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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/1321/2007-1322/2007 – SM[BR] Date 05/08/2009

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

To :
M/S R.G.PIGMENTS PVT. LTD.

KHASRA NO.99, VILLAGE, UMMEDPURA, DISTT.
KOTA (RAJASTHAN)

M/S R.G.PIGMENTS PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No 872 – 873 / 2009 –SM[BR]**. dated 16.7.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SHRI SANJAY GROVER ADV.
S- 500, GREETER KAILASH –I, NEW DELHI-48.

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)
16 Office Copy
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Assistant Registrar
(SM Appeal Branch)

2. M/S MITTAL PIGMENTS PVT. LTD.

A-203, ROAD NO.5, IPIA, KOTA, (RAJASTHAN)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals No.1321-22 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.332-333/GRM/CE/JPR.I/06 dated 27.12.96 passed by the Commissioner of Central Excise (Appeals), Central Excise, Jaipur]

Date of Hearing/ Decision:15.07.2009

**For approval and signature:**

***Hon'ble Mr. P.K. Das, Member (Judicial)***

| | | |
|---|---|---|
| 1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. | | No |
| 2. Whether it should 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 Departmental authorities? | : | Yes |

(1)M/s. R.G. Pigments (P) Ltd.
(2)M/s.Mittal Pigments Pvt. Ltd. ...Appellants
(Rep. by Shri Sanjay Grover, Advocate)

Vs.

CCE, Jaipur ...Respondent
(Rep. by Shri S.N. Srivastava, SDR)

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No.872-873/2009-SM(BR)/Dated:16.07.2009

**Per P.K. Das:**

Heard both sides and perused the records.

2. The Original Authority confirmed the recovery of Cenvat credit and imposed penalty alongwith interest. The Commissioner(Appeals)

upheld the adjudication order. The issue involved in these cases are that the appellant availed Cenvat credit of Service Tax paid in respect of freight to GTA for transportation of finished goods. The finding of the Commissioner (Appeals) are that the place of removal is the factory gate only and, therefore, they have no right to avail credit on freight.

3. Ld. Advocate relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Ambuja Cements Ltd. reported in 2009 (236) LT 431 (P&H). He also relied upon the decision of the Larger Bench of the Tribunal in the case of ABB Ltd. Vs. Commissioner of Central Excise and Service Tax, Bangalore reported in 2009 (15) STR 23 (Tribunal-LB).

4. I find that the Hon'ble High Court in the case of Ambuja Cements Ltd. (supra) held that the credit is admissible on outward transportation upto the place of removal defined as input service during the material period under Rule 2(l) of Cenvat Credit Rules, 2004. The issue before the Hon'ble High Court is that whether the service of transportation upto the customer's doorstep, in the case of destination 'FOR destination" where the entire cost of freight is paid would be input-service within the meaning of Rule 2(l) of Cenvat Credit Rules. The finding of the Hon'ble High Court in the case of Ambuja Cements Ltd. (supra) are reproduced below:-

"11. The only question then is whether the appellant fulfills the requirement of circular. The first requirement is that the ownership of the goods and the property therein is to remain with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step. The aforesaid condition has to be considered to be fulfilled because the supply of cement by the appellant to its customer is 'FOR destination'. The appellant also bears the freight in respect thereof up to the door step of the customer. The freight charges incurred by it for such sale and supply at the door step of the customer are subjected to service tax which is also duly paid by the appellant.

13. The third condition that the freight charges were integral part of the excisable goods also stand fulfilled as the delivery of the goods is "FOR destination' price. This aspect has been especially pointed out in para 2.2 of the reply dated 12.4.2006 given to the show cause notice. Therefore, we are of the view that the first question is liable to the answered in favour of the assessee and against the revenue."

5. In the present case, the appellants stated in reply to the show cause notice that they had supplied the material on "FOR" Destination basis and submitted photocopies of some of the invoices. It was also contended that the appellants had not charged the freight and insurance charges

separately and thus, the assessee is entitled for freight upto the FOR destination. So, there is no reason to deny credit to the appellants.

6. In view of the above discussions and respectfully following the decision of the Hon'ble Punjab & Haryana High Court in the case of Ambuja Cements Ltd. (supra), the impugned orders are set aside. The appeals are allowed with consequential relief.

Order dictated & pronounced in open court on 16.07.2009.

( P.K. Das )
Member (Judicial)

ckp.