit, as otherwise it only leads to cascading of taxes, which the cenvat credit scheme seeks to remedy.

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2018-TIOL-42-SC-CX

IN THE SUPREME COURT OF INDIA

Case Tracker
CCE & ST Vs ULTRA TECH CEMENT LTD [High Court]

Civil Appeal No. 11261 of 2016

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX

Vs

ULTRA TECH CEMENT LTD

A K Sikri & Ashok Bhushan, JJ

Dated: February 1, 2018

Appellant Rep. by: Mr. Arijit Prasad, Adv. Mr. B Krishna Prasad, AOR **Respondent Rep. by:** Mr. V Lakshmikumaran, Adv. Mr. L Badri Narayanan, Adv. Mr. Aditya Bhattacharya, Adv. Mr. Victor Das, Adv. Ms. Apekhsha Mehta, Adv. Mr. Yogendra Aldak, Adv. Mr. M P Devanath, AOR

CX - Cenvat Credit on GTA service availed for transport of goods from place of removal to buyer's premises is not admissible w.e.f 01.04.2008 [Notification 10/2008-CX(NT) refers] - it needs to be kept in mind that Board's Circular 96/7/2007 dated August 23, 2007 was issued in clarification of the definition of 'input service' as existed on that date i.e. it related to unamended definition - if Board circular 96/7/2007 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 - 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 - Revenue appeal allowed: Supreme Court [para 6 to 12]

Appeal allowed

Observations of Supreme Court -

++ It may be relevant to point out here that the original definition of 'input service' contained in Rule 2(l) of the Rules, 2004 used the expression 'from the place of removal'. As per the said definition, service used by the manufacturer of clearance of final products 'from the place of removal' to the warehouse or customer's place etc., was exigible for Cenvat Credit.

++ However, vide amendment carried out in the aforesaid Rules in the year 2008, which became effective from March 1, 2008, the word 'from' is replaced by the word 'upto'. Thus, it is only 'upto the place of removal' that service is treated as input service. This amendment has changed the entire scenario. [Notification **10/2008-CX(NT)** refers]

++ The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and doors to the cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from

the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(i) of Rules, 2004.

++ Whereas the word ‘from' is the indicator of starting point, the expression ‘upto' signifies the terminating point, putting an end to the transport journey. We, therefore, find that the Adjudicating Authority was right in interpreting Rule 2(l)…

++ The aforesaid order of the Adjudicating Authority was upset by the Commissioner (Appeals) principally on the ground that the Board in its Circular dated August 23, 2007 had clarified the definition of ‘place of removal' and the three conditions contained therein stood satisfied insofar as the case of the respondent is concerned, i.e. (i) regarding ownership of the goods till the delivery of the goods at the purchaser's door step; (ii) seller bearing the risk of or loss or damage to the goods during transit to the destination and; (iii) freight charges to be integral part of the price of the goods. This approach of the Commissioner (Appeals) has been approved by the CESTAT as well as by the High Court.

++ We are afraid that the aforesaid approach of the Courts below is clearly untenable for the following reasons:

+++ In the first instance, it needs to be kept in mind that Board's Circular **96/7/2007**dated August 23, 2007 was issued in clarification of the definition of ‘input service' as existed on that date i.e. it related to unamended definition…

+++ As can be seen from the reading of the … portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd. and M/s. Ultratech Cement Ltd. Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the ‘place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage.

+++ 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.

+++ 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.

Conclusion:

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 to the respondent.

Case law cited :

Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd....Para 7

JUDGEMENT

Per: A K Sikri:

The core issue involved in the present case is with regard to the admissibility or otherwise of the Cenvat Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises. This issue has arisen in the following factual background:

The respondent M/s. Ultratech Cement Ltd. (hereinafter referred to as the ‘assessee') is involved in packing and clearing/forwarding of cement classifiable under Chapter sub heading 25232910 of Central Excise Tariff Act, 1985, with Central Excise Registration No. AAACL6442LEM014. The assessee is also availing the benefit of Cenvat Credit facility under the Cenvat Credit Rules, 2004 (‘Rules, 2004' for short). The assesseeherein gets finished goods (cement) from its parent unit on stock transfer basis and sells the same in bulk form and packed bags. The assessee during the period from January, 2010 to June, 2010 availed Cenvat Credit of service tax paid on outward transportation of goods through a transport agency from their premises to the customer's premises. According to the appellant/Revenue, the transport agency service used by the assessee for transportation of their final product from their premises to customers premises cannot be considered to have been used directly or indirectly in relation to clearance of goods from the factory viz., place of removal in terms of Rule 2(l) of the Rules and as such cannot be considered as input service to avail Cenvat credit.

Accordingly, the Office of the Commissioner of Central Excise: Bangalore II Commissionerate issued show cause notice dated February 3, 2011 to the assessee inter alia stating that on scrutiny of ER-1 return submitted by the assessee for the period January, 2010 to June, 2010, it was noticed that the assessee have wrongly availed the Cenvat Credit of Service Tax paid on outward transportation of goods from the factory to the Customer's premises, inasmuch as the Goods Transport Agency Service used for the purpose of outward transportation of the goods from factory to customer's premises is not input service within the ambit of Rule 2(l)(ii) of the Rules, 2004. It was further mentioned that the total Cenvat Credit claimed was in the sum of Rs. 25,66,131/- and the assessee was called upon to show cause as to why the said amount be not recovered and penalty be not imposed. The assessee submitted its reply to the show cause notice contesting the position contained therein.

2) After hearing, the Adjudicating Authority passed Order-in-Original dated August 22, 2011 holding that once the final products are cleared from the factory premises, extending the credit beyond the point of clearance of final product is not permissible under Cenvat Credit Rules and post clearance use of services in transport of manufactured goods cannot be input service for the manufacture of final product. Further, the Adjudicating Authority held that CBEC vide its Circular No. 97/8/2007-ST dated August 23, 2007 has clarified the definition of place of removal. With respect to fulfillment of requirement of Circular dated August 23, 2007, it was held that the assessee has not produced any documentary evidence to prove that conditions laid down vide Circular dated August 23, 2007 has been fulfilled. Accordingly, the Adjudicating Authority passed the order as under:

"(i) Demanding the irregular Cenvat credit availed on outward transportation of goods amounting to Rs.25,66,131/- under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944;

(ii) Demanding interest under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AB of Central Excise Act, 1944 read with Section 75 of the Finance Act, 1994;

(iii) Did not order for initiation of action under Rule 15(1) of Cenvat Credit Rules, 2004 read with Rule 25 of Central Excise Rules, 2002;

(iv) Imposed penalty of Rs.25,66,131/- under Rule 15(3) of Cenvat Credit Rules, 2004;

(v) Imposed penalty of Rs.1,00,000/- under Rule 25 of Central Excise Rules, 2002."

3. Aggrieved by the Order-in-Original No. 24/2011 dated August 22, 2011, respondent/assessee preferred an appeal before Commissioner (Appeals). The Commissioner (Appeals) vide Order-in-Appeal No. 57/2012-CE dated March 15, 2012 allowed the appeal and set aside the Order-in-Original holding that assessee is eligible for availment of service tax paid on GTA service on the outward freight from the factory to the customers' premises as per the Board's Circular 97/8/2007-Service Tax dated August 23, 2007. It was now the turn of the Revenue to feel aggrieved by the order. Accordingly, appeal was filed before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) by the Revenue which was rejected vide judgment dated May 1, 2015. Further appeal to the High Court preferred by the assessee has met the same fate as the said appeal has been dismissed by the High Court of Karnataka vide its judgment dated June 29, 2016 = ***2016-TIOL-1828-HC-KAR-C*** , which is the subject matter of the present appeal.

4. As mentioned above, the assessee is involved in packing and clearing of cement. It is supposed to pay the service tax on the aforesaid services. At the same time, it is entitled to avail the benefit of Cenvat Credit in respect of any input service tax paid. In the instant case, input service tax was also paid on the outward transportation of the goods from factory to the customer's premises of which the assessee claimed the credit. The question is as to whether it can be treated as 'input service'.

5. 'Input service' is defined in Rule 2(l) of the Rules, 2004 which reads as under:

"2(l) "input service" means any service:-

(i) Used by a provider of taxable service for providing an output services; or

(ii) Used by the 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 services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

6. It is an admitted position that the instant case does not fall in sub-clause (i) and the issue is to be decided on the application of sub-clause (ii). Reading of the aforesaid provision makes it clear that those services are included which are used by the 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'.

7. It may be relevant to point out here that the original definition of ‘input service' contained in Rule 2(l) of the Rules, 2004 used the expression ‘from the place of removal'. As per the said definition, service used by the manufacturer of clearance of final products ‘from the place of removal' to the warehouse or customer's place etc., was exigible for Cenvat Credit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd.) vide judgment dated January 17, 2018. However, vide amendment carried out in the aforesaid Rules in the year 2008, which became effective from March 1, 2008, the word ‘from' is replaced by the word ‘upto'. Thus, it is only ‘upto the place of removal' that service is treated as input service. This amendment has changed the entire scenario. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and doors to the cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(i) of Rules, 2004. Whereas the word ‘from' is the indicator of starting point, the expression ‘upto' signifies the terminating point, putting an end to the transport journey. We, therefore, find that the Adjudicating Authority was right in interpreting Rule 2(l) in the following manner:

“… The input service has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes, interalia, services used in relation to inward transportation of inputs or export goods and outward transportation upto the place of removal. The two clauses in the definition of ‘input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport services credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions.

15. Credit availability is in regard to ‘inputs'. The credit covers duty paid on input materials as well as tax paid on services, used in or in relation to the manufacture of the ‘final product'. The final products, manufactured by the assessee in their factory premises and once the final products are fully manufactured and cleared from the factory premises, the question of utilization of service does not arise as such services cannot be considered as used in relation to the manufacture of the final product. Therefore, extending the credit beyond the point of removal of the final product on payment of duty would be contrary to the scheme of Cenvat Credit Rules. The main clause in the definition states that the service in regard to which credit of

*tax is sought, should be used in or in relation to clearance of the final products from the place of removal. The definition of input services should be read as a whole and should not be fragmented in order to avail ineligible credit. Once the clearances have taken place, the question of granting input service stage credit does not arise. Transportation is an entirely different activity from manufacture and this position remains settled by the judgment of Honorable Supreme Court in the cases of Bombay Tyre International 1983 (14) ELT = **2002-TIOL-374-SC-CX-LB**, Indian Oxygen Ltd. 1988 (36) ELT 723 SC = **2002-TIOL-88-SC-CX** and Baroda Electric Meters 1997 (94) ELT 13 SC = **2002-TIOL-96-SC-CX-LB**. The post removal transport of manufactured goods is not an input for the manufacturer. Similarly, in the case of M/s. Ultratech Cements Ltd. v. CCE, Bhatnagar 2007 (6) STR 364 (Tri) = **2007-TIOL-429-CESTAT-AHM**, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of relevant provisions clearly, correctly and in accordance with the legal provisions."*

8. The aforesaid order of the Adjudicating Authority was upset by the Commissioner (Appeals) principally on the ground that the Board in its Circular dated August 23, 2007 had clarified the definition of 'place of removal' and the three conditions contained therein stood satisfied insofar as the case of the respondent is concerned, i.e. (i) regarding ownership of the goods till the delivery of the goods at the purchaser's door step; (ii) seller bearing the risk of or loss or damage to the goods during transit to the destination and; (iii) freight charges to be integral part of the price of the goods. This approach of the Commissioner (Appeals) has been approved by the CESTAT as well as by the High Court. This was the main argument advanced by the learned counsel for the respondent supporting the judgment of the High Court.

9. We are afraid that the aforesaid approach of the Courts below is clearly untenable for the following reasons:

10. In the first instance, it needs to be kept in mind that Board's Circular dated August 23, 2007 was issued in clarification of the definition of 'input service' as existed on that date i.e. it related to unamended definition. Relevant portion of the said circular is as under:

"ISSUE: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

*COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (6) STR 249 Tri-D] = **2007-TIOL-429-CESTAT-AHM**. In this case, CESTAT has made the following observations:-*

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing

*with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions". Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar - **2007-TOIL-429-CESTAT-AHM**, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.*

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"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 stored 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."

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place."

11. As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd. and M/s. Ultratech Cement Ltd. Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the ‘place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. 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.

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.

13. The upshot of the aforesaid discussion would be to hold that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible to the respondent. Accordingly, this appeal is allowed, judgment of the High Court is set aside and the Order-in-Original dated August 22, 2011 of the Assessing Officer is restored.

Valuation (Central Excise) — Includibility of freight and insurance charges — Clarifications

37B Order No. 59/1/2003-CX., dated 3-3-2003

F. No. 6/6/2003-CX.1

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Inclusion of freight and insurance charges in the assessable value.

In exercise of the powers conferred under Section 37B of the Central Excise Act, 1944, Central Board of Excise and Customs considers it necessary, for the purpose of uniformity in connection with valuation of excisable goods to issue the following instructions.

2. Attention is invited to CBEC's Circular No. 533/29/2000-CX., dated 24-5-2000 [2000 (118) E.L.T. T52] regarding Central Excise Valuation - amended definition of 'place of removal' decision of CEGAT.

3. The said Circular had been issued with reference to CEGAT's Order No. 1222/99-A, dated 24-8-99 in case of *M/s. Escorts JCB Limited* v. *CCE, New Delhi*. The said judgment of Tribunal was appealed against (CA No. 7230/1999) by the assessee before the Hon'ble Supreme Court. Supreme Court have, vide its Order in Civil Appeal No. 7230 of 1999 and C.A. No. 1163 of 2000 reported in 2002 (146) E.L.T. 31 (S.C.) decided the issue on 24-10-2002 setting aside the order of Tribunal.

4. While giving the judgment the Hon'ble Bench of Supreme Court have observed (in para 13 of the said judgment) that

> "in view of the discussions held above in our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and transit insurance. Such a conclusion is not sustainable".

In this judgment Hon'ble Supreme Court also quoted Section 39 of 'Sales of Goods Act, 1930' and held that the machinery, handed-over to the carrier/transporter is as good as **delivery** to the buyer in term of section 39 of the Sales of Goods Act, apart from terms and conditions of sale .

5. Similarly in Civil Appeal Nos. 4808-4809 of 2000 with C.A. Nos. 1858-1859 of 2001, 7898 of 2001 and 4221 of 2002 against the order of Tribunal in case of *Prabhat Zarda Factory Limited* v. *Commissioner of Central Excise* reported vide 2000 (119) E.L.T. 191 (T-LB), the Hon'ble Supreme Court have in their order reported vide 2002 (146) E.L.T. 497 (S.C.) held, on 14-11-2002, that :

> "In these matters, the question is whether freight and insurance charges are to be included in the assessable value for the purposes of excise. This question is covered by the judgment of this Court in the case of *Escort JCB Ltd.* v. *Commissioner of Central Excise, Delhi* - 2002 (146) E.L.T. 31 (S.C.). The only difference which has been pointed out is that in the case of *Escorts* case (supra) the sale was at the factory gate whereas in this case the sale was from the depot. Learned Counsel for the appellants admit that the freight and insurance charges up to the Depot would be includible in the assessable value for the purposes of excise. However, the sale being at the Depot, the freight and insurance for delivery to the customers from the Depot would not be so includible as per the said judgment."

6. The Central Board of Excise and Customs have in consultation with Additional Solicitor General, decided not to file review petition against the said Supreme Court judgments.

7. "Assessable value" is to be determined at the "place of removal". Prior to 1-7-2000, "place of removal" [section 4(4)(b), sub-clauses (i), (ii) and (iii)], was the factory gate, warehouse or the depot or any other premises from where the goods were to be sold. Though the definition of "place of removal" was amended with effect from 1-7-2000, the point of determination of the assessable value under section 4 remained substantially the same. Section 4(3)(c)(i) [as on 1-7-2000] was identical to the earlier provision contained in section 4(4)(b)(i), section 4 (3)(c)(ii) was identical to the earlier provision in section 4(4)(b)(ii) and rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, took care of the situation covered by the earlier section 4(4)(b)(iii). In the Finance Bill, 2003 (clause 128), the definition "place of removal" is proposed to be restored, through amendment of section 4 to the position as it existed just prior to 1-7-2000.

8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. The 'insurance' of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods.

9. Based on the above clarifications, pending cases may be disposed off. Past instructions, circulars and orders of the Board on the issue may be considered as suitably modified.

10. Suitable trade notice may be issued for the information and guidance of the trade.

11. Receipt of this order may please be acknowledged.

12. Hindi version will follow.

Cenvat Credit Rules, 2004 — Determination of Place of Removal

Circular No. 988/12/2014-CX, dated 20-10-2014

F.No.267/49/2013-CX. 8

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Determination of place of removal - Regarding.

Attention is invited to Notification No. 21/2014-C.E. (N.T.), dated 11-7-2014 vide which the definition of "place of removal" has been inserted in the CENVAT Credit Rules, 2004 (CCR). Under these rules there are provisions that the credit of input services is available upto the place of removal. As the definition is now provided in the CCR, wherever Cenvat credit is available upto the place of removal, this definition of place of removal would apply, irrespective of the nature of assessment of duty.

(2) The second associated issue is regarding ascertainment of place of removal. In this regard there are two circulars of the Board namely 37B order no 59/1/2003, dated 3-3-2003 [2003 (153) E.L.T. T7] and Circular No. 97/8/2007, dated 23-8-2007 [2007 (7) S.T.R. C88]. The relevant paragraphs of these two circulars are reproduced below for ease of reference -

(i) **Circular dated 3-3-2003 :** "*8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale.* The 'insurance' of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods."

(ii) **Circular dated 23-8-2007 :** *"8.2 …….. It is, therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods.* In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that *the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930 occurred at the said place."*

(3) The operative part of the instruction in both the circulars give similar direction and are underlined. They commonly state that the *place where sale takes place is the place of removal. The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer.* This can be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon'ble Tribunal in case of *Associated Strips Ltd.* v. *Commissioner of Central Excise , New Delhi* [2002 (143) E.L.T. 131 (Tri.-Del.)]. This principle was upheld by the Hon'ble Supreme Court in case of *M/s. Escorts JCB Limited* v. *CCE, New Delhi* [2002 (146) E.L.T. 31 (S.C.)].

(4) Instances have come to notice of the Board, where on the basis of the claims of the manufacturer regarding freight charges or who bore the risk of insurance, the place of removal was decided without ascertaining the place where transfer of property in goods has taken place. This is a deviation from the Board's circular and is also contrary to the legal position on the subject.

(5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act , 1930 which has been referred at paragraph 17 of the *Associated Strips* Case (supra) reproduced below for ease of reference -

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass

from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

(6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value , payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. *The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*

(7) Difficulty in implementing the circular may be brought to the notice of the Board. Trade may be kept suitably informed. Hindi version will follow.

2011 (23) S.T.R. 97 (Kar.)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

N. Kumar and Ravi Malimath, JJ.

COMMISSIONER OF C. EX. & S.T., LTU, BANGALORE

Versus

ABB LIMITED

C.E.A. Nos. 121 of 2009 with C.E.A. Nos. 141, 140, 139[3], 138[3] of 2009 and 10 of 2010[3], decided on 23-3-2011

Cenvat credit of Service tax - Input service - Outward transportation from place of removal whether input service - Tribunal held that definition of input service to be interpreted in light of requirements of business - Revenue's submission that expenditure incurred for transporting goods from place of removal not to be considered for availing Cenvat credit - Question, upto what stage after manufacturing, service rendered in transporting finished goods constitute input service - Input service per se not confined to pre-manufacturing stage - Board's Circular No. 97/8/2007-S.T., dated 23-8-2007 that credit of Service tax paid on transportation up to place of sale admissible if sale and transfer of property in goods occurred at said place - Exhaustive portion of definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004 includes "clearance from place of removal" - Though word transportation not specifically used but same covered as after final products reached place of removal nothing more needs to be done than packing, loading, transportation - Activity not covered under phrase "activities relating to business as specifically covered in first part and not necessary to interpret other provisions of same rule to include said service again - Till 1-4-2008, notwithstanding Board's circular, transportation charges incurred by manufacturer for clearance of final product from place of removal included in definition of input service - Rule 2(l) ibid. *[paras 30, 31, 33]*

Cenvat credit of Service tax - Input service - Transportation charges from place of removal - Activities relating to business - Tribunal Larger Bench while holding that said activity covered under exhaustive portion of definition of "input service" under phrase "clearance from place of removal" stated that credit available also as activity covered under extentive portion under omni bus phrase "activities relating to business" - Not open for Court to include something which legislature deliberately not included in definition - Particular service when included within definition, not necessary to interpret other provision of same rule to include said service again - Finding on coverage under "activities relating to business" entirely unnecessary - Words "clearance..... from place of removal" further substituted by "clearance..... upto place of removal" and legislature's intention manifest - Transportation from place of removal to destination cannot be included within phrase activities relating to business - Rule 2(l) of Cenvat Credit Rules, 2004. - *When a specific provision is made in the first part of the definition portion of the Cenvat Rules which refers to 'clearance of final products from the place of removal' and in the second part (inclusive) of the definition when the phrase used is 'activities relating to business such as", merely because in that portion of the definition either transportation charges is not included or service rendered for clearance of final products is not included, it is impermissible to read those words as in the earlier portion of the definition, it is specifically provided for. [para 31]*

Cenvat credit of Service tax - Input service - Transportation from place of removal - Revenue's submission that expression "place of removal" as defined in Section 4(3) of Central Excise Act, 1944 applicable - *HELD :* Sub-section (3) ibid starts with words "for the purpose of this section" - Expression "place of removal" to be confined for the purpose of Section 4 ibid only. *[paras 15, 16]*

Cenvat credit - Nature of - Cenvat credit is a pool of duty paid under

various heads enumerated in Rule 3 of Cenvat Credit Rules, 2004 - It includes duty, cess or tax paid under various headings on any input, capital goods or input service by a manufacturer, producer or provider of output service. *[para 19]*

Cenvat credit of Service tax - Input service - Transportation from place of removal - Period involved prior to 1-4-2008 - Exhaustive portion of definition of input service also including clearance of final product from place of removal - Services received or rendered by manufacturer such as packing, loading/unloading, transportation, delivery, etc. from place of removal till it reaches destination covered - Word transportation though not specifically used but same covered as after final products reached place of removal, nothing more needed to clear them, except transporting to ultimate destination - However, portion of definition to be construed strictly and in restrictive manner - Rule 2(l) of Cenvat Credit Rules, 2004. *[para 30]*

Interpretation of statute - Jurisdiction of Court to include something in statute - While interpreting a provision, Court must take note of not only express words used but also words which not used - Not open to Court to include something which legislature deliberately not included in definition/provisions - Re-writing provisions impermissible. *[para 31]*

Interpretation of statute - Rule of interpretation - Statute when uses words and phrases in particular section, meaning has to be given in each of these sections - Statute when provides specifically for particular contingency, it has to be interpreted and after so interpreting, it cannot be said in another portion, where general words are used, it also includes what is specifically provided. *[para 31]*

Appeals dismissed

CASES CITED

Gujarat Ambuja Cements Ltd. v. Commissioner — 2007 (6) S.T.R. 249 (Tribunal) = 2007 (212) E.L.T. 410 (Tribunal) — *Referred*.....

DEPARTMENTAL CLARIFICATION CITED

C.B.E. & C. Circular No. 97/8/2007-S.T., dated 23-8-2007.....

REPRESENTED BY : Shri N.R. Bhaskar, Sr. C.G.S.C., for the Appellant.

S/Shri G. Shivadas, Harish, P.M. Prabhakar, B.N. Gururaj, K.S. Ravishankar and Swamy Associates, Advocates, for the Respondent.

[Judgment per : N. Kumar, J.]. - This appeal is by the revenue challenging the order passed by the Larger Bench of the Tribunal holding that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(1)(ii) of the Cenvat Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the Service tax on the value of such services.

2. The assessee M/s. ABB Limited, Maneja, Vadodara is engaged in the manufacture of transformer, circuit breaker, etc., falling under Chapter 85 of the Central Excise Tariff Act, 1985. The assessee is having Central Excise Registration No. AAACA3834BXM007. The asseesee is availing the cenvat credit as per the provisions of the Cenvat Credit Rules, 2004. They are also paying service tax on the service to transport goods by road in respect of inward transportation as well as outward transportation. They have obtained Service Tax Registration No. AAACA3834BST013 for the same. They are also availing cenvat credit for the Service tax paid for the outward transportation of finished goods. The authorities observed that the assessee was paying the Service tax on inward transportation of raw materials as well as outward transportation of finished goods and availing credit on the Service tax paid on freight amount towards outward transportation.. Therefore, a letter was issued by the Range Officer to the assessee calling for information in respect of such credit availed by them. The information was furnished by the assessee. The authorities were of the opinion that the assessee is not entitled to avail the credit of Service tax paid on outward transportation of finished goods as the same does not qualify to be an input service !n terms of Cenvat Credit Rules, 2004. Therefore, they were called upon to show cause on the cenvat credit amounting to Rs. 33,55,306/- of Service tax and Rs. 67,104/- of education cess totaling to Rs. 34,22,410/- for the period from November, 2005 to September 2006, wrongly availed by them on the GTA services towards the Service tax paid on outward transportation beyond the place of removal, should not be

recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 with interest and penalty. The assessee filed its reply justifying the credit availed and utilised. However rejecting the contention of the assessee, an order in original came to be passed on 4-5-2007 confirming the demand as well as the interest and penalty. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Central Excise and Service Tax (Appeals). The first Appellate Authority upheld the order of the original authority and dismissed the appeal. Aggrieved by the same, the assessee preferred an appeal to the tribunal. The tribunal while considering the application for stay of the operation of the Appellate Authority noticed that the issue involved in this appeal is also involved in the case of *M/s. India Cements and Others*. The said issue had been referred to a Larger Bench by an order dated 13-8-2007 in M.C. No. 412/2007. Therefore, they referred this appeal also to the Larger Bench. That is how the Larger Bench of the tribunal considered this appeal.

3. After hearing both the parties and taking into consideration the various judgments rendered by the High Courts as well as the Tribunals and also the Supreme Court and taking Into consideration the guidelines issued by the Organisation for Economic Co-operation and Development and the circular issued by the Board, the Tribunal held that the definition of 'input service' has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine the same as a service received only upto the factory or upto the depot of manufacturers. The services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(1)(ii) of the Cenvat Credit Rules, 2004 and the manufacturer is entitled to the credit of the service tax paid on the value of such outward transportation services also. It is this order of the Larger Bench, which is challenged in this appeal.

4. The learned Additional Solicitor General of India, assailing the impugned order contended that though the expression 'place of removal' has not been defined in Cenvat Credit Rules, 2004 in terms of sub-rule (t) of Rule 2 of the said rules, if any words or expressions are used in the Cenvat Credit Rules, 2004 and are not defined therein, but are defined in the Central Excise Act, 1994 or the Finance Act, 1994, they shall have the same meaning for the Cenvat Credit Rules as assigned to them in those Arts. The expression "place of removal" is defined under Section 4 of the Central Excise Act, 1944 (for short hereinafter referred to as the 'Act') meaning a factory or any other place or premises of production or manufacturer of excisable goods, a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, 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 arc removed. Therefore, it is clear that once the manufactured product is removed from the factory or a warehouse or a depot or premises of a consignment, the expenditure incurred for transporting the goods from that place, till the goods are delivered to the customer cannot be taken into consideration for the purpose of availing cenvat credit. Therefore, he contends that in the light of the aforesaid provisions, the finding recorded by the Larger Bench of the Tribunal that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service, is contrary to the aforesaid statutory provisions and therefore, the same is liable to be quashed.

5. *Per contra*, the learned counsel appearing for the assessee submitted that though the expression 'place of removal' has been defined under the Act and a restrictive meaning is assigned to the said phrase, the said definition is to be confined only to Section 4 of the Act for the purpose of valuation of excisable goods for purposes of charging of duty of excise. Rule 2 of the Rules makes it clear. The definition contained in the said Rules have the meaning assigned to them in the said rules unless the context otherwise requires. Therefore, even though the phrase "place of removal" is defined under the Act, as it is expressly stated in sub-section (3) of Section 4, the said definition is only for the purpose of the said section and not for the purpose of the Act, While interpreting the word 'place of removal' used in other parts of the Act, the meaning assigned to the same in Section 4(3)(c) is not applicable. It being a very restricted definition, when the said word is used in the context of other provisions of the Act. it has to be given an expanded meaning. Therefore, a proper interpretation of the definition of "input service" would make if clear that all expenditure incurred by the assessee. If it has become an integral part of the consideration received for sale and transportation of the goods, then on the duty or service tax paid on such expenditure the assessee is entitled to the cenvat credit.

6. In the light of the aforesaid submissions the point that arises for our consideration in this appeal are as under :

> Whether the Service tax paid on transportation charges from the assessee place, such as a factory, warehouse, depot, till the manufactured goods are delivered to the customer falls within the meaning of input service' as defined under the Rules and can the assessee be allowed to take Cenvat credit ?

7. In order to answer this question it is necessary to notice the relevant provisions under the Cenvat Credit Rules, 2004 (prior to its amendment from 1-4-2008), Central Excise Act, 1944 as well as the Finance Act, 1994.

8. In exercise of the power conferred by Section 37 of the Central Excise Act, 1944 and Section 94 of the Finance Act 1994 the Central Government have promulgated the Cenvat Credit Rules, 2004. It defines 'input', 'input service', 'output service', 'persons liable for paying Service tax', 'provider of taxable service', etc. The definitions as they stood before 1-4-2008 are as under :-

> "Rule 2(l) defines 'input service' means any service

(i) used by a provider of taxable service for providing an output service, or

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

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal."

[*The word 'from' was substituted by the word 'upto' made effective from 1-4-2008 by Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008].

9. The words 'clearance of final products upto the place of removal' appearing in clause (ii) was substituted for the words 'clearance of final products from the place of removal' with effect from 1-4-2008 and earlier to the substitution it read as under :

"clearance of final products from the place of removal".

10. Rule 2(p) defines output service' as under :-

"Output service" means any taxable service, excluding the taxable service referred to in sub-clause (xxp) of clause (105) of Section 65 of the Finance Act, provided by the provider of taxable service], to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions 'provider' and 'provided' shall be construed accordingly."

11. Rule 2(q) defines "person liable for paying service tax" as under : -

"person liable for paying service tax has the meaning as assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;"

12. Rule 2(r) defines "provider of taxable service" as under : -

"provider of taxable service" include a person liable for paying Service tax;"

13. It is also necessary to notice Rule 2(t) which reads as under :-

"that the words and expression used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts".

14. In view of this provision one of the expressions which falls for our consideration is, "place of removal" used in the definition of 'input service'. The words "place of removal has been defined under the Central Excise Act at Section 4 which reads as under :

"**Section 4 Valuation of excisable goods for purposes of charging of duty of excise.** - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sale consideration for the sale, be the transaction value :

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

[*Explanation.* - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, it any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum duty, excluding sales tax and other taxes, if any, actually paid shall be deemed to include the duty payable on the such goods.]

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3.

(3) For the purpose of this section.

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent :

(b) Persons shall be deemed to be "related" if -

(i) they are inter-connected undertakings :

(ii) they are relatives :

(iii) amongst them the buyer is a relative and a distributor of the assessee. or a sub-distributor of such distributor : or

(iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

Explanation - In this clause -

(i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and. Restrictive Trade Practices Act. 1969 (54 of 1969) : and

(ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act. 1956 (1 of 1956) :

(c) "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 :

[(cc) "time of removal", in respect of the excisable goods removed from the place of removal referred to in sub clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;]

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward, handling, servicing, warranty, commission or any other matter, but does not include the amount of duty of excise sales tax and other taxes, if any, actually paid or actually payable on such goods.]"

15. However, the opening words of sub-section (3) reads as under :

"For the purpose of this section".

16. Therefore though the expression "place of removal" is defined under Section 4(3) of the Central Excise Act, 1944, its application is to be confined as is clear from the opening words of sub-section (3) for the purpose of Section 4 only.

17. Rule 3 of the Cenvat Credit Rules deals with Cenvat credit. It reads as under :

"Rule 3. Cenvat credit. - (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the Cenvat credit) of-

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act.

(ii) xxx xx

(iii) xxx xx

(xi) xxxxxx

xxxxxxxxyxx

paid on -

(i) *any input or capital goods* received in the factory or manufacture of final product or premises of the provider of output service on or after the 10th day of September 2004 including the said duties, or tax, or cess paid on any input or input service, as the case may be used in the manufacture of intermediate products, by a job worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue). No. 214/86-Central Excise, dated the 25th March, 1986, published in Gazette of India vide number G.S R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to the manufacture of final product on or after 10th day of September, 2004.

(ii) any *input service* received by the manuufacturer of final product or by the provider of output services on or after the 10th day of September 2004.

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed cenvat credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act."

18. A reading of Rule 3 makes ii clear that the manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit of the duties, cesses or taxes paid under any one of those heads mentioned therein, provided it is paid on any input or capital goods received in the factory of the manufacturer of final product or premises of the provider of output service and any input service received by the manufacturer of products final product or by the provider of output service including the said duties or tax or cess paid on any input or input service as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification and received by the manufacturer for use in, or in relation to, the manufacture of final product on or after 10th day of September, 2004.

19. Therefore, Cenvat credit includes the duty, cess or tax paid under the aforesaid various heading on any input, capital goods or input service by a manufacturer, producer or provider of output service. Therefore it is a pool of duty paid under various heads enumerated in the said rule. The aforesaid Cenvat credit may be utilized

for the payment of any duty of excise on any final product or the amount equal to Cenvat credit taken, on inputs, if such inputs are removed as such or if partially being processed or an amount equal to Cenvat credit taken on capital goods, if such capital goods are removed as such or Service tax on any output service.

20. In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944, the Central Government has also made the Central Excise Valuation (Determination of Price of Excisable Goods) Rules. 2000. Rule 2(c) of the said Valuation Rules defines the word value as referred to in Section 4 of the Act. Similarly Rule 2(d) makes it clear that words and expressions used in the said rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

21. Rules 3, 4 and 5 of the Valuation Rules, 2000 are also relevant which read as under :

> "**Rule 3.** The value of any excisable goods shall, for the purposes of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with these rules.
>
> **Rule 4.** The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods wider assessment, as may paper reasonable.
>
> **Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub Section (1) of Section 4 of the Act except the circumstances in which the excisable goods are cold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods."
>
> Explanation. 1 to the said rule defines what is 'cost of transportation'. It reads as under :
>
> "*Explanation* 1. "cost of transportation" includes -
>
> (i) the actual cost of transportation; and
>
> (ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing."
>
> Explanation. 2 reads as under :
>
> "*Explanation* 2. For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."

22. From the aforesaid rules it is clear that the cost of transportation from the place of removal up to the place of delivery of such excisable goods shall not be included in the value of such excisable goods.

23. The question is upto what stage after manufacturing of the product, whether the "service" rendered in transporting the finished goods from the place of removal up to the place of delivery, constitutes "input service" as defined under the Cenvat Credit Rules, 2004.

24. This question arose for consideration in the case of *Gujarat Ambuja Cements Limited* v. *Commissioner of Central Excise, Ludhiana* reported in 2007 (6) S.T.R. 249 (Tri. - Del) = 2007 (212) E.L.T. 410 (Tri. - Del.) before the CESTAT, Principal Bench, New Delhi. It held as under :-

> "14. The interpretation convassed by the appellant is also contrary to the rule on the subject contained in the judgment of Hon'ble Supreme Court in the Reserve Bank case. A statute is to he read as a whole and words used interpreted taking into account the context in which they are used. Definitions are to be looked at as a whole. Clauses of a definition are not to be read disjunctively. In the present case, the statute deals with a tax on manufacture. The definition is in the context of relief in regard to duty/tax paid on input services. Post sale transport of manufactured goods is not an input in manufacture. The two clauses in the definition take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation up to the place of removal are to he treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit up to the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport up to the place of removal. The two clauses, one dealing with general provision and another dealing with a specific item, are not to be read disjunctively as to bring about conflict and to defeat the laws scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions."

25. Therefore, the CESTAT did not accept the arguments of the assessee that any service used by the manufacturer in relation to the clearance of final products from the place of removal is eligible for input service credit. The contention that the transportation of goods from the place of removal to the buyer's premises remains covered by the expression clearance from the place of removal and thus credit is specifically provided for in respect of service tax paid on transport to buyers, did not find favour. However, after the said judgment, the Central Board of Excise and Customs. New Delhi issued a Master Circular certifying the procedural issues relating to service tax vide Circular No. 97/8/2007-S.T., dated 23-8-2007. It reads as under :-

> "8. CENVAT Credit :
>
> 8.1 ……

(a) ……

(b) ……

"(c) *Issue :* Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

Comments. This issue has been examined in great detail by the CESTAT in the case of *M/s. Gujarat Ambuja Cements Ltd.* v. *CCE. Ludhiana* (2007 (6) S.T.R. 249 (Tri. - Del.) = 2007 (212) E.L.T. 410 (Tribunal). In this case,. CESTAT has made the following observations :

> "the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are riot to be read disjunctively so as to bring about conflict to defeat the laws scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions."

Similarly, in the case of *M/s. Ultratech Cements Ltd*. v. *CCE, Bhavnagar* - 2007 (6) S.T.R. 364 (Tri.) = 2007-TIOL-429-CESTAT-AHM. It was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion a manufacture/consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that."

26. Acting on the circular in the appeal preferred by *Gujarat Ambuja Cements*, the Punjab and Haryana High Court, held as under :

"9. It is well settled that the circulars issued by the Hoard are binding and aims at adoption of uniform products. In that regard reliance has, been rightly placed on the judgment of Hon'ble the Supreme Court in the case of *Paper Products Ltd.* (supra] and such circulars are binding on the department. Placing reliance on earlier judgments of the Supreme Court in the cases of *CCE* v. *Usha Martin Industries*, 1997 (94) E.L.T. 460 (S.C.) = (1997) 7 SCC 47; *Ranadey Micronutrients* v. *CCE*, 1996 (87) E.L.T. 19 (S.C.) = (1996) 10 SCC 387; *CCE* v. *Jayant Dalal (P) Ltd*., 1996 (88) E.L.T. 638 (S.C.) = (1997) 10 SCC 402 and *CCE* v. *Kores (India) Ltd*., 1997 (89) E.L.T. 441 (S.C.) = (1997) 10 SCC 338. Hon'ble the Supreme Court concluded in para 5 as under :

> "5. It is clear from the abovesaid pronouncement of this Court that, apart from the fact that the Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is cleat that so far as the Department is concerned, whatever action' it has to take the same will have to be consistent with the Circular which is in force at the relevant point of time."

"10. It is. thus, evident that the revenue is precluded from challenging the correctness of the circular even on the ground of the same being inconsistent with statutory provisions. It goes further to limit the right of the revenue to file an appeal against the correctness of the binding nature of the circular. Therefore, there is no escape from the conclusion that the circular is binding on the revenue."

"11. The only question then is whether the appellant fulfills the requirements of circular. The first requirement is that the ownership of the goods and the property therein is to remain with the seller of goods till the delivery of the good s in acceptable condition to the purchaser at his door step. The aforesaid condition has to be onsiclered to be fulfilled because the supply of cement by the appellant to its customer is 'FOR destination'. The appellant also bears the freight in respect thereof up to the door step of the customer. The freight charges incurred by it for such sale and supply at the door step of the customer are subjected to service tax which is also duly paid by the appellant."

"12. The 'input service' has been defined to mean any service used by the manufacturer whether directly or indirectly arid also includes, *inter alia*, services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal. It has also remain un-controvertecl that for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, even the second condition that the seller has to bear the risk of loss or damage to the goods during transit to the destination stand fulfilled."

27. Following the aforesaid judgment, the Full Bench of the CESTAT in the impugned order, after referring to the various judgments, held that the contention of the revenue that outward transportation is specifically mentioned in the inclusive clause of the definition, credit for outward transportation cannot be allowed with reference to any other limb or category of the definition of input service which is general in nature, is not

correct. They further held that the expression “activities relating to business” admittedly covers transportation upto the customers’ place and therefore, credit cannot be denied by relying on a specific coverage of outward transportation upto the place of removal in the inclusive clause. The expression “such as” is purely illustrative. The expression means “for example” or “of a kind that”. The usage of the words “such as” after the expression “activities relating to business” in the inclusive part of the definition, therefore, further supports their view that the definition of the term “input service” would not be restricted to services specified thereafter. They also noted that the transportation of goods to a customer’s premises is an activity relating to business. It is an integral part of the business of a manufacturer to transport and deliver the goods manufactured. If services like advertising, market and research which are undertaken to attract a customer to buy goods of a manufacturer, are eligible to credit, services which ensure physical availability of goods to the customer, i.e. services for transportation should also be eligible to credit. They held that the arguments of the revenue that the inclusive clause in specifically limiting the credit for outward transportation upto the place of removal, has a bearing on the interpretation of the clause and therefore, the expression “service relating to clearance from the place of removal” cannot cover outward transportation as untenable and ultimately, after relying on the judgment of the Punjab and Haryana High Court in the case of *Gujarat Ambuja Cements Ltd.* held that the definition of ‘input service” has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine the same only upto the factory or upto the depot of manufacturers.

28. Following this Full Bench judgment, the appeals which were pending where the said question arose for consideration were answered in favour of the assessee and against the revenue.

29. Cenvat Credit Rules, 2004 are framed by the Central Government by virtue of the powers conferred on it both by the Central Excise Act, 1944 and Finance Act, 1994 whereas the Determination of Value of Excisable Goods Rules, 2000 are framed only under the Central Excise Act. Duty or service tax is payable both on goods which are manufactured or produced and services which are rendered or provided. Therefore it is necessary to define Input and Input Service. Input refers to goods and only Excise duty is payable thereon, whereas Input service applies to service on which service tax is payable. The Valuation Rules makes it clear, read with Section 4 and the definition of “place of removal”, that the transportation charges upto the place of removal is taken into consideration for valuation for levying excise duty, thus excluding the transportation charges from the place of removal to the place of delivery. Input service *per se* is not confined to pre-manufacturing stage. It also refers to post manufacturing stage. As is clear from the Circular issued by the Board on 23-8-2007, where a manufacture/consignor may claim that the sale has taken place at the destination point because in terms of sale contract/agreement (i) the ownership of good s and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition. to the purchaser at his door step (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such eases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant, of such credit, that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place. Therefore, if the service tax is paid on transportation charges, in such cases, it fell within the phrase “clearance of final products from the place of removal” and therefore, the assessee was entitled to CENVAT credit.

30. The definition of “input service’ contains both the word means’ and includes’, but not ‘means and includes’. The portion of the definition to which the word means applies has to be construed restrictively as it is exhaustive. However, the portion of the definition to which the word includes applies has to be construed liberally as it is extensive. The exhaustive portion of the definition of ‘input service’ deals with service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products, it also includes clearance of final products from the place of removal. Therefore, services received or rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of input, service. What are the services that normally a manufacturer would render to a customer from the place of removal? They may be packing, loading, unloading, transportation, delivery, etc. Though the word transportation is not specifically used in the said section in the context in which the phrase ‘clearance of final products from the place of removal’ is used, it includes the transportation charges. Because, after the final products has reached the place of removal, to clear the final products nothing more needs to be done, except transporting the said final products to the ultimate destination i.e. the customer’s/buyer of the said product, apart from attending to certain ancillary services as mentioned above which ensures proper delivery of the finished product upto the customer. Therefore, all such services rendered by the manufacturer are included in the definition of input service’. However as the legislature has chosen to use the word ‘means’ in this portion of the definition, it has to be construed strictly and in a restrictive manner. Alter defining the ‘input service’ used by the manufacturer in a restrictive manner, in the later portion of the definition, the legislature has used the word ‘includes’. Therefore, the later portion of the definition has to be construed liberally. Specifically what are the services which fall within the definition of ‘input service’ has been clearly set out in that portion of the definition. Thereafter, the words ‘activities relating to business - an omni-bus phrase is used to expand the meaning of the word ‘input service’. However, after using the omni bus phrase, examples are given. It also includes transportation. The words used are (a) inward transportation of inputs or capital goods (b) outward transportation upto the place of removal. While dealing with inward transportation, they have specifically used the words ‘inputs’ or ‘capital goods’. But, while dealing with outward transportation those two words are conspicuously missing. The reason being, after inward transportation of inputs or capital goods into the factory premises, if a final product emerges, that final product has to be transported from the factory premises till the godown before it is removed for being delivered to the

customer. Therefore, 'input, service' includes not only the inward transportation of inputs or capital goods but also includes outward transportation of the final product upto the place of removal. Therefore, in the later portion of the definition, an outer limit is prescribed for outward transportation, i.e. up to the place of removal.

31. The phrase 'activities relating to business is an omni bus one and it finds a place in the inclusive definition. The question is, by a judicial interpretation, outward transportation of the final product from the place of removal till it is delivered to the customer, could be construed as falling within the definition of input service. It is a well settled rule of interpretation that, while interpreting a provision, the Court must take note of not only the express words used but also the words which are not used. If the legislature has expressly used the words in respect of the transportation in a particular manner and did not choose to include within the ambit of the word 'transportation', certain aspects, having regard to the scheme of the Section, the way it is worded, it is not open to the Court to include something which the legislature deliberately did not include in the definition. If the Courts indulge in such interpretation, it amounts to re-wilting the provision which is impermissible. Yet another reason for coming to such a conclusion is, in the first part of the restrictive definition 'clearance of final products from the place of removal' is expressly stated. If transportation of final product from the place of removal is included in the phrase 'clearance of final products from the place of removal' again the same cannot be read into the provision under the words 'activities relating to business'. When a particular service was included within the definition, it is not necessary to interpret other provisions of the very same rule to include the said services over again. When a specific provision is made in the first part of the definition portion of the Cenvat Rules which refers to 'clearance of final products from the place of removal' and in the second part (inclusive) of the definition when the phrase used is 'activities relating to business such as', merely because in that portion of the definition either transportation charges is not included or service rendered for clearance of final products is not included, it is impermissible to read those words as in the earlier portion of the definition, it is specifically provided for. It is a well known rule of interpretation that when the statute uses words and phrases in a particular section, meaning has to be given it, each of those sections. When the statute provides specifically for a particular contingency, it is to be so interpreted and after so interpreting, it cannot be said in another portion where general words are used, it also includes what is specifically provided. Therefore, the finding recorded by the CESTAT that the phrase and expression 'activities relating to business' admittedly covers transportation upto the customer's place was entirely unnecessary. This interpretation of ours find support from the subsequent conduct on the part of the Central Government, which amended Rule 2(l)(ii). By Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008, the words 'clearance of final products upto the place of removal' were substituted in the place of the words 'clearance of final products from the place of removal'. The intention of the legislature is thus manifest. Till such amendment, the words 'clearance from the place of removal' included transportation charges from the place of removal till it reached the destination, namely the customer. Therefore, the said input service was included in the early part of the definition 2(l)(ii). Consequently, we cannot read what is expressly provided in the early part of the rule as having been included in the later part of the rule while interpreting the words "activities relating to business', though it has been amplified by saying it is only an inward transportation of inputs or capital goods and outward transportation upto the place of removal. The phrase "outward transportation upto the place of removal" used in the inclusive portion of the definition (the second part), has to be read along with the word inward transportation of input or capital goods. It has no reference to 'clearance of final products'. However, when the claims are put forth on the basis of the said circular of 23-8-2007. for benefit of CENVAT credit, even in the cases where the aforesaid conditions are not satisfied relying on the words clearance of final products from the place of removal, the Central Government thought it fit to amend the provision from 1-4-2008 by substituting the word 'upto' in place of 'from', in Clause (ii) of Rule 2(l) making the intention clear i.e. whether it is an inward transportation of input of capital goods or clearance of final products upto the pi ace of removal, any service rendered and service tax paid would fall within the definition of input service . Therefore, it is clear that till such amendment made effective from 1-4-2008 notwithstanding the clarification issued by the Central Government by way of their circular, transportation charges incurred by the manufacturer for 'clearance of final products from the place of removal' was included in the definition of input service. Therefore the interpretation placed by the Tribunal on the words 'activities relating to business' as including clearance of final products 'from the place of removal' which occurred already in the first part of Rule 2(l)(ii)) prior to 1-4-2008, runs counter to the language employed in the second part of the definition of 'input service' and is to that extent contrary to the legislative intention and therefore, the said finding is unsustainable in law.

32. In *Gujarat Ambuja Cements'* case, the Principal Bench of CESTAT, New Delhi, had taken the view "post sale transport of manufactured goods is not an input in manufacture. The two clauses in the definition take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation up to the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit up to the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport up to the place of removal. The two clauses, one dealing with general provision and another dealing with a specific item, are not to be read disjunctively as to bring about conflict and to defeat the laws scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions'. Giving effect to the said judgment, when the circular was issued by the Board dated 23-8-2007 the circular came up for consideration before the Punjab and Haryana High Court where it was held that when the ownership of the goods and the property remain with the seller of the goods till the delivery of goods in acceptable condition to the purchaser at his door step, the freight charges incurred by the manufacturer for such sale and supply at the door step of the customer are subjected to service tax and therefore, it falls within the definition of input service'.

However, the Larger Bench of the CESTAT following the aforesaid judgment held the expression 'activities relating to business' covers transportation upto the customers' place and it is an integral part of the manufacturing business and therefore, credit cannot be denied by relying on a specific coverage of outward transportation upto the place of removal in the inclusive clause. However, the interpretation placed by us on the words 'clearance of final products from the place of removal' and the subsequent amendment by Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word 'from' in the said phrase in place of 'upto makes it clear that transportation charges were included in the phrase 'clearance from the place of removal' upto the date of the said substitution and it cannot be included within the phrase 'activities relating to business'.

33. Therefore, it is not necessary to expand the meaning of the word activities relating to business' so as to include the transportation of the final product from the place of removal to its destination. Therefore, though the ultimate order passed by the Larger Bench does not suffer from any infirmity the aforesaid reason assigned by it in coming to the said conclusion is erroneous.

34. For the reasons, which we have assigned in our order, the final order of the Tribunal is legal and valid. We further make it clear that this interpretation is valid till 1-4-2008. In that view of the matter, but for the aforesaid modification, we do not see any merit in these appeals. The substantial questions of law raised are answered in favour of the assesses and against the revenue.

35. We would like to place on record, our appreciation for the assistance received from the officials of the Excise Department, in particular Mr. D.P, Nagendra Kumar, Commissioner, CDR, CESTAT and Ms. Sudha Koka, Additional Commissioner, SDR, CESTAT and the learned Senior Counsel in rendering this judgment.

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