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. ST/572 /2010 – SM[BR] ST /COD/ 472/2010 ST / CO/ 230/2011 Date 30/08/2011

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S COMMERCIAL AUTO PRODUCTS (P) LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No. 520 /2011-SM[BR]** Dated 20.7.2011 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
M/S COMMERCIAL AUTO PRODUCTS (P) LTD.,
TEWARIGANJ, FAIZABAD ROAD,
LUCKNOW.

2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.
FA-9,NEW KAVI NAGAR GHAZIABAD

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 (Harvana)
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:20.07.11
Date of decision:20.07.11

Service Tax Appeal No.572 of 2010-SM(BR)
With ST COD 472 of 2010 & ST/CO/230/10-SM

[Arising out of Order-in-Appeal No.30-ST/LKO/2010 dated 29.01.2010 passed by the Commissioner of Central Excise (Appeals), Lucknow].

CCE, Lucknow — Appellant

Vs.

M/s.Commercial Auto Products (P) Ltd. — Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

---

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

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?

Appearance: Rep. by Mrs. Renu K. Jagdev, SDR for the appellants.
Rep. by Shri Rajesh Chhibber, Advocate for the respondent.

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

Final

Order No. 520/2011-SM(BR)/Dated:20.07.2011

Per Rakesh Kumar

The point of dispute in this case is as to whether the respondents' sales transactions with their customers are on FOR destination basis and whether the respondents would be eligible for Cenvat credit of service tax paid on outward transportation of the finished goods from the factory gate to the place of delivery. The Asstt. Commissioner vide Order-in-Original dated 22.5.2009 decided this issue against the respondent and accordingly, confirmed the Cenvat credit demand of Rs.1,80,374/- along with interest and also imposed equal amount of penalty on them. The Commissioner (Appeals), however, by impugned order dated 29.01.2001 set aside the Asstt. Commissioner's order holding that the respondent would be eligible for Cenvat credit as sales to their buyers were on FOR destination basis and as such, it is the place of delivery, which is the place of removal as per Board/s Circular No.97/6/2007 dated 23.8.2007. Against this order of the Commissioner (Appeals), Revenue is in appeal challenging the order on the ground that the Commissioner (Appeals)'s findings that the place of delivery is the place of removal and that the respondents would be eligible for Cenvat credit of the service tax on the charges for outward transportation of the finished goods is not correct. In respect of the Revenue's appeal, the respondent have filed cross objection. Since there was delay of 19 days in filing of the appeal, a COD application for condonation of delay has been filed by the Department.

2. Heard both the sides.

3. As regards the delay of 19 days in filing of the appeal, in view of the reasons disclosed in the COD application, the same is condoned.

3. Mrs. R.K. Jagdev, ld. Departmental Representative, who pleaded that the Commissioner (Appeals) in the impugned order-in-appeal has not given any justification for his findings, that the sales of the respondent to their customers are not on FOR destination basis in terms of the Board's Circular No.97/6/2007 dated 23.8.2007 and that as can be seen from the Commissioner's findings in para-7 of the impugned order, he has merely repeated the respondent's submissions without discussing as to how he has arrived at his conclusions.

4. Shri Rajesh Chibber, Advocate, ld. Counsel for the respondent, pleaded that at the time of hearing before the Commissioner (Appeals), the purchase orders had been placed before him and on the basis of the same, he has given his findings that their sales are on FOR destination basis.

5. I have carefully considered the submissions from both the sides and perused the records.

6. As per the Board's Circular dated 23.08.2007, the services of outward transportation of the goods from the factory gate to the

customer's premises can be treated as input service only if the transactions are on FOR destination basis in the sense that during transit from the factory gate to the place of delivery, the ownership remains with the manufacturer and the risk of loss of or damage to the goods is of manufacturer and the cost of transportation from the factory gate to the customer's place is an integral part of the transaction value, on which duty has been paid. The Hon'ble Punjab & Haryana High Court in the case of **Gujarat Ambuja Cements Ltd. Vs. CCE, Ludhiana** has also relying upon the Board's circular has held that that in the cases where the sales are on FOR destination basis, the Cenvat credit of service tax paid on outward transportation of the finished goods from the factory gate to the place of delivery would be available. However, in this case, I find that though the Commissioner (Appeals) has given a finding that the respondent fulfill the conditions of sales on FOR destination basis in terms of the Board's Circular dated 23.08.2007, there is no detailed discussion in respect of this finding and this finding of the Commissioner (Appeals) is being disputed by the revenue. In view of the above, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) for de novo decision for detail finding on the point of dispute i.e. whether the respondent's sale to their customers are on FOR destination basis in terms of the Board's Circular No.97/6/2007 dated 23.08.2007. If so the Cenvat credit of service tax paid on outward transportation of the finished goods from the factory gate to the place of delivery would be available. Since the issue of limitation has also been raised before the Commissioner (Appeals), but the same has not been discussed by the Commissioner (Appeals), he is also directed to go into the question of limitation.

6. In view of the above, the Revenue's appeal is allowed by way of remand. The cross objection stands disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.