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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/301/2010-EX[DB]

Dated: **20/06/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. LUDHIANA
Central Excise House, 'F' Block, rishi
Nagar, Ludhiana 141001 (Punjab)

C.C.E. LUDHIANA (Appellant)

VS

ABC PAPER LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/705/2012-EX[DB]** dated **13/06/2012** passed by the Tribunal under section

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
ABC PAPER LTD.
SCO NO. 18-19, 1ST FLOOR, SECTOR
8-C, CHANDIGARH.

2. **Advocate(s) / Consultant(s):** SH. S. SUNIL, ADV., 46, BANK ENCLAVE, DELHI-92

3. **C.D.R**

4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

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-110005

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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/ decision:13.06.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, 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?	

Excise Appeal No. 301 of 2010

(Arising out of order-in-Appeal No. 221/CE/LDH/09 dated 27.10.2009 passed by the Commissioner (Appeals) customs & Central Excise, Chandigarh-I).

CCE, Ludhiana Appellants

Vs.

M/s ABC Paper Ltd. Respondent

Present Shri R.K. Verma, AR for the appellant.
None for the respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/705/2012-Ex (BR)

Per. Rakesh Kumar:

The respondent manufacture paper chargeable to central excise duty. The dispute in this case is as to whether during the period from February, 2005 to May, 2007 they were 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 respondent, their place of removal is buyer's place, as their sales are on FOR destination basis and hence they were eligible for the cenvat credit. But the department did not accept this plea and issued a show cause notice for denial of credit to the tune of Rs.31,61,755/- and imposition of penalty. The show cause notice was adjudicated by the Joint Commissioner vide order-in-original dated 21.01.2008 by which the cenvat credit demand of Rs. 31,61,755/- was confirmed alongwith interest and besides this, penalty of equal amount was imposed on the respondent.

2. On appeal against this order, the Commissioner (Appeals) vide Order-in-Appeal dated 27.10.2009 allowed the appeal and set aside the order relying upon the judgement of larger bench of the Tribunal in the case of ABB Ltd. vs. CCE &ST Bangalore reported in 2009 (15) STR 23 (Tri. LB). Against this order of Commissioner (Appeals), the present appeal has been filed by the revenue.

3. Though notice for hearing of this matter has been sent to the respondent, today when the matter was called none representing the respondent. We find that on earlier occasions for hearings dated 17.2.2011, 26.07.2011 and 29.12.2011 notices of hearing were sent to the respondent

at the address SCO No. 18-19, Ist Floor, Sector-8-C, chandigarh through registered A.D. post those notices have been received back. For today's hearing also, a notice was sent on the same address which has received undelivered. Since the notice was put in the postal service, there was a presumption of service of the notice. As no one has turned up, today, we are constrained to hear the appeal ex-parte against the respondent.

4. Heard Sh. R.K. Verma, ld. AR for the department who pleaded that the impugned order has been passed based on the judgement of the Tribunal in the case of ABB Ltd. vs. CCE &ST Bangalore (supra) without any reference to the facts of the case. Ld. AR submits that as per the definition of "place of removal" given in Section 4(3)(c) of the Central Excise Act, the place of removal cannot be any place other than the factory premises, warehouse where the excisable goods are stored or the depot / premises of consignment agent of the respondent from where goods are sold. Ld. AR submits that the place of delivery ~~of~~ to the ~~custom~~ customer can not be the place of removal. It is pleaded that even if the ~~customs~~ customer's premises ~~as~~ is treated as the place of removal, there is no finding by CCE(Appeals) that the sales were on FOR destination basis. It is submitted that in the instant case, neither the Commissioner (Appeals) nor the adjudicating Joint Commissioner have looked into this aspect of the case by referring to the facts. Therefore, the impugned order as well as order-in-original are not sustainable in law. Thus, ld. DR requests for setting aside the impugned order and remand of the case to the adjudicating authority for denovo adjudication after taking into account the overall facts and circumstances of the case.

5. We have gone through the submissions as well as order-in-original and we find that neither the impugned order nor the order-in-original are based upon the scrutiny of the facts to conclude that the place at which the ownership of the property was transferred was the customer's premises. We find merit in the submission made by ld. AR. Accordingly, we hold that impugned order is not sustainable in law.

6. In view of the above, appeal is accepted and the impugned order is set aside and the matter is remanded back for denovo adjudication with reference to the facts of the case after giving opportunity of being heard to both the parties. Appeal is disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant