TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2859/2007 – SM[BR]** Date **10/06/2011**

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

To :
BHILAI ENGINEERING CORPN LTD
POST BOX NO 31,HATHKHOJ INDUSTRIAL AREA,
BHILAI(CG)

BHILAI ENGINEERING CORPN LTD Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 309 / 2011-SM[BR]** dated 24.5.2011 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. RAIPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001.

2. Adv. / Consult SHRI K.K.ANAND ADV.
A-5,BASMENT LAJPAT NAGAR-III,
NEW DELHI-24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
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 -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:24.5.2011

Central Excise Appeal No.2859 of 2007-SM

Arising out of the order in appeal No.95/RPR-II/2007 dated 6.6.2007 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur(C.G.).

For Approval and Signature

Hon'ble Shri Justice R.M.S. Khandeparkar, President

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Bhilai Engineering Corpn. Ltd. .. Appellant

Vs.

C.C.E. & Customs, Raipur .. Respondent

Appearance:

Shri S. Yadav, Advocate for the appellant
Shri K.P. Singh, Authorised Departmental Representative (DR) for the respondent

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President

Final Oral Order No. 309/2011 SM (BR)

Per Shri Justice R.M.S. Khandeparkar:

Heard the Advocate for the appellants and the DR for the respondent. This appeal arises from the order dated 6.6.2007 passed by the Commissioner (Appeals), Raipur. By the impugned order the Commissioner (Appeals) set aside the order passed by the Deputy Commissioner, Bhilai on 29.1.2007. By the said order, the Deputy Commissioner, Bhilai had allowed the credit in relation to the outward freight services on the ground that outward freight was paid in relation to the removal of the goods from the place i.e. at the factory gate of the manufacturer. The Commissioner (Appeals) while observing that the issue is no more res integra as the Tribunal in the matter of Gujarat Ambuja Cement Ltd. vs. C.C.E., Ludhiana reported in 2007 (6) STR 249 has held that the credit of service tax paid on outward transportation was available and yet set aside the order of the adjudicating authority and disallowed the said credit and, therefore, the same is sought to be challenged by this appeal.

2. Learned Advocate appearing for the appellants while assailing the impugned order submitted that though in para 10, the lower appellate authority held that the Tribunal has held in Gujarat Ambuja Cement Ltd. case that credit of service tax paid on outward transportation is available, proceeded to hold that the appellant wrongly availed the credit on outward transportation. The DR on the other hand submitted that bearing in mind the Circular No.97/8/2007-ST dated 23.8.2007 issued by the Board unless conditions specified under clause 8(1(c) of the said Circular are satisfied, the appellants are not entitled to claim the benefit of such credit.

3. Perusal of the order passed by the lower authority discloses a clear finding to the effect that "there is no dispute on the fact that the said outward freight was paid in relation to removal of goods from the place of removal, as the noticees are manufacturer of the goods and the said output services are used by them for clearance of final product from their factory. As such, I find that the said credit relates to input service for the noticee and hence the same is correctly availed by them".

4. Undisputedly, the said finding of fact that the credit availed was in relation to the services rendered up to the stage of removal of goods at factory gate was not disputed by the Department, it was not permissible for the Commissioner (Appeals) to deny the credit to the appellants. On this ground alone, the impugned order cannot be sustained and is liable to be set aside and is

accordingly hereby set aside, allowing the credit in relation to the output service which was granted by the adjudicating authority. Ordered accordingly. The appeal stands disposed of.

(Justice R.M.S. Khandeparkar)
President

scd/