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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. E/2372/2007 – SM[BR] E/Co/256/07-SM(BR) Date 08/07/2009

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S MODERAN LAMINATORS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 665 / 2009 –SM[BR] dated 23.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S MODERAN LAMINATORS LTD
   C-4, INDUSTRIAL AREA, GORAKHPUR (UP)
2. Adv. / Consult SHRI O.P.OJHA
   299-BAGHAMBARRI HOUSING SCHEME ALLAHAPUR
   ALLAHABAD[U.P.]

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2372 of 2007 and C.O. Application No. 250 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 65-CE/ALLD/2007 dated 28/03/2007 passed by The Commissioner (Appeals), Central Excise, Allahabad (U.P..]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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

CCE, Allahabad — Appellant

Versus

M/s ~~Modern~~ Modern Laminators Ltd. — Respondent

Appearance

Shri S. N. Srivastava, Authorized Representative (DR) – for the appellant.

Shri O.P. Ojha, Consultant – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 23/06/2009.

Final Order No. 665/2009 SM(BN) Dated : ____________

Per. Rakesh Kumar :-

This is an appeal by the Revenue against order-in-appeal No. 65/CE/ALLD/2007 dated 28/3/07 passed by CCE (Appeals), Allahabad. The respondents are engaged in the manufacture of HDPE, PP Bags, PVC Pipes classifiable under Chapter sub-heading No. 3923.90 and 3917.00 of the First Schedule to the Central Excise Tariff Act, 1985. They are also registered under Section 69 of Finance Act, 1994, as a notified person liable for paying Service Tax in relation to transport of goods by road in a goods carriage in term of Notification No. 36/2004 (ST) dated 31/12/2004 issued under Section 68 (2) of Finance Act, 1994. The Respondents have sales at the factory gate on FOR basis and also in respect of these sales the transportation of the goods is arranged by them, the service tax is paid by them and its Cenvat credit is taken by them by treating the outward transportation of the finished goods as ~~are~~ 'input service.' The respondent took the Cenvat credit amounting to Rs. 2,21,390/- in respect of outward transportation of finished goods from the factory gate to the customer's premises. The Assistant Commissioner vide order-in-original dated 16/11/06 disallowed this credit and confirmed the demand alongwith interest and beside this, imposed penalty of Rs. 3,000/- under Rule 15 of the Cenvat Credit Rules. The Commissioner (Appeals), however, vide the impugned order-in-appeal dated 28/3/07 set aside the Assistant Commissioner's orders holding that the outward transportation of finished goods from the factory gate to the customer's premises is covered by the definition of input service. The Revenue has come up in appeal against this order of CCE (Appeals).

2. Heard both the sides.

2.1 Shri S.N. Srivastava, the learned Departmental Representative, reiterating the grounds of appeal pleaded that the outward transportation of the finished goods from place of removal to the customer's premises is not covered by the definition of 'input service', that in this case, there is no evidence that the sale took place at the customer's premises, in which case, the cost of transportation upto the customer's premises would be a part of the assessable value for payment of Central excise duty and that in view of this, the Commissioner (Appeal)'s order is not correct.

2.2 Shri S.P. Ojha, Consultant, the learned Counsel for the Respondent, pleaded that the issue is now squarely covered by the Larger Bench's judgment in case of **ABB & Ors. vs. CCE & ST, Bangalore & Ors.** reported in **2009 (15) S.T.R. 23 (Tri. – LB)**, wherein the Tribunal held that outward transportation of goods from the place of removal to the customer's premises is input service as it is covered by the expression "activities relating to business", used in the definition. He pleaded that in view of the Larger Bench's judgment, it is not necessary to go into the facts as to whether the Respondent had paid duty on FOR price basis including the cost of transportation or at the price at place of removal, as the Tribunal in this case has held that the two issues namely valuation and Cenvat credit are independent of each other and have no relevance to each other. In view of this, he pleaded that there is no infirmity in the impugned order.

3. I have carefully considered the submissions from both the sides and perused the records. The only issue involved in

this case is as to whether the Respondent are eligible for Cenvat credit of service tax paid on the outward transportation of the finished goods from the factory gate to the Customer's premises. I find that this issue now stands settled in favour of the Respondent by the Larger Bench of the Tribunal in the case of ABB & Ors. vs. CCE & ST, Bangalore & Ors. (Supra), wherein it has been held in clear terms that outward transportation of goods from the place of removal is an input service as it is covered by the expression "activities relating to business" used in the definition of 'input service' and that the issue of valuation and issue of Cenvat are independent of each other and have no relevance to each other. In view of this, following the Larger Bench's decision, I hold that there is no infirmity in the impugned order. The Revenue's appeal is dismissed. The cross objection filed by the Respondents also stands disposed off.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK