



2024:KER:74910

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 9TH DAY OF OCTOBER 2024/17TH ASWINA, 1946

C.E.APPEAL.NO.17 OF 2019

AGAINST THE ORDER DATED 31.12.2018 IN APPEAL NO.E/20390/2018-SM
OF CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH,
BANGALORE

APPELLANT/APPELLANT:

TRANSFORMERS AND ELECTRICALS KERALA LTD.
ANGAMALY SOUTH P.O., PIN-683 573, REPRESENTED
BY ITS MANAGING DIRECTOR MR.PRASAD B.

BY ADV.SRI.JOSEPH KODIANTHARA (SR.)
SRI.V.ABRAHAM MARKOS
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.SHARAD JOSEPH KODANTHARA

RESPONDENTS/RESPONDENTS:

- 1 THE COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE
CENTRAL REVENUE BUILDING, I.S.PRESS ROAD, KOCHI-682018.
- 2 THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
1ST FLOOR, W.T.C.BUILDING, FKCCI COMPLEX, K.G.ROAD,
BANGALORE-560009.

BY SRI.SREELAL N. WARRIOR, STANDING COUNSEL

THIS CENTRAL EXCISE APPEAL HAVING BEEN FINALLY
HEARD ON 09.10.2024, ALONG WITH C.E.APPEAL.NO.18/2019,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

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THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 9TH DAY OF OCTOBER 2024/17TH ASWINA, 1946

C.E.APPEAL NO.18 OF 2019

AGAINST THE ORDER DATED 31.12.2018 IN APPEAL NO.E/20383/2018-SM
OF CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH,
BANGALORE

APPELLANT/APPELLANT:

TRANSFORMERS AND ELECTRICALS KERALA LTD.
ANGAMALY SOUTH P.O, PIN-683 573, REPRESENTED BY ITS
MANAGING DIRECTOR, MR. PRASAD B.

BY ADVS.JOSEPH KODIANTHARA (SR.)
ABRAHAM JOSEPH MARKOS
ISAAC THOMAS
ALEXANDER JOSEPH MARKOS
SHARAD JOSEPH KODANTHARA
V.ABRAHAM MARKOS

RESPONDENTS/RESPONDENTS:

- 1 THE COMMISSIONER OF CENTRAL TAXES AND CENTRAL EXCISE
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, KOCHI-682
018
- 2 THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
1ST FLOOR, W.T.C. BUILDING, FKCCI COMPLEX, K.G. ROAD,
BANGALORE-560 009

BY SRI.SREELAL N. WARRIOR, STANDING COUNSEL

THIS CENTRAL EXCISE APPEAL HAVING BEEN FINALLY
HEARD ON 09.10.2024, ALONG WITH C.E.APPEAL.NO.17/2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

As both these appeals impugn the common order of the Customs, Excise and Service Tax Appellate Tribunal, that rejected the contention of the appellant that it was entitled to avail input tax credit of the tax paid in relation to services availed from goods transport agencies for transporting the products manufactured by it to the premises of the buyer concerned under a contract that was entered on Freight on Road [FOR] basis, they are taken up together for consideration and disposed by this common judgment. The brief facts necessary for disposal of these appeals are as follows:

2. The appellant is engaged in the manufacture and sale of electrical transformers and allied products falling under Chapter 85 of the Central Excise Tariff Act, 1985. During the period between 01.04.2012 and 28.02.2015, it had entered into contracts with various customers for the supply, installation at site and commissioning of transformers manufactured by it. The terms and conditions of the contracts entered into with the customers clearly indicated that the contracts were to be on FOR basis whereby the obligation to transport



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the goods from the place of manufacture to the buyer's premises was on the appellant. As a matter of fact, in connection with the said contract, the appellant had also separately taken out transit insurance for the goods, and the charges incurred therefor, together with the freight charges, were collected from the customers along with the price of the goods.

3. It would appear that although it was the case of the appellant that the sale of the goods under the said contracts was concluded only at the buyer's premises, since the contract also provided for an inspection clause that mandated that the buyer was obliged to receive the goods only if, after inspection, he was satisfied with the same, the appellant did not include the charges incurred for freight and insurance in the assessable value of the goods for the purposes of payment of Central Excise duty. Thus, although it was the case of the appellant that the sales of the goods covered under the aforementioned contracts were completed only at the buyer's premises, the charges incurred by the appellant subsequent to the clearance of the goods from the factory gate were not included by it for the purposes of payment of Central Excise duty. We have deemed it necessary to state the above facts at the outset since we find that the claim of the appellant in these appeals is for the benefit of input tax credit of the tax paid in relation to transportation services availed by the appellant from goods transport agencies, while transporting the manufactured goods from its factory



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to the buyer's premises where the sale of the goods was concluded. The appellant's case before the authorities below had been that inasmuch as the sale was concluded only at the buyer's premises, it was entitled to treat the services availed from the goods transport agencies as an input service in connection with the manufacture and supply of goods to the buyer concerned, and claim input tax credit under the CENVAT Credit Rules. The authorities below placed reliance on the decision of the Supreme Court in **Commissioner of Central Excise Service Tax v. Ultratech Cement Ltd. - [2018 (9) GSTL 337 (SC)]** to find against the appellant and to hold that the place of removal of the goods was the appellant's factory, and CENVAT credit on GTA services being available only in respect of services availed up to the place of removal and not beyond it, the claim of the appellant could not be legally countenanced. It is aggrieved by the said finding of the Appellate Tribunal that the appellant is before us through these appeals.

4. We have heard Sri.Abraham Markos, the learned counsel for the appellant as also Sri.Sreelal N. Warrior, the learned Standing Counsel for the respondent Department.

On a consideration of the rival submissions, we find that while it may be a fact that in the decision of the Supreme Court in **Commissioner of Customs and Central Excise, Aurangabad v.**



Roofit Industries Ltd. - [2015 (319) E.L.T. 221 (SC)] that is relied upon by the learned counsel for the appellant, it was found that in circumstances where a manufacturer enters into a contract with his buyer on FOR basis, the place of removal for the purposes of payment of Central Excise duty has to be seen as the buyer's premises and not the manufacturer's factory, the upshot of the said finding was that the manufacturer, in that case, was legally obligated to include the cost of transportation of the goods from his factory to the premises of the buyer in the assessable value of the goods for the purposes of payment of Central Excise duty. May be in a factual situation similar to that, the appellant would be justified in contending that on the cost of transportation being included in the assessable value of the goods for the purposes of Central Excise duty, the amount paid to the goods transport agencies, who carried out the transportation, has to be seen as incurred in connection with an input service, for the purposes of claiming input tax credit of the tax paid in relation to the said services. In the instant cases, however, we find that it is the admitted case that the appellant did not include the transportation costs in the assessable value of the goods for the purposes of payment of Central Excise duty. Under such circumstances, we fail to see how the appellant can claim input tax credit in respect of the transportation services availed by it for the purposes of transporting the goods from the place of removal to the buyer's premises. In our view, permitting the appellant to avail input tax credit in such circumstances would militate against the very

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Scheme of CENVAT credit, which is designed to avoid the cascading effect of tax and an ultimate burden on a consumer. We therefore see no reason to interfere with the order of the Tribunal impugned in these appeals. The appeals fail, and are accordingly dismissed.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
SYAM KUMAR V.M.
JUDGE**

prp/9/10/24



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APPENDIX OF C.E.APEAL.NO.17/2019

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE APPEAL PAPER BOOK IN APPEAL NO.E/20390/2018-SM FILED BY THE APPELLANT BEFORE THE 2ND RESPONDENT (WITHOUT ANNEXURES).

ANNEXURE B: TRUE COPY OF THE SHOW CAUSE NOTICE NO.60/2015-CE DATED 04.09.2015 ISSUED TO THE APPELLANT.

ANNEXURE C: TRUE COPY OF THE REPLY DATED 30.9.2015 TO THE SHOW CAUSE NOTICE FILED BY THE APPELLANT.

ANNEXURE D: TRUE COPY OF THE CIRCULAR BEARING NO.1065/4/2018-CX DATED 08.6.2018.

ANNEXURE E: TRUE COPY OF FINAL ORDER NO.A/10374-10375/2019 DATED 25.02.2019 OF CESTAT, AHMEDABAD.

ANNEXURE F: CERTIFIED COPY OF THE IMPUGNED FINAL ORDER NO.21956/2018 DATED 31.12.2018 IN APPEAL NO.E/20390/2018 PASSED BY THE 2ND RESPONDENT.



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APPENDIX OF C.E.APEAL.NO.18/2019

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ANNEXURE A: TRUE COPY OF THE APPEAL PAPER BOOK IN APPEAL NO. E/20383/2018-SM FILED BY THE APPELLANT BEFORE THE 2ND RESPONDENT (WITHOUT ANNEXURES).

ANNEXURE B: TRUE COPY OF THE SHOW CAUSE NOTICE NO. 38/2013-CE DATED 30.04.2013 ISSUED TO THE APPELLANT.

ANNEXURE C: TRUE COPY OF THE REPLY DATED 25.5.2013 TO THE SHOW CAUSE NOTICE FILED BY THE APPELLANT.

ANNEXURE D: TRUE COPY OF THE CIRCULAR BEARING NO. 1065/4/2018-CX DATED 08.06.2018.

ANNEXURE E: TRUE COPY OF FINAL ORDER NO. A/10374-10375/2019 DATED 25.02.2019 OF CESTAT, AHMEDABAD.

ANNEXURE F: CERTIFIED COPY OF THE IMPUGNED FINAL ORDER NO. 21055/2018 DATED 31.12.2018 IN APPEAL NO.E/20383/2018 PASSED BY THE 2ND RESPONDENT.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE