FAX : 0532-2400149

REGISTERED/A.D.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70873/2016-SM[BR] dated 22/09/2016

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
1	E/50788/2015	UP ASBESTOS LTD MOHANLALGANJ, RAIBAREILLY ROAD,LUCKNOW U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

Kamaljeet Singh
J-144, PATEL NAGAR -I,
GHAZIABAD,
UTTAR PRADESH

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, 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 ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SION. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Ex.Appeal No.50788/15

Arising out of OIA No.262-CE/APPL-LKO/LKO/2014 dated 08/12/2014 passed by the Commissioner (Appeals), Central Excise, Customs & S.Tax, Lucknow.

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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M/s U. P. Asbestos Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Lucknow

RESPONDENT (S)

APPEARANCE

Shri Kamal Jeet Singh, Adv. for the Appellant (s)
Shri Ashutosh Nath, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING : 29.03.2016

DATE OF PRONOUNCEMENT : 22-09-2016

Final ORDER NO. 70873/2016

Per Mr. Anil Choudhary :

The appellant is in appeal against order in appeal dated 8/12/14 by which the disallowance of Cenvat credit on outward transport of finished goods have been disallowed.

2. The brief facts are that the appellant is a manufacturer of asbestos products and availed Cenvat credit on inputs and input services. The appellant sells its finished goods at uniform prices to purchasers located anywhere in India. The freight for transportation of goods to the premises of the customer or depots is borne by the appellant as per contract. The appellant discharges the service tax liability for the GTA services as recipient. The appellant also bears cost of insurance during transit. A show cause notice dated 24/7/12 was issued as it appeared to revenue that in the case of the appellant, the place of removal is the factory gate as Central Excise duty have been paid on the value of goods excluding outward freight. Therefore, it appeared that service tax is paid on transportation beyond the place of removal, that is from the factory gate to the customers premises cannot be treated as input service in terms of Rule 2 (l) of CCR. The SCN was adjudicated on contest and the proposed demand relating to the period July,2011 and November, 2011, totaling Rs. 36,59,870/- was confirmed with interest and further penalty of Rs.3,50,000/- was imposed under Rule 15 (1) of CCR, 2004. The Additional Commissioner observed that the it is appellant's own submission vide their letter dated 30/8/12 that they are effecting factory gate sale

from April, 2010 onwards and the place of removal is factory gate. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal holding that transport charges have not been included in the transaction value, for payment of duty, at the factory gate and it has been charged separately in the invoices, from the buyers of the goods. The ld.Commissioner (Appeals) further observed that an earlier SCN dated 4/4/12, wherein duty was demanded on the transportation charges of finished goods, from factory gate to the buyer's premises but the said notice was dropped after accepting the plea of the appellant that the same was at factory gate.

3. Being aggrieved, the appellant is before this Tribunal.

4. The ld. Counsel urges that the appellant states freight on the sale value which includes freight. He takes me through sample copy of invoices, annexed to the appeal paper book, and demonstrates that freight have not been separately charged and the same formed part of the sale value. Only in the internal column, actual freight have been shown in the invoices. He further demonstrates from the lorry receipts or GR that the goods have been dispatched freight paid. He further states that it is nowhere case of the revenue that the appellant have collected freight separately over and above an amount of the sale price. In this view of the matter, the appellant fulfilled all the conditions of Circular No. 97/8/2007 dated 23/8/2007, wherein the place of removal is the premises of the buyer if (i) the ownership of the 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 bore the risk of loss or damage to the goods during transit and (iii) the freight charges were an integral part of the price of the goods. The appellant have fulfilled all the conditions and is entitled to credit of service tax paid on outward freight. It is further urged that the ld. Commissioner (Appeals) have erred in observing that freight charges are not included in the transaction value, for payment of duty, and further, the same have been charged separately in the invoices. Accordingly, he prays for allowing the appeal with consequential benefits.

5. The ld.A.R. for revenue relies on the impugned order. He further states that the documents like, copy of GR/lorry receipt and the sale invoices, have been produced for the first time before this Tribunal.

6. Having considered the rival contentions, I find that the appellant is satisfying all the three conditions as prescribed under Circular dated 23/8/2007 and accordingly, place of removal shall be the premises of the buyers. Accordingly, the appellant appears to be entitled to cenvat credit on the output transport expenses, wherein the appellant paid the freight charges and service tax on the same, as the recipient of service. Accordingly, I remand the matter back to the adjudicating authority for verification of the facts as the documents being GR notes or lorry receipts and invoices are claimed to be filed before this Tribunal for the first time. The ld. Adjudicating Authority shall verify the claim from the documents and/or books of account as may be

deemed fit and if it is found that the facts are as stated before this Tribunal, the authority shall pass the consequential order accordingly.

7. Thus, the appeal is allowed by way of remand.

(Pronounced in the open Court on 22-09-2016)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
24.10.16
सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001