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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. ST/1422/2010 – SM[BR]** **Date 30/11/2011**

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

To :
**M/S FLAIR FILTRATION PVT. LTD.**
**G-72/73, RIICO INDUSTRIAL AREA, MANSAROVER, JAIPUR.**

**M/S FLAIR FILTRATION PVT. LTD.** Appellant

Vs

**C.C.E. JAIPUR I** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 851 / 2011-SM[BR]** dated 17.11.2011 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
**C.C.E. JAIPUR I**
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
**MR.ALOK KOTHARI**
A-92 MANISH MARG,NOMI NAGAR,GANDHI PATH,VAISHALI NAGAR JAIPUR,

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 Copv
13. Guard file

Assistant Registrar
(SM Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI

Date of Hearing:17.11.2011
Date of Decision:17.11.2011.

Service Tax Appeal No.1422 of 2010-SM (BR)

[(Arising out of common Order-in-Appeal No.333(DKV)CE/JPR-I/2020 dated 12.07.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-I]

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?

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M/s. Flair Filtration Pvt. Ltd. — Appellants

Vs

CCE, Jaipur-I — Respondent

Appeared for the Appellant: Rep. by Shri Alok Kothari, Advocate
Appeared for the Respondent: Rep. by Shri R. Jagdev, SDR

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

Final ORDER....851/2011-SM(BR).....................Dated:17.11.2011

**Per Rakesh Kumar:**

The only point of dispute in this case is as to whether the appellant are eligible for Cenvat Credit of Service Tax paid on outward transportation of the goods from the factory to the customer's premises. According to the appellant, their transaction value was on FOR basis and the duty had been paid on the value which included the transportation charges and during the transit to the destination, the risk was of the assessee. The Commissioner (Appeals) has not accepted this plea and has disallowed the Cenvat credit amounting to Rs.2,09,345/- and has also upheld the imposition of penalty. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri Alok Kothari, Advocate, ld. Counsel for the appellant, pleaded that the issue involved in this case stands decided in their favour by the judgement of the Karnataka High Court in the case of **CCE, Bangalore Vs. M/s. ABB Ltd., Vadodara reported in 2011-TIOL-395-HC-KAR-ST** and also pleaded that they have documents to show that their transactions with their customers were on FOR destination basis in the sense that the transportation charges from the factory to the destination were part of the transaction value, the sale had taken place at the customer's premises and

during transit, the risk of loss of or damage to the goods was of the assessee. He also pleaded that in the show cause notice as well as in the impugned order, the definition of the 'input service' as given in Rule 2 (l) which was relied upon, was applicable w.e.f. 1.4.2008 and that prior to 1.4.2008, the definition of 'input service' also included the services in connection with the clearances of the goods from the place of removal which included the outward transportation irrespective of whether the cost of outward transportation was part of the assessable value or not.

4. Smt. R. Jagdev, ld. DR defended the impugned order pleading that in terms of the judgement of the Hon'ble Karnataka High Court in the case of **CCE, Bangalore Vs. ABB Ltd. (supra),** the outward transport from the factory to the place of removal can be treated as input service only when the sale had taken place at the customer's premises and the customer's place was the place of removal, that this is clear from para 27 to 29 of the judgement, that when outward transportation from the factory to the customer's premises were not part of the assessable value of the goods and as such, no excise duty had been paid on the transportation charges, for the purpose of availment of Cenvat credit, it cannot be treated as input service.

5. I have carefully considered the submissions from both the sides and perused the records. On going through the judgement of the Karnataka High Court cited above, I find that in terms of this judgement, Cenvat credit in

respect of the outward transportation from the factory/Depot to the customer's premises would be available only when the sale is on FOR destination basis in the sense that during transit, the risk of the loss/damage to the goods was of the assessee and the transportation charges were integral part of the assessable value on which the excise duty has been paid. This is clear from the observations of the Hon'ble High Court in the case of **M/s. ABB Ltd. (paras 27 to 29).** Same view has been taken by Hon'ble Punjab & Haryana High Court in case of **Gujarat Ambuja Cements Ltd. Vs. CCE, Ludhiana reported in 2007 TIOL 539 (CESTAT-Delhi).** However, in this cases, the appellant plead that they have records to show that their transactions were on FOR basis in the sense that the excise duty had been paid on the value which included the cost of transportation from the factory to the buyer's premises. This plea has to be verified. In view of this, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) for de novo decision after examining the records submitted by the appellant in support of their plea that their transactions were on FOR destination basis. The appeal stands disposed of as above.

[Order dictated & pronounced in open court]

( Rakesh Kumar )
Member (Technical)

Ckp.