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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/2525/2008 – SM[BR] **Date 30/11/2011**

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR II Appellant

Vs

M/S RANKA ORGANICS PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 850 / 2011 –SM[BR]** dated 9.11.2011 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 RANKA ORGANICS PVT LTD
E-107-109, INDUSTRIAL AREA,
GUDLI, UDAIPUR.

2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
M/S RESPONDENT:-------------------

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
NEW DELHI

Date of Hearing:09.11.2011
Date of Decision:09.11.2011

Excise Appeal No.E/2525 of 2008-SM

(Arising out of common Order-in-Appeal No.148(DK)CE/JPR-II/2008 dated 22.09.2008 passed by the Commissioner of Central Excise (Appeals-II), Jaipur)

For Approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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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, Jaipur-II Appellants

Vs

M/s. Ranka Organics Pvt. Ltd. Respondent

Appeared for the Appellant: Rep. by Shri R.K. Verma, DR
Appeared for the Respondent: Rep. by Shri Hemant Bajaj, Advocate

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

Final ORDER 850/2011 SM (Br)....................Dated:09.11.11

Per Rakesh Kumar:

The only issue of dispute in this case is as to whether the respondent during the period from Jan., 2007 to September, 2007 were eligible for cenvat credit of service tax paid on outward transportation of the goods from the factory to the buyer's premises. According to the respondent, their sales to their customers were on FOR destination basis and, hence, they were eligible for cenvat credit of service tax paid on the GTA services availed for outward transportation upto the customer's premises. The department, however, not accepting this plea of the respondent, disallowed the cenvat credit and in this regard, an order-in-original dated 23.5.2008 was passed confirming the cenvat credit demand of Rs.43,468/- along with interest and also imposing penalty of Rs.2,000/- under Rule 15 (3) of the Cenvat Credit Rules, 2004. However, on appeal against the order-in-original dated 22.09.2008, the Commissioner of Central Excise (Appeals) set aside the Asstt. Commissioner's order on the ground that the respondent's sales to their customers were on FOR destination basis and in this regard all the conditions as given in Board's Circular No.97/8/2007-ST dated 23.08.2007 are satisfied i.e. during transit, the risk of loss of the goods or damaged to the goods was of the respondent and freight upto the customer's premises was integral part of the transaction value. Against the order of the

Commissioner of Central Excise (Appeals), this appeal has been filed by the Revenue.

2. Heard both the sides.

3. Shri R.K. Verma, the learned DR assailed the impugned order by reiterating the grounds of appeal.

4. Shri Hemant Bajaj, Advocate, ld. Counsel for the respondent pleaded that when the Commissioner (Appeals), Central Excise has given a specific finding that sales were on FOR destination basis and it is the premises of the customer, which is the place of removal, the GTA services availed for transportation upto the customer's place would be covered by the definition of 'input service', that based on the Board's Circular dated 23.08.2007, the Hon'ble Punjab & Haryana High Court in the case of **Ambuja Cements Ltd. reported in 2009 (14) STR 3 (P&H)** has held that when the sales by the manufacturer are on FOR destination basis, the GTA services availed for transportation from the factory to the customer's premises would be covered by the definition of 'input service', that the Hon'ble Karnataka High Court in the case of **CCE, Bangalore Vs. ABB Ltd.** reported in 2011 (23)STR 97 (KAR) relying upon the judgement of the Hon'ble Punjab & Haryana High Court has expressed the same view, that the Hon'ble Gujarat High Court in the case of **M/s. Parth Poly Wooven Pvt. Ltd. reported in Tax Appeal No.419 of 2010 and others** has held that during the period of dispute i.e. during period prior to 1.4.2008 outward transportation from the place of

removal was covered by the definition of 'input service', and that in view of this, there is no infirmity in the impugned order.

5. I have carefully considered the submissions from both the sides and perused the records. The issue of eligibility of cenvat credit in respect of GTA services availed for outward transportation of the goods from the place of removal is no longer res integra and stands decided by the judgments of three High Courts of Hon'ble Punjab & Haryana High Court in the case of **Ambuja Cements Ltd.** (supra), of Hon'ble Karnataka High Court in the case of **ABB Ltd.** (supra) and of Hon'ble Gujarat High Court in the case of **Parth Poly Wooven Pvt. Ltd.** (supra). The ratio of these judgements of the Hon'ble High Courts is that prior to 1.4.2008, the service of Goods Transport Agency for transportation of the goods from the factory/Depot was covered by the definition of 'input service" if the sale took place at the customer's premises and the transactions were on FOR destination basis. In this case, I find that the Commissioner (Appeals), after examining the invoices, has given a specific finding that the respondent's sales to their buyers were on FOR destination basis in the sense that the ownership of goods during transportation remained with the respondent, the risk of/or damage to the goods during transit was of the respondent and freight was integral part of the value of the goods and as such, all the conditions specified in the Board's Circular dated 23.08.2007 of the Board for treating the transaction as FOR destination basis are satisfied. If the transaction is on

FOR destination basis it is the customer's premises which would be the place of removal and hence, GTA service would be covered by the definition of 'input service'. In the Revenue's appeal while challenging the Commissioner (Appeals) order, it has not been mentioned as to how the Commissioner (Appeals)'s findings that the respondent's transactions with their buyers were on FOR destination basis is incorrect. The judgement of the Tribunal in the case of **Gujarat Cement Ltd. Vs. CCE, Ludhiana reported in 2007 (6) STR 249** (Tribunal) cited by the ld. DR does not help the department's case as there are judgements of the three High Courts where a contrary view has been expressed. In view of this, I do not find any merit in the Revenue's appeal. The same is dismissed.

[order dictated & pronounced in open court]

(Rakesh Kumar)
Member (Technical)

Ckp.