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

To

Dated: 26/2/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70075/2016 SM dated 17/02/2016

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/3811/2012 SM	CHINAR PACKAGING PVT LTD ETAWAH ROAD, SIRSAGANJ FIROZABAD,UP
	Name and Address of Respondent	CCE, KANPUR 117/7,SARVODAYA NAGAR KANPUR(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH BRIJESH VERMA,ADV
609,VITH FLOOR, MARUTI PLAZA
BEHIND CENTRAL EXCISE
DEPTT, SANJAY PLACE
AGRA(UP)

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.36), 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, I-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 ICFAI society, 52, Nagarjuna Hill,Punjagutta 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 No.3811/12

Arising out of O/A No.283-CE/APPL/KNP/2011 dated 30.12.2011 passed by Commissioner of Central Excise (Appeals), Kanpur

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 Chinar Packaging Pvt. Ltd. ..APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur RESPONDENT (S)

APPEARANCE

Shri Shambhu Chopra, Adv. for the Appellant (s)
Shri D. K. Deb, A.C. (A.R.) for the Department

CORAM:

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

DATE OF HEARING : 17. 02. 2016

DATE OF PRONOUNCEMENT : 24-02-2016

FINAL ORDER NO. 70075/2016

Per Mr. Anil Choudhary :

The appellant is in appeal against order in appeal dated 30/12/2011 passed by the Commissioner of Central Excise appeals, Kanpur.

2. The issue in this Appeal is whether the appellant is entitled to take Cenvat credit on outward transportation (for finished goods) during the period February, 2007 to October, 2010, transport from factory to the premises of the buyer.

3. The brief facts are that during audit, Revenue noticed that appellants have availed Cenvat credit amounting to Rs.49,128/- on service tax paid on outward freight. SCN dated 29.04.2011 was issued involving the extended period as it appeared that the factory is the place of removal.

4. The appellants contested the SCN stating that as per the Purchase Order from the buyer, the manufactured goods were to be delivered at the door steps of the buyer. Further, reliance was placed of CBEC Circular No.97/8/2007-ST dated 23.08.2007, which provides that wherever, the manufacturer claims that the sale has taken place at the destination point in terms of the sale agreement, it should be seen as under :

(i) the ownership of goods and the property in goods remained with the seller of the goods till the delivery of 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 ;

(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 upto such place of sale would be admissible if it can be established by the claimant of such sale and transfer of property in goods occurred at the said place.

The SCN was adjudicated vide Order-in-Original dated 27.06.2011 and proposed demand was confirmed with equal amount of penalty under Section 11AC of the Act along with interest. Being aggrieved, the appellant preferred the appeal before the ld.Commissioner (Appeals), who has been pleased to dismiss the appeal observing that it is undisputed fact that the freight charges have not been included in the assessable value of excisable goods, which is a sine qua non to avail input service credit as it indicates that place of removal is the buyer's place. Being aggrieved, the appellant is in appeal before this Tribunal.

5. The ld.Counsel for the appellant, states that both the Court below, have committed mistake of fact. He took me through sample purchase orders issued by Surya Roshni Ltd., wherein under condition of purchase, mode of transport is road, freight is payable by you (seller) & destination – our works at Malanpur (buyer's factory). He also took me through the invoice No.166, Book No.4 dated 05.06.2010, wherein no freight have been charged separately from the

buyers. Similarly, Invoice No.798, Book No.16 dated 26.02.2010 for sale to Surya Roshmi Ltd., no amount have been charged for freight. In the accompanying GR Note, the goods have been sent freight paid . However, in the GR-Note No.398 in Annexure 2, Invoice No.166, the goods were sent freight "to pay". It is not evident, who paid the freight. The ld.Counsel further states that it is evident that the goods have been delivered by the seller-appellant at the buyer's premises and the risk during transit was on the seller and further according to the terms of purchase/sale, the buyer accepted the goods only on its delivery at their premises. As such, all the conditions are satisfied as explained by the CBEC Circular mentioned hereinabove and accordingly, the appeal may be allowed with consequential benefit.

6. The ld.A.R. for the Revenue relies on the impugned order.

7. Having considered the rival contentions, I find that the first condition is satisfied as the ownership of the goods remained with the seller as the buyer accepted the goods only on delivery on which event only, transfer of the property took place. Second condition also stands satisfied because during transit to destination risk remained with the seller/appellant. So far as the third condition is concerned, it is apparent from the sample invoice mentioned hereinabove that the freight charges have not been charged separately, and are integral part of the price of the goods. Accordingly, I find that the ld.Commissioner (Appeals) is in error in upholding that the freight charges have not been included in the assessable value.

8. In this view of the matter I allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefit in accordance with law.

9. Thus the appeal is allowed.

(Pronounced in the open Court on 24-2-16)

(Anil Choudhary)
Member (Judicial)

mm