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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 01/09/2011

Appeal No. **E/2941/2009 –SM[BR]**

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

Appellant

C.C.E. CHANDIGARH

Vs

Respondent

M/S GROZ-BECKERT ASIA PVT.LTD.

I am directed to transmit herewith a certified copy of **Final order No. 538 / 2011-SM[BR]** dated 20.7.2011 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 GROZ-BECKERT ASIA PVT.LTD.
133-135, INDUSTRIAL AREA,
PHASE-I, CHANDIARH.

2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
H.NO.5, SECTOR-10A, CHANDIGARH.

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:20.07.11
Date of decision:20.07.11

Excise Appeal No.E/2941 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.226-228/CE/CHD-I/09 dated 22.06.2009 passed by the Commissioner of Central Excise (Appeals), Chandigar].

CCE, Chandigarh-I — Appellant

Vs.

M/s. Grox-Backert Asia Pvt. Ltd. — Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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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 Vikrant Kackria, Advocate for the respondent.

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

Final

Order No. 538/2011/SM(BR)/Dated:20.07.2011

Per Rakesh Kumar

This is an appeal filed by the Revenue against Order-in-Appeal No.226-228/CE/CHD-I/09 dated 22.06.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh.

2. The point of dispute in this case is as to whether the respondents would be eligible for Cenvat credit of Service Tax paid on the GTA services availed for outward transportation of the goods from the factory gate to the customer's premises. Though the appellants pleaded that their transactions were on FOR Destination basis and the assessable value on which the duty is paid includes the element of freight upto the customers' premises, the Original Adjudicating Authority holding that there is no evidence that the assessable value on which the duty has been paid includes the elements of freight upto to the customers' premises held that it is the factory which is the place of removal and accordingly, dis-allowed the Cenvat credit. However, Commissioner (Appeals) set aside the impugned order on the basis of decision of Larger Bench of Hon'ble CESTAT in the case of ABB & Ors. Vs. ST Bangalore reported in 2009 TIOL-830-CESTAT-Bang.-LB, wherein it had been held that the consignments of goods and availability of Cenvat Credit are independent of each other and exclusion of freight cost from transaction value would not come in the way of allowing Cenvat credit on outward transportation.

Against this order of the Commissioner (Appeals), Revenue has come in appeal.

3. Heard both the sides.

4. Mrs. Renu K. Jagdev, ld. DR assailing the impugned order pleaded that the Commissioner (Appeals)'s order is based on the Larger Bench decision of the Tribunal in the case of ABB & Others (supra), that the Revenue had filed an appeal before the Karnataka High Court against the Tribunal's order and the Hon'ble Karnataka High Court vide judgement reported in 2011 (23) STR 97 (Karnataka) following the judgement of Hon'ble Punjab & Haryana High Court in the case of Gujarat Ambuja Cements Ltd. reported in 2009 (236) ELT 431 (P&H) has held that for the period prior to 31.03.2008 the Cenvat credit on GTA services for outward transportation from factory gate would be available in the cases where the place of removal is the customers' premises i.e. the transactions on FOR basis, that in this judgement of Hon'ble High Court, the Hon'ble High Court has not affirmed the portion of judgement of the Larger Bench of the Tribunal holding that the consignment of goods and availment of cenvat credit are independent of each other and exclusion of freight cost from transaction value would not come in the way of allowing Cenvat credit on outward transportation, that the Commissioner (Appeals) has not gone at all into the question as to whether the respondents' sales to their customers were on FOR destination basis in

the sense that ownership of the goods and risk of damage to the loss or loss during the transit is of the manufacturer and the cost of transportation from the factory gate to the premises is an necessary part of the transaction value. In view of the above, the impugned order is not correct.

5. Shri Vikrant Kackria, Advocate, ld. Counsel for the respondent pleaded that the sales of the respondents are on FOR basis and that the duty had been paid on transaction value, which included the element of freight from the factory gate to the customers' premises, that in view of this, even on the basis of the Board's Circular No.59/1/2003-CX dated 3.3.2003 and the judgement of the Hon'ble Punjab & Haryana High Court in the case of Gujarat Ambuja Cements Ltd. reported in 2009 (236) ELT 431 (P&H), the Cenvat credit of service tax paid on GTA services for outward transportation cannot be denied and that as such, there is no infirmity in the impugned order.

6. I have carefully considered the submission from both the sides and perused the records. The Larger Bench of the Tribunal in the case of Commissioner of Central Excise, Bangalore Vs. ABB Limited (supra) while deciding the question as to whether the Cenvat credit of service tax paid on GTA services availed for transportation of the goods to the customer's premises would be available had decided the issue in favour of the assessee, ~~Mainly~~ mainly, on the ground that the valuation of the goods and availability of the Cenvat credit are independent of each other and

exclusion of freight cost from transaction value would not come in the way of allowing Cenvat credit on outward transportation. This is the judgement of the Larger Bench of the Tribunal, which has been followed by the Commissioner (Appeals) in this case and without going into the question as to whether the Respondent's transaction were on FOR destination basis, their appeal has been allowed. However, I find that the Hon'ble Punjab & Haryana High Court in the case of **Gujarat Ambuja Cements Ltd.(supra)** has held that the Cenvat credit of service tax paid on GTA services for transportation of the finished goods from the factory gate to the customer's places would be available if the transaction is on FOR destination basis, that is, during the transit of the goods the ownership of the goods remains with the manufacturer/assessee, the risk of loss of a damage to the goods during transit is of the manufacturer/assessee and the cost of transportation upto the customer's premises is integral part of the transaction value on which duty has been paid. It is this judgement of the Hon'ble Punjab & Haryana High Court, which has been followed by the Hon'ble Karnataka High Court in respect of the Department's appeal against the Tribunal's judgement in case of **M/s. ABB Ltd. VS. CCE, Bangalore reported in 2011 (23) STR 97 (Karnataka) (para 24 to 29 of the judgement).** In fact, this judgement nowhere affirms the delinking the issue of valuation and the cenvat credit. Thus, the view taken in the judgement of Hon'ble Punjab & Haryana

High court and Karnataka High Court is that Cenvat credit of service tax paid on outward transportation freight would be available only when the manufacturer's transaction with the customers are on FOR destination basis and it is the place of delivery, which is the place of removal. The Commissioner of Central Excise (Appeals) has not given any finding on the point as to whether the Respondents' sales were on FOR destination basis satisfying the condition in this regard in the Board's Circular NO.97/8/07-CX dated 23.08.2007. In view of this, the impugned order is not sustainable and the same is set aside. The matter is remanded to the Commissioner (Appeals) for de novo decision after examining the question as to whether the respondent's transactions with their customers were on FOR destination basis. The appeal stands disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.