# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# SOUTH ZONAL BENCH
# BANGALORE

Appeal(s) Involved:

**E/1077/2009-DB**

[Arising out of OIA No. 334/2009 dated 07/09/2009 passed by CCE(Appeals), Mangalore]

**FASTENERS & ALLIED PRODUCTS (P) LTD**
M-3, INDUSTRIAL ESTATE, GOKUL ROAD,
HUBLI

Appellant(s)

**Versus**

**C.C.,C.E.& S.T-BELGAUM**
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Respondent(s)

**Appearance:**

Shri M.S. NAGARAJA ,
T. RAJESWARA SASTRY &
ASSOCIATAES.
NO.1010, 2ND FLOOR,
ABOVE CORP.BANK, 26TH MAIN, 4TH T
BLOCK, JAYANAGAR
BANGALORE
KARNATAKA
560 041

For the Appellant

Shri Pakshirajan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 16/08/2018
Date of Decision:___________

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**
**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

## Final Order No. ________ / 2018

**Per : S.S. GARG**

The present appeal is directed against the impugned order dt. 07/09/2009 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is a registered manufacturer of fasteners and allied products. The Department entertain a view that the appellant had wrongly availed input service credit on the service tax paid on the service category of Goods Transport Agency for outward movement of finished goods during the period 1.1.2005 to 31.3.2007 totally amounting to Rs.2,27,188/-. On this allegation, a show-cause notice was issued to the appellant and after following the due process, the demand was confirmed. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who also rejected the appeal of the appellant. Hence the present appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable as the same is contrary to the binding judicial precedent. He further submitted that the appellant being the recipient of GTA service had borne the cost of the said service and had taken the CENVAT credit in terms of the definition of input service prior to 1.3.2008. He further referred to the definition of input service in Rule 2(l) of CENVAT Credit Rules, 2004 as (i) used by a provider of taxable service for providing an output service, or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of the final products from the place of removal. Learned counsel further submitted that this issue is no more res integra and has been settled

by the Hon'ble Supreme Court in the case of CCE, Belgaum Vs. Vasavadutta Cements Ltd. [2018(11) GSTL 3 (SC)] wherein the Hon'ble Apex Court has upheld the judgment of the High Court of Karnataka in the case of commissioner Vs. ABB Ltd. [2011(23) STR 97 (Kar.)] and has further held that expression used in the aforesaid Rule was "from the place of removal". It has to be from the place of removal upto a certain point. Therefore, the tax paid on the transportation of the final product from the place of removal up to the first point, whether it is depot or the customer, has to be allowed.

5. Following the ratio of the said decision, we are of the considered view that the issue is finally settled in favour of the assessee as per the judgment of the Hon'ble Supreme Court as well as the judgment of the Hon'ble High Court of Karnataka. Consequently, we set aside the impugned order by allowing the appeal of the appellant. Since the appellant has deposited an amount of Rs.2,27,188/- vide Challan No.0002 dt. 07/06/2007 and 16/11/2007 and also deposited interest of Rs.28,469/- on 26/12/2007, the same is ordered to be refunded to the appellant within a period of three months from the date of receipt of this order.

(Order was pronounced
in Open Court on **.......................**)

**P. ANJANI KUMAR**
**TECHNICAL MEMBER**

**S.S. GARG**
**JUDICIAL MEMBER**

Raja...