FAX : 0532-2400149 REGISTERED / AD

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

Dated: 21/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70571/2017-EX[DB] dated 12/06/2017

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/2793/2009	HARIG CRANKSHAFT LTD. C-49, PHASE-I, NOIDA.
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3 Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-I,
Mayur Vihar, 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.36), Vaithyaram Street, T. Nagar, Chennai-17

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

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

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade. Vasant Kunj. New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block. Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2793/2009-EX[DB]
(Arising out of Order-in-Appeal No. 237-CE/APPL/NOIDA/2009 dated 28/08/2008 passed by Commissioner Customs & Central Excise (Appeals), Noida)

Harig Crankshaft Ltd. **Appellant**

Vs.

Commissioner of Central Excise-Noida **Respondent**

Appearance:

Shri None for Appellant
Shri Pawan Kumar Singh (Supdt.)AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 12/06/2017
Date of Decision : 12/06/2017

FINAL ORDER NO. 70571/2017

Per: Anil Choudhary

The issue in this appeal is whether the appellant is entitled to Cenvat Credit on outward transportation of Service Tax paid on their finished goods for sale on FOR destination basis.

2. Notices issued to the appellant have been returned back. Further, the counsel for the appellant Mr. R. Krishnan, advocate have submitted letter dated 3rd October, 2016 stating that he is having no instructions and/or contact with the appellant company and/or its directors since June, July 2012. As per his last information from one Director Mr.

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Gopal, Bank of India has taken over the possession of the appellant and sealed the factory for recovery of its dues. Further, two notices were also sent through the Jurisdictional Commissionerate issued on 3rd January, 2017 and 15 March, 2017, but so far no service report have been received. In the circumstances, it is decided to dispose of the appeal ex-parte.

3. Heard learned DR for the Revenue and perused the records.

4. The admitted facts are that the appellant is engaged in manufacture of Forgings and Crankshaft falling under chapter 73 and 84 of the CETA. As it appeared to Revenue that the Cenvat Credit of Service Tax taken on the outward transport of the goods is not admissible. Pursuant to show cause an amount of Rs. 5,89,076/- was disallowed along with confirmation of penalty under Rule 25 of CER, 2002 read with Rule 15 of CCR, 2004. Being aggrieved the appellant had preferred appeal before learned Commissioner (Appeals) urging that the issue of Cenvat Credit of Service Tax on outward transportation, on FOR destination basis, is covered in favour of the appellant by ruling in the case of Ambuja Cements Ltd versus CCE 2009-14-STR-3 wherein it has been held that Service Tax credit on outward transportation from factory was to be allowed subject to fulfillment of the requirements specified in the CBEC Circular dated 23rd August, 2007. It was further urged that the transactions were

duly recorded in the books of accounts and the returns filed and as such there is no suppression etc. on the part of the appellant. It was further stated that sales were made on FOR destination basis and that the freight charges were an integral part of the price of the goods, as required by the CBEC Circular dated 23 August, 2007. It was also urged that the issue is covered in favour of the appellants by larger Bench decision of this Tribunal in ABB Ltd v/s CCE 2009-15-STR-23. The learned Commissioner was pleased to reject the appeal, observing that this Tribunal in ABB Ltd v/s CCE, Bangalore (supra) has observed that – there is no restriction that their activities relating to business should be relating to only the main activities or essential activities and therefore all the activity relating to business falls within the definition of Input Service. It was further held that transportation of goods to customers premises is an activity relating to business and is integral part of the business of manufacture, to transport and delivery of goods manufactured. It further held in ABB Ltd v/s CCE, Bangalore (supra), that the services availed by manufacturer for outward transportation of final products from the place of removal should be treated as an input service in terms of Rule 2(l) (ii) of CCR, 2004 thereby manufacturer to take credit of the Service Tax paid on such service. It is further observed by the learned Commissioner (Appeals) that in the present case, the appellant have enclosed the copies of purchase orders evidencing placing of order on FOR destination/free home basis. However, no document evidence for, (i) dispatch/supply of goods on FOR destination basis, (ii) providing of insurance cover and (iii) document indicating the freight as integral part of the value of excisable goods were produced. Hence, in absence of such evidence, it was not established that the appellant has fulfilled the three conditions as discussed or prescribed by the CBEC Circular dated 23 August, 2007. On the issue of whether larger period of limitation is attracted, it was held that the appellant have erred by not informing the Department regarding the fact of availing credit of the Service Tax paid on outward freight and accordingly, larger period was held to be applicable.

5. In the memorandum of appeal, the appellant have raised the grounds that the issue is squarely covered in their favour by the larger Bench ruling in ABB Ltd v/s CCE (supra). We further find that the learned Commissioner (Appeals) have not recorded any categorical finding as to which condition prescribed under the circular dated 23 August, 2007 is not fulfilled. The admitted facts on record are that the appellant was supplying goods, on FOR destination basis, had taken out insurance for transit and that the sales price included the freight element. None of these facts have been found to be untrue by the courts below. In this view of the matter, we hold that the ruling of the larger Bench of this Tribunal, squarely covers the issue in favour of the appellant

(in ABB Ltd). We also take notice that the ruling of larger Bench in ABB Ltd have been confirmed by Hon'ble Karnataka High Court. In this view of the matter, we allow the appeal and set aside the impugned order, including penalty, so far the issue of disallowance of Cenvat Credit on outward transportation is concerned. Thus, the appeal is allowed with consequential benefits.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Anku

प्रमाणित प्रति/Certified True Copy
22/06/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001