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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/155 /2008 – SM[BR] Date 22/09/2010

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

M/S GODREJ CONSUMER PRODUCTS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 995 / 2010-SM[BR] dated 7.9.2010 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 GODREJ CONSUMER PRODUCTS LTD.
   INDUSTRIAL AREA, MALANPUR, DIST-BHIND, M.P.
2. Adv. / Consult SHRI V.LAKSHMIKUMARN ADV.
   B-6/10 ,SAFDARJUNG ENCLAVE NEW DELHI-29.
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.155 of 2008-SM

(Arising out of Order-in-Appeal No.IND-I/196/2007 dated 11.12.2007 passed by the Commissioner of Central Excise(Appeals-I), Indore)

Date of Hearing/Decision: 07.09.2010

For approval and signature:

Hon'ble Mr.M.Veeraiyan, 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 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?	

CCE, Indore Appellant

Vs.

M/s.Godrej Consumer Products Ltd. Respondent

Present for the Appellant : Shri R.K.Gupta, SDR
Present for the Respondent: Shri Ravi Raghvan, Advocate
Ms.Nupur Maheshwari, Advocate

Coram:
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final **ORAL ORDER No.** 995/2010 SM(BR)

PER: M.Veeraiyan

This is an appeal filed by the department against the Order-in-Appeal No.IND-I/196/2007 dated 11.12.2007 of the Commissioner(Appeals).

2. Heard both sides.

3. The relevant facts in brief are that the respondents are manufacturers of toilet soap and soap noodles. They availed cenvat credit inter alia on service of GTA, during the period from January, 2005 to March, 2007; that the respondents have taken a sum of Rs.2,13,422/- as cenvat credit of service tax paid on outward freight. The original authority held that the respondents cleared the goods at the factory gate on sale and, therefore, transportation involved from the factory gate to the buyers premises could not be treated as input service and accordingly denied the credit and demanded a duty of Rs.2,13,422/- alongwith interest and imposed equal amount as penalty under Rule 15 of Cenvat Credit Rules, 2002. On appeal, the Commissioner (Appeals) has set aside the order of the original authority holding that the respondents have paid excise duty on value which is inclusive of transport cost upto the premises of buyers.

4. Learned SDR submits that the decision of the Commissioner (Appeals) is erroneous. The communication dated 26.11.2007 from the jurisdictional Central Excise Superintendent to the Commissioner(Appeals) only shows that the purchase order was on FOR destination basis and duty was paid on FOR destination price. The decision of the Hon'ble High Court of Punjab & Haryana High Court in the case of Ambuja Cements reported in 2009 (236) ELT 431 allowed Cenvat credit on GTA services on outward transportation subject to the condition that the ownership of the goods and property in the goods should be transferred to the purchaser at their door step and the risk on loss or damage during transit to the destination should be covered by the seller. These conditions appear to have not been fulfilled and looked into by the Commissioner (Appeals).

5. Learned Advocate for the respondents relying upon the decision of the Hon'ble High Court in the case of Ambuja Cement supports the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides and perused the records. The decision of the Hon'ble Punjab and Haryana High Court in the case of Ambuja Cement in certain circumstances treats the GTA service involved in the transport to premises of the customer as input service. The said decision is subject to the fulfilment of conditions mentioned therein. In this context, relevant portions of the order of Hon'ble High Court is reproduced below:

> *"12. The 'input service' has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes, inter alia, services used in relation to inward transportation of inputs or export of goods and outward transportation upto the place of removal. It has also remain un-controvrted that for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, even the second condition that the seller has to bear the risk of loss or damage to the goods during transit to the destination stand fulfilled.*
>
> *13. The third condition that the freight charges were integral part of the excisable goods also stand fulfilled as the delivery of the goods is 'FOR destination' price. This aspect has been specifically pointed out in para 2.2. of reply dated 12-4-2006 given to the show cause notice. Therefore, we are of the view that the first question is liable to be answered in favour of the assessee and against the revenue."*

7. While the Commissioner (Appeals) has allowed the appeal of the party merely on the ground that the sales have been effected at FOR destination basis, he has not gone into other aspects relating to the transfer of the ownership of the goods and property in the goods and whether the risks of loss and damage have been borne by the seller or the buyers. Further, the respondents are not in a position to show from the available records that the conditions stipulated in the said decision have been fulfilled except making an assertion that they have fulfilled the conditions. The submission of the learned SDR is that in certain cases they have made collections of amounts on account of freight and insurance which has not been considered by the original authority or the Commissioner (Appeals). Learned Advocate, at this point of time, submits that they have availed credit only in respect of cases where there were no separate recovery of the amounts towards freight and insurance. It is noticed that these submissions have not been specifically raised before and discussed by the authorities below.

8. In view of the above, I deem it proper that the matter should be considered afresh by the original authority. To enable the same I set aside the order of the Commissioner (Appeals) and that of the original authority and remand the matter to the original authority to consider the issue afresh after granting a reasonable opportunity of hearing to the respondents.

9. The appeal is allowed by way of remand.

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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