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

Dated: 3/5/2016

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/ 70167/2016 SM dated 3/5/2016

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.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/54385/2014	COMMISSIONER OF CENTRAL EXCISE, MEERUT II OPP SHAHEED PARK BHANSALI GROUND,MEERUT (UP)
	Name and Address of Respondent	TRIVENI ENGINEERING&INDUS LTD MILAK NARAYANPUR DADIYAL, RAMPUR(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH R.KRISHNAN,ADV
297-E, POCKET-II
MAYUR VIHAR, PHASE-I
DELHI-110091

4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm 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 Rohtak 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-18, 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 ICFAI society, 52, Nagarjuna Hill,Panjegotta Hyderabad -500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal Nos.54385/14

Arising out of OIA No.MRT/EXCUS/002/APP/20/14-15 dated 13/05/2014 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Meerut II.

For approval and signature:

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

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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

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Commissioner of C.Ex., Customs & S.Tax, Meerut II ...APPELLANT(S)

VERSUS

M/s Triveni Engineering & Industries Ltd. RESPONDENT (S)

APPEARANCE

Shri S. J. Sahu, Asstt.Commr. (A.R.) for the Respondent
Shri R. Krishnan, Advocate for the Respondent

CORAM:

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

DATE OF HEARING : 29.04.2016

DATE OF PRONOUNCEMENT : 03.05.2016

Final ORDER NO. 70167/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपील अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

Revenue is in appeal against the Order-in-Appeal No.MRT/EXCUS/002/APP/20/14-15 dated 13/05/2014, whereby the ld.Commissioner (Appeals), has allowed input service credit on output transportation services. The period involved in this case is from October, 2007 to June, 2012.

2. Brief facts of the case are that the respondent is a manufacturer of sugar and molasses and selling the goods on FOR destination basis. The ownership of the goods upto the delivery to their customer is with them and goods were insured by them. Insurance charges are also paid by the respondent. Outward transportation charges have formed part of the assessable value of the goods. In these circumstances, the ld.Commissioner (Appeals) held that the respondent has complied with the condition of Circular No.97/8/2007 dated 23.08.2007. Therefore, respondent is entitled to take Cenvat credit. Against that order, Revenue is in this appeal.

3. The ld.A.R. for the Revenue, submits that after 01.04.2008, the respondent is not entitled to take Cenvat credit on outward transportation services as these are finished goods which have been transported and Cenvat credit is available to the services which have nexus with the manufacturing activity of the final product. Admittedly, these services have been availed after manufacturing of final product. Therefore, same has no nexus with the manufacturing activity. It is further submitted that the place of removal is the factory of the

respondent. Therefore, in this case, transportation has been availed beyond their factory. Therefore, they are not entitled to take Cenvat credit. It is further submitted that the transportation services is an input service of the customer and not of the respondent. Therefore, respondent is not entitled to take Cenvat credit. He also relied on the decision in the case of CCE, Kolkata Vs. Vesuvious India Ltd. : 2014 (1) ECS (47) (HC-Kol.) to say that respondent is not entitled to take Cenvat credit wherein the CBEC Circular and the decision in the case of ABB Ltd. Vs. CCE, Bangalore : 2011 (23) STR 97 (Kar) passed by the High Court of Karnataka has been considered. He further submitted that words "services upto the place of removal" has been used twice after 01.04.2011. The ld.A.R. also states that the Revenue is in appeal before the Hon'ble Supreme Court of India against the judgement of the Hon'ble Karnataka High Court in the case of ABB Ltd. (supra).

4. The ld.Counsel for the respondent relies on the impugned order and submits that the place of removal in this case is the FOR destination of the customer. Therefore, they are entitled to take Cenvat credit.

5. Having considered the rival contentions, I find that the short issue involved herein, required to be determined that whether the respondents are entitled to take Cenvat credit on outward transportation services when the goods are sold on FOR destination or not. Now the question arises if goods are sold on FOR basis what is the place of removal ? Admittedly, when goods are sold on FOR basis,

the place of removal is the destination of the goods. Therefore, upto that place, whatever services availed by the assessee is entitled to take Cenvat credit. Admittedly, in this case, goods have been sold on FOR destination basis and transportation charges have been paid by the respondent themselves. Goods were insured and ownership of the goods remained with the respondent till delivery of the goods were made to the customer. In these circumstances, I find that decision in this case of Vesuvious India Ltd. (supra) relied on by the appellant is not applicable to the facts of this case to say that services have been availed upto the place of removal of the goods. Assessee is entitled to take Cenvat credit.

6. Therefore, I do not find any infirmity in the impugned order. Accordingly, the same is upheld.

7. Thus, the Revenue's appeal is dismissed.

(Pronounced in the open Court on 03.05.2016)

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

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