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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/83 /2008-SM[BR] Date 28/04/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S VIJAY INDUSTRIES
MUZAFFARNAGAR ROAD,
SHAMLI,
DISTT. MUZAFFARNAGAR (UP)

M/S VIJAY INDUSTRIES Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 661 /2008 –SM[BR] dated 28.3.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

SERVICE TAX APPEAL No. 83 OF 2008-SM

[Arising out of Order-in-Appeal No. 187-CE/APPL/MRT-I/2007 dated 30.10.2007 passed by the Commissioner (Appeals), Central Excise, Meerut-I, Meerut]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	[illegible]
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	[illegible]
3.	Whether their Lordships wish to see the fair copy of the order?	[illegible]
4.	Whether order is to be circulated to the Departmental authorities?	[illegible]

M/s. Vijay Industries — Appellants

Vs.

CCE, Meerut-I — Respondent

Appearance:

Shri Alok Arora, Advocate for the appellants,
Shri B.S. Suhag, JDR for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,

Date of Hearing: 27th March, 2008

FINAL ORDER NO. 661/08-SM(DR) dated 28.3.08

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against impugned order whereby CENVAT Credit in respect of service tax on the outward freight was disallowed.

3. Contention of the appellants is that the Commissioner (Appeals) relied upon the decision of the Tribunal in the case of Gujarat Ambuja Cement, reported in 2007 (6) STR 249 to deny the credit. Contention is that in the present case the appellants are paying duty on FOR price, therefore, they are entitled for credit in respect of outward freight. The appellants also relied upon the CBEC Circular No. 97/8/2007-ST dated 23.08.2007 [published under 2007 (7) STR C88-C98] para 8.2. The appellants also relied upon the decision in the case of Vardhman Special Steels vs. CCE, Ludhiana, reported in 2008 (223) ELT 220 (Tri.-Del.). Contention is that the Tribunal after considering the decision in the case of Gujarat Ambuja Cement, relied upon by the Commissioner (Appeals) held that in case assessable value of goods includes cost of transportation and duty has been paid on the assessable value including disputed freight, credit is available.

4. Contention of the Revenue is that in the present case place of removal is factory gate. Therefore, service tax paid on freight paid in respect of transportation of goods from factory gate to the customer's place cannot be considered as input service as the same has nothing to do to the manufacture of goods. Therefore, credit was rightly denied.

5. I find that in this case contention of the appellants is that they are including cost of freight in the assessable value of goods as the transaction value is FOR price. This fact was specifically mentioned in the reply to the show cause notice. I find there is no finding on this issue. Board in its Circular, relied upon by the appellants, in para 8.2 clarified that credit of service tax paid on transportation is admissible where ownership of goods remained with seller till delivery of goods.

6. I find that the Tribunal in the case of Vardhman Special Steels (supra) also considered the said issue and held as under:-

> "3. The dispute is about eligibility of service tax (paid on transport) as Cenvat credit. Service tax in question was paid on outward transport and was denied upon a finding that the transport was after the duty paid removal of the goods. The learned counsel would contend that the assessable value of the goods included the cost of the transport in question also and duty was paid on an assessable value including the disputed freight. His contention is that in such a case, credit is available in terms of the decision of this Tribunal in the case of Gujarat Ambuja [2007 (6) STR 249 (Tribunal) = 2007 TIOL 539 CESTAT, Delhi].
>
> 4.The factual position, as to whether the disputed freight formed part of the assessable value, is required to be verified. If it had, service tax paid on such outward transport would be available as credit."

In the present case the plea whether the appellants has paid excise duty after taking into consideration transaction value on FOR basis is not considered by the lower authorities. The same requires verification. Hence, the impugned order is set aside and the mater is remanded to the adjudicating authority to decide the same in accordance with law after affording opportunity of hearing to the appellants.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 28th March, 2008
RK