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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/843 /2009 – SM[BR] Date 16/11/2010

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

To :
MARK EXHAUST SYSTEM LTD-II
VILL- BINOLA, DISTT- GURGAON

MARK EXHAUST SYSTEM LTD-II Appellant
Vs
C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1245 / 2010-SM[BR] dated 26.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. DELHI III
   UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
2. Adv. / Consult
   MS. SEEMA JAIN ADV.
   84, DARYAGANJ, N.DELHI-2.
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.843 of 2009

(Arising out of Order-in-Appeal No.285/ANS/GGN/2008 dated 16.12.08 passed by the CCE (A), Gurgaon), Delhi-III)

Date of Hearing: 26.10.2010
Date of Decision: 26.10.2010

For approval and signature:
Hon'ble Mr.Ashok Jindal, Member (Judicial)

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?	

M/s.Mark Exhaust Systems Ltd. Appellant

Vs.

CCE, Delhi-III Respondent

Present for the Appellant: Ms.Seema Jain, Advocate
Present for the Respondent: Shri S.K.Bhaskar, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 1245/2010 SMBD

PER: ASHOK JINDAL

The appellant has filed this appeal for denial of input service credit for outward freight paid by the appellant upto the premises of the customers.

2. The facts of the case are that the appellants are engaged in the manufacture motor vehicle parts and supplied the same to M/s.Maruti Udyog Ltd. and as per their agreement they have

to supply the goods at the doorstep of their buyers and they have to pay the transportation, transition insurance and packing and forwarding charges upto the place of buyers' premises. The lower appellate authority following the decision of this Tribunal in the case of Gujarata Ambuja Cements Ltd. vs.CCE, Ludhiana reported in 2007 (212) ELT 410 (Tri.) denied the input service credit for transportation of the goods upto to the place of buyers' premises. Aggrieved by the said order, the appellant before this Tribunal.

3. Learned Advocate for the appellant submits that the Circular No.97/6/2007-ST dated 23.8.2007 issued CBEC has clarified the place of removal. As per circular the place of removal means:

"Place of removal" means –

(i) A factory or any other place or premises of production or manufacture of the excisable goods;

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty;

(iii) A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed."

4. As the circular has been issued later on, therefore, the lower appellate authority has not examined their case in view of the aforesaid circular and in the case of Ambuja Cements vs. Union of India reported in 2009 (236) ELT 431 (P & H) wherein

the Hon'ble High Court has held that the circular dated 23.8.2007 is having retrospective effect if the assessee is satisfying all three conditions of the circular, the assessee is entitled for input service credit on the transportation of the goods upto the place of their buyers' premises.

5. Heard both sides.

6. I have seen the impugned order. Both the lower authorities have not examined the issue in the light of Board's circular dated 23.8.2007. Hence, the matter is sent back to the adjudicating authority to examine whether the appellant fulfils the conditions of the above said circular or not. If the appellant fulfils the conditions of the circular then the adjudicating authority will allow the input service credit to the appellant. The adjudicating authority shall give a reason opportunity to the appellant to present their case.

7. In view of these, observations, the impugned order is set aside and the appeal is allowed by way of remand.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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