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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

Date **10/06/2011**

Appeal No. **E/1180/2007 – SM [BR] WITH E / CO /142 / 2007-SM[BR]**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE

Appellant
Vs
Respondent

M/S RADIX IMPEX PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 312 / 2011 –SM[BR]** dated 3.5.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S RADIX IMPEX PVT. LTD.
INDUSTRIAL AREA NO.1,
A.B.ROAD, DEWAS (M.P.)

2. Adv. / Consult
NONE:------------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi -
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)

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. III
Excise Appeal No. 1180 of 2007 (SM) along with Cross Objections No.E/CO/142/07 (SM)

[Arising out of the Order-in-Appeal No.31/CE/IND/APPL/2007 dated 27/02/2007 passed by The Commissioner (Appeals), Central Excise & Service Tax, Indore.]

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, Indore — Appellant

Versus

M/s Radix Impex P. Ltd. — Respondent

Appearance

Ms. Rim Jhim Prasad, Authorized Representative (SDR) – for the appellant.

None – for the respondent.

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

DATE OF HEARING / DECISION : 03/05/2011.

Final Order No. 312/2011 SM(BR) Dated : ___________

Per. Rakesh Kumar :-

The respondents are manufacturer of Pet bottles chargeable to Central Excise duty under sub-heading No.3923.90 of the Central Excise Tariff. The period of dispute in this case is from February, 2006 to March, 2006. They availed Cenvat Credit amounting to Rs.82,307/- of Service Tax paid by them on the freight in respect of outward transportation of goods by Road from the factory to the customer's premises. The point of dispute is as to whether the respondents were eligible for Cenvat Credit of the service tax paid by them on the GTA service availed by them for transportation of goods from the factory gate to the customer's premises. The original adjudicating authority vide order in original dated 24.01.06 held that outward transportation from the place of removal is not covered by the definition of "input services", as given in the Cenvat Credit Rule, 2004 as place of removal of the goods is the factory gate and the definition of "input services" as given in Rule 2(l) of Cenvat Credit Rules, 2003, covers only the transportation upto the place of removal. The original adjudicating authority confirmed the Cenvat Credit demand of Rs.82,307/- along with interest and imposed penalty of Rs.10,000/- on the respondent.

In this order, the adjudicating authority also confirmed Central Excise duty demand of Rs.76,755/- along with interest.

1.1. On an Appeal being filed to the Commissioner(Appeals), the Commissioner(Appeals) while upholding the Central Excise duty demand of Rs.76,755/- set-aside the demand of Cenvat Credit of Rs.82,307/- in respect of outward freight. Against the order of the Commissioner(Appeals) setting aside the original adjudicating authority's order in respect of Cenvat Credit for outward freight from the place of removal, the department has filed this appeal. The respondents have also filed cross objection application in respect of this appeal filed by the department.

2. None appeared for the respondent though notice regarding hearing of this matter had been sent to them well in time. In view of this, in accordance with Rule 21 of CESTAT Procedure Rules so far as respondents are concerned, this matter is being decided ex-parte.

3. Heard Mrs. R.J.Prasad, the Ld. SDR, who pleaded that in this case, as admitted by the respondent, the place of removal is the factory gate and the Central Excise duty has been paid by the respondent on the assessable value at the factory gate and as such the transportation from the place of the factory to the customers premises has not been included in the assessable value in terms of judgement of Hon'ble Punjab & Haryana High Court in case of Ambuja Cements Ltd. vs. Union of India in 2009 (14) STR 3 (P&H) which is based on Board Circular No.97/6/2007-ST, dated 23.08.07, the transportation of goods from the factory gate to the customers premises can be treated "input service" only if the conditions as

prescribed in the circular dated 23.08.07, that during the transportation from the factory/depot to the customers premises, the ownership of the goods remains with the owner and risk of loss of goods or damage to the goods is of the manufacturer and that the transportation in integral part of the price of goods, that these conditions have not been satisfied in this case and hence the outward transportation from the factory gate cannot be treated as "input service", that Commissioner(Appeals) has wrongly relied upon the order passed by the Commissioner(Appeals), Indore reported in 2006(204)ELT189, that this service tax paid on transportation of finished goods from the factory to the premises of the customer is not available as Cenvat credit and therefore impugned order is not correct.

4. I have carefully considered the submissions from the Departmental Representative and perused the records.

5. The only dispute in this case as to whether the service of goods transport agency availed for the transportation of finished goods from the factory gate to the customers premises can be treated as "input service" under Rule 2(l) of Cenvat Credit Rules, 2004. On this issue, as per the judgment of Hon'ble Punjab & Haryana High Court in the case of Ambuja Cements Ltd. vs. Union of India (supra), the GTA service for transportation of the goods from factory gate/depot to the customers premises can be treated as input service only if the sale is on FOR destination basis, i.e., during transit from the factory/depot to the customer's premises, the ownership of goods remains with the assessee, during transit the risk of loss of the goods or damage to the goods is of the assessee and amount of freight is integral part of the

goods on which the excise duty is paid. In this case, none of these conditions satisfied. No evidence has been produced by the respondent that the sale is on FOR destination basis and excise duty has been paid on the price which includes freight charges for transportation from the factory to the customer's premises. When the respondent have paid excise duty on the price at the factory gate and the transportation from the factory gate to the customer's premises is not part of the assessable value of the goods for payment of excise duty, for the purpose of Cenvat Credit, the transportation from the factory gate to the customers premises cannot be treated as input service. In view of this, the part of the impugned order setting aside the Cenvat Credit demand of Rs.82,307/- is not sustainable. The same is set-aside and in this regard the order passed by the original adjudicating authority is restored. The Revenue's appeal is allowed. Cross objection is also disposed of as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I