CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Excise Appeal No. 85618 of 2022

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APPELLANT-0187/2020-21 dated 16.11.2020 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Gnat Foundry Pvt Ltd. **.....Appellant**
Plot no. 4/1, MIDC Shiroli,
Kolhapur

VERSUS

Commissioner of Central Excise & Central GST, Kolhapur **.....Respondent**
Vasant Plaza, Commercial Complex,
Rajaram Road, Bagal Chowk
Kolhapur

APPEARANCE:

Shri J N Somaiya, Advocate for the appellant
Shri Rajiv Ranjan, AC (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 85509/2026

DATE OF HEARING : 10.03.2026
DATE OF DECISION : 26.03.2026

Per: AJAY SHARMA

This appeal has been filed challenging the order dated 16.11.2020 passed by the Commissioner of Central Tax (Appeals)-I, Pune, whereby the learned Commissioner rejected the appeal filed by the appellant while upholding the Order-in-

Original dated 30.01.2019 passed by the Deputy Commissioner, Central GST, Division II, Kolhapur.

2. The issue involved herein is whether the appellant is eligible to avail CENVAT Credit of Service Tax paid on GTA service used for outward transportation of goods up to the customer's premises?

3. I have heard rival submissions and perused the case records alongwith the written submission/synopsis and the case laws. The main ground for rejection of appeal by the learned Commissioner is reliance on the law laid down by the Hon'ble Supreme Court in the matter of *CCE vs. Ultratech Cement Ltd.; 2018 (9) GSTL 337 (SC)* and few circulars. From the date of passing of the order, till date much water has flown under the bridge. The issue involved herein is no more res integra and has been answered by Larger Bench of the Tribunal in the matter of *M/s Ramco Cements Ltd. Vs. CCE, Puducherry; 2023 (12) TMI 1332- CESTAT-CHENNAI-LB* wherein the Larger Bench after detailed examination of the statutory provisions and law laid down by the Hon'ble Supreme Court in *Ultra Tech Cement Ltd.* (supra) and also the circulars issued by the CBEC from time to time has held that *'in a case where clearance of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgements of the Supreme Court in Emco and Roofit Industries, the decision of Karnataka High Court in Bharat Fritz Werner, and the Circular dated*

08.06.2018 of the Board to determine the admissibility of Cenvat Credit on the GTA service upto the place of removal.' Relevant paragraphs of the decision are extracted as under:-

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25. Thus, it is crucial to understand and apply the principle laid down by the Supreme Court in Ultratech Cement. In understanding the ratio of a judgment, the observation of Supreme Court in Collector of Central Excise, Calcutta vs. Alnoori Tobacco Products 2004 (170) ELT 135 (SC), later followed in Escorts Ltd. vs. CCE, Delhi-II 2004 (173) ELT 113 (SC) would be relevant. Commenting on the methodology of interpretation and understanding a judgment of the Supreme Court, their Lordships held as follows:

> *"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed :*
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> > *"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."*

12. In Home Office v. Dorset Yacht Co. [1970 (2) All ER 294] Lord Reid said, "Lord Atkin's speech…… is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board [1972 (2) WLR 537] Lord Morris said :

> *"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."*

13. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

14. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> *''Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

26. The Supreme Court in State of Orissa vs. Md. Illiyas (2006) 1 Supreme Court Cases 283 also laid down the guidelines to follow the precedent. Their Lordships at paragraph 12 observed as follows:

> *"12. When the allegation is of cheating or deceiving, whether the alleged act is willful or not depends upon the circumstances of the concerned case and there cannot be any strait jacket formula. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on earlier decision of the Court held that pre-requisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its*

own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates

(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides.

What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."

27. Applying the said principle to the present circumstances, it is seen that the Supreme Court, though in paragraph 13 observed that CENVAT credit on Goods Transport Agency availed for transport of goods from

place of removal to buyers' premises was not admissible, but the principles in ascertaining the place of removal in the context of admissibility of CENVAT credit on GTA Services have not been laid down, as was also submitted by the learned counsel for the appellant. The said issue has been left open to be decided on the facts of each case.

28. The said judgment of the Supreme Court in Ultratech Cements has been subsequently considered by different High Courts. The Rajasthan High Court in Commissioner of CGST, Udaipur vs. Mangalam Cements Ltd. 2019 (24) G.S.T.L. 545 (Raj.) and Commissioner of CGST & Central Excise, Jaipur vs. ARL Infratech Ltd. 2019 (369) E.L.T. 351 (Raj.), in judgments delivered on the same date i.e., on 19.09.2018, following the judgment in Ultratech Cements held that credit would not be admissible on GTA service for delivery of goods at the buyers' premises. In the both these cases, the Circular issued by the Board was not considered.

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32. The interpretation of the judgment of the Supreme Court by the High Courts as above throws light on the controversy. The Rajasthan High Court in Mangalam Cements simply referred to the judgment of the Supreme Court without analyzing its applicability in the context of the case in denying the credit on GTA service. The Supreme Court set aside the said judgment and remanded the case to examine the facts in the light of the judgment. On the other hand, in the judgment of the Karnataka High Court in Bharat Fritz Werner, all aspects of the case have been considered, including the Circular dated 08.06.2018 of the Board, and the judgments of

Supreme Court in Emco Ltd. and Roofit Industries to conclude that the place of removal is the buyer's premises."

4. The aforesaid decision of the Larger Bench has been followed thereafter in quite a few decisions of this Tribunal viz. *U. B. Stainless Ltd. vs. CGST & Central Excise; 2025 (1) TMI 1319- CESTAT MUMBAI; M/s. Varroc Lighting Systems (India) Pvt Ltd. Vs. CCE & Service Tax, Pune I, 2026 (2) TMI 229- CESTAT MUMBAI; CIE Automotive Ltd. Vs. CCE & Service Tax, Pune I; 2026 (2) TMI 836- CESTAT MUMBAI* and few more. It is pertinent to note that none of the aforesaid decisions have been stayed or set aside by any higher judicial forums.

5. Though it has been submitted by learned Authorised Representative by way of written submissions that no documentary evidence such as contract/purchase order establishing FOR destination sale has been produced, but in my view the said allegation is baseless as firstly the same is not the case of Revenue anywhere before the lower authorities and secondly, along with the appeal paper book the appellant has placed on record few purchase orders along with tax invoices issued from time to time, which are from pages 33 to 44, establishing that the order has been placed with the appellant for 'FOR- door delivery.'

6. Section 4 of the Central Excise Act, 1944 makes it clear that where excise duty is chargeable on an ad valorem basis, the

assessable value shall be the transaction value, provided the goods are sold for delivery at the time and place of removal, the buyer and assessee are not related, and price is the sole consideration. Thus, valuation is intrinsically linked to the point of delivery at the 'place of removal'. The Explanation to Section 4 clarifies that the 'place of removal' may be (i) the factory or any other place of manufacture, (ii) a warehouse or premises where goods are stored without payment of duty, or (iii) a depot, consignment agents' premises, or any other place from where the goods are ordinarily sold after clearance.

7. The definition of 'input service' u/r 2(l) of CENVAT Credit Rules, 2004 provides that this clause covers services used directly or indirectly in or in relation to manufacture or provision of output service and it includes certain services mentioned therein which are used in relation to activities connected with manufacture but it excludes few specified services from the ambit of input service. For a service to qualify, it must fall within either the means or inclusive part and must not be hit by the exclusion clause. Significantly, Goods Transport Agency (GTA) services for outward transportation up to the place of removal are expressly covered under both the inclusive clause *"outward transportation up to the place of removal"* and the means clause *"clearance of final products up to the place of removal"*. Accordingly, the determinative issue is the identification of the *"place of removal"* based on the facts of each case.

8. In the instant case, the purchase orders issued by different customers, which are annexed with the Appeal herein, stipulates the delivery term as *"FDD (FOR Door Delivery)/BEML KGF"* [BEML is the name of one of the customers of the appellant] and that the payment of the value of goods supplied will be made on receipt of the goods in proper condition, which unequivocally indicate that the sale is completed only upon delivery and acceptance of goods in proper condition at the buyer's premises.

9. In the light of the aforesaid discussions and settled legal position, I am of the view that in the facts of the present case, the customer's premises constituted the place of removal. Accordingly, the GTA service availed for outward transportation of finished goods up to the customers premises qualify as input service under Rule 2(l). The appellant has rightly availed CENVAT Credit of Service Tax on GTA service.

10. The impugned order is therefore set aside by allowing the appeal.

(Pronounced in open Court on 26.03.2026)

(Ajay Sharma)
Member (Judicial)

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