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: 26/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71902/2017-SM[BR] dated 18/07/2017

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/87/2009	**C.D. ENGINEERING CO.** C-199, BSR ROAD IND. AREA, GHAZIABAD (U.P.)
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

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Copy To

3Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD (UP) 201002

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/87/2009-EX[SM]

(Arising out of Order-in-Appeal No. 263-CE/APPL/GZB/2008 dated 25/11/2008 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

C.D. Engineering Company — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

Appearance:

Shri Rajesh Chhibber (Advocate) — for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR — for Respondent

CORAM:

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

Date of Hearing	:	18/07/2017
Date of Decision	:	18/07/2017

FINAL ORDER NO. 71902/2017

Per: Anil Choudhary

The issue in this appeal by the assessee engaged in manufacture of Forging and Flanges is that, whether they are entitled to Cenvat Credit on the outward transportation/freight incurred on clearance of the finished products for making delivery of the same from the factory gate to the buyer's premises, through the transport agencies. The appellant paid the freight including the service tax and took the credit of service tax on the freight/transportation of the said goods, claiming it as input service credit.

2. The case of Revenue, as per the show cause notice dated 19 October, 2007 is that the appellant have sold the goods at factory gate, the place of removal was the factory, hence the outward transportation of the goods was not an input service as defined in Rule 2(l) of the CCR, 2004. According to the Department Rule 2(l) of CCR provides outward transportation upto the place of removal only.

3. The learned Commissioner (Appeals) in the impugned order have held that on the plain reading of Rule 2(l) of CCR, 2004 which provides input service means any service......, and includes services used in relation to outward transportation from the place of removal. Further, the inclusive part states – and includes services used in relation to setting up........, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

4. According to learned Commissioner the Second Clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit is eligible upto the place of removal. The learned Commissioner further held with respect to penalty that the issue involved is more in the nature of interpretation of law and there appears to be no mala fide on the part of the appellant. Accordingly, he held that penalty imposed under Section 78 is not maintainable and was pleased to set aside the same.

5. Heard the parties.

6. Having considered the rival contentions, I find that the issue herein is wholly interpretational as held by the learned Commissioner (Appeals). Further, in several judgments of this Tribunal, it have been held that prior to the amendment in the year 2008, in the definition of input in Rule 2(l) of CCR, Cenvat Credit was available on the outward transportation, wherein the place of removal was the factory gate. Under such circumstances, I find that the show cause notice issued invoking the extended period of limitation is bad and the same is not sustainable. The show cause notice have been issued for the period January, 2005 to August, 2006 on 19 October, 2007 which is clearly beyond 12 months from 10 September, 2006 (date of filing return). Accordingly, I set aside the impugned order for the extended period, so far it have confirmed the disallowance of Cenvat Credit on outward transport of finished goods from the factory gate to the buyer's premises. Accordingly, the appellant shall be entitled for the consequential benefits in accordance with law.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy
18/01/18
[illegible]/Asstt. Registrar
[illegible] एवं सेवा कर
[illegible](C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38 M. G. MARG, ALLAHABAD-211001