

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD**

Date: 17/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70180/2016 SM dated 29/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

[Signature]
Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/52962/2014	BIRLA CORPORATION LTD UNIT - RAEBARELI CEMENT WORKS PLOT NO D-9 TO D-15 UPSIDC INDUSTRIAL AREA-II AMAWAN ROAD RAEBARELI,UP 229001
		COMMISSIONER OF CENTRAL EXCISE, LUCKNOW
		Name and Address of Respondent 7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant/s SRI BIPIN GARG, ADV
B-1/1289-A, VASANT KUNJ
NEW DELHI

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.56), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohitak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

13 The ICTAI society, 52, Nagarjuna Hill, Ponjagutta Hyderabad-500082

14 C.D.R. 15 Office Copy 16 Guard File.

17 M/S KNOWLEDGE PROCESSING PVT LTD (TAMMANAGEMENTINDIA.COM)

[Signature]
Asstt. Registrar
Regional Bench, Allahabad

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

Ex.Appeal No.52962/14

Arising out of OIA No.39-CE/LKO/2014 dated 27/01/2014 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

M/s Birla Corporation Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & S.Tax, Lucknow

RESPONDENT (S)

APPEARANCE

Shri Bipin Garg, Adv. for the Appellant (s)
Shri V. K. Shastri, Asstt. Commr. (A.R.) for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 29.10.2015

Final ORDER NO. 70180/2016



Per Mr. Anil Choudhary :

The appellant is in appeal against order in appeal dated 27/1/14 passed by Commissioner appeals Customs Central Excise and Service Tax, Lucknow, by which it has been held that the place of removal in the case of cement sold FOR-destination is the factory gate and as such, the appellant is not entitled to take Cenvat credit on the service tax paid on transport charges for transportation of cement from the factory to the premises of the buyers.

2. The brief facts are that the appellant is engaged in manufacture of cement. The appellant have been taking Cenvat credit on various inputs, capital goods and input services. 12 periodical show cause notices were issued for the period November 2010 to October 2011 as it appeared to revenue that the appellant is not entitled to take Cenvat credit on outward freight for transportation of the finished goods from the factory to the premises of the dealer/customer totalling to Rs.48,80,335/-.

3. The appellant appeared and contested the show cause notices. It was contended that they were paying duty on basis of retail sale price preprinted on the cement bags as per notification number 4/2006 - CE. It was contended that the goods are sold on FOR basis on the door **step of the buyer** and as such, door step of the buyer is the "place of removal" as defined under Section 4 (2)(c) of the Central Excise Act, as place of removal includes and any other place or premises from where the excisable goods are to be sold after their



clearance from the factory. That reliance was also placed on CBEC circular number 97/8/2007 dated 23/8/07 wherein it has been classified that the "place of removal" is the premises of the buyer where - (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 borne the risk of loss or damage to the goods during transit to the destination and (iii) the freight charges were an integral part of the price of goods. It was further contended that the issue being fully interpretational in nature there is no malafide, suppression et cetera and as such no penal provisions are attracted. The SCN was adjudicated and the proposed demand was confirmed along with equal amount of penalty under rule 15 (3) of CCR read with section 11 AC. The Additional Commissioner observed that the "place of removal" is the factory gate. In view of the amendment in the definition of "input service" in 2008 and 2011 for the words "from the place of removal" with the words "up to the place of removal" were substituted.

4. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order rejected the appeal holding that the definition of "place of removal" under section 4 (2)(iii), applies to those premises from where the goods are to be sold after their clearance from the factory. However, in the facts of this case, the customer's premises is the ultimate destination of the goods and not to be sold further from there. Hence the customer's premises is not covered under clause (iii) of section 4 (3)(c) of the Act. The

Ag

appellant had also produced the certificate of chartered accountant certifying that the appellant have sold the goods on FOR-destination basis and ownership of goods remained with the appellant till delivery of the goods to the parties at his door step, and for that further no separate payments have been received from the purchasers on account of transport charges and further, freight charges was an integral part of the price of the goods.

4. Being aggrieved the appellant is in appeal before this Tribunal.

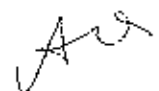
5. The Id. Counsel for the appellant states that the issue is no longer *res integra* and it is settled by precedent decisions of the Division Bench of this Tribunal and the Honourable High Court. Reliance is placed on the ruling in the case of Ultratech Cement Ltd. Vs. Commissioner of Central Excise and Service Tax, Rohtak : 2015 (37) STR 364 (Tri.-Del.), relying on the ruling of Honourable Chattisgarh High Court in the case of Lafarge India Ltd. Vs. CC, Raipur : 2014 (307) ELT 7 (Chhattisgarh), it was held that no provision in the Central Excise Act, 1944 or its rules or any circular issued by the board, that where duty is charged on the specified rate, the "place of removal" would invariably be the "factory gate". The place of removal would depend upon the specific transaction in issue. Where the removal is pursuant to sales on FOR-destination basis, with the risk in the goods manufactured being borne by the manufacturer till delivery to the customer at its premises, and when the composite value of sales include the value of freight for the delivery to the customers' premises, the "place of removal" would not be at the "factory gate" but

Asr

at the customer's premises. The Id. Counsel further states that it has been certified by the Chartered Accountant that since the cement is sold on FOR-destination basis and therefore, the appellant have legitimately claimed Cenvat credit on the service tax paid on the freight charges for delivery from the factory gate to the place of the buyer. The said certificate have not been found wrong and have been erroneously ignored by the Commissioner (Appeals). Reliance is also placed on the ruling of Punjab & Haryana High Court in the case of Ambuja Cement Ltd. Vs. Union of India : 2009 (236) ELT 431 (P & H) wherein under similar facts and circumstances, it has been held that Cenvat credit is available to the manufacturer.

4. The Id.A.R. for revenue relies on the impugned order and further places reliance on the ruling off Honourable Supreme Court in the case of CCE, Nagpur Vs. Ispat Industries Ltd.

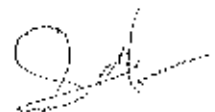
5. Having considered the rival contentions. I find that the ruling in the case of Ispat Industries Ltd. (supra) relied upon by the Revenue, is of no help as in that case the issue was as to the includibility of cost of transportation charges from factory gate to the depot which was the place of removal in the transaction value of the goods, under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 under the fact that the assessee had cleared the goods both directly from the factory gate as well as from the depot. I further hold that in the facts of this case, "the place of delivery of goods" is the customer's premises and the freight is borne by the appellant manufacturer. The "place of removal" has to be held at the customer's



premises. This position has been clarified by CBEC in the Circular No. ST/137/85/2007--CX--4 dated 23/8/2007. Even after the amendment in the definition of input services with effect from 1/4/2008 replacing the words "from the place of removal" by "up to the place of removal", the place of removal gets extended up to the buyer's premises in the case of FOR-destination sales and as such, the said amendment does not make any difference, where the sales are on FOR-destination basis. In the case of destination sale, the ownership and property is transferred when the manufacturer delivered the goods to the buyer at his premises. Accordingly, I hold that Cenvat credit of service tax is available to the appellant on outward transport for FOR Sales made to the buyers.

6. Thus, the appeal is allowed. The appellant is entitled to consequential benefits, if any, in accordance with law.

(Pronounced in the open Court)



(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
7.6.16
राजस्थान पंजीकार / Asstt. Registrar
राजस्थान, जयपुर / Rajasthan, Jaipur
ऑफिस अधिकाारी / (C.E.S.T.A.R.)
26, एन. जी. रोड, जयपुर-211001
38, M. G. ROAD, JAIPUR-211001

