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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/2974/2007 & E/366/2008-EX[DB]

Dated: **03/10/2012**

**Assistant Registrar**
C.E.S.T.A.T. New Delhi
To,
**AARTI STEEL LTD**
Focal Point, Ludhiana.

**AARTI STEEL LTD** (Appellant)

VS

**C.C.E. LUDHIANA** (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1189-1190/2012-EX[DB]** dated **01/10/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

**Assistant Registrar**
**EXCISE Appeal Branch**

**Copy To,**
**1. Respondent**
**C.C.E. LUDHIANA**
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**2. Advocate(s) / Consultant(s):**
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**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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

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**Assistant Registrar**
**EXCISE Appeal Branch**

**IN THE CUSTOMS, EXCISE & SERVICE TAX**
**APPELLATE TRIBUNAL**
**West Block No.2, R.K.Puram, New Delhi-110066**
**Principal Bench, New Delhi**
**COURT NO. 1**

**Date of Hearing:12.06.2012**
**Date of Decision :** 11/10/2012

**Excise Appeal Nos. E-2974/07 & E-366/08**

**M/s. Aarti Steel Ltd.** **Appellants**

**Vs.**

**CCE, Ludhiana** **Respondent**

(Arising out of the Order No. 368-CE/LDH/CHD/07 Dated 12.09.2007 passed by the Commissioner Central Excise(Appeals), Chandigarh.

**Hon'ble Justice Ajit Bharihoke, President**
**Hon'ble Shri 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) Rule, 1982? :

2. Whether it would be released under Rule 27 of the CESTAT (procedure) Rule, 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? :

**Appearance**

Sh. R. Santhanam, Advocate - for the Appellant
Sh. Sunil Kumar, DR - for the Respondent

FINAL ORDER No. A/1189-1190/2012-EX(BR)

**Per Rakesh Kumar**

The fact leading to this appeals are, in brief, as under:-

1.1 The appellant are engaged in the manufacture of Alloy/ Non Alloy Steel ingots/Billets/Steel Wire Rod etc. chargeable to Central Excise Duty under Chapter 72 of the Central Excise Tariff. They avail the Cenvat Credit of Central Excise Duty paid on inputs and capital goods and service tax paid on inputs services used in or in relation to the manufacture of their final products. The dispute in this case is as to whether the appellant are eligible for Cenvat Credit of service tax paid on GTA Service availed for outward transportation of finished goods from the factory gate to the customer's premises. The appellant during the period from Jan'05 to Nov.'05 and from Nov.'05 to August'06 took Cenvat Credit of Rs. 11,71,026/ and Rs. 12,66,789/- respectively, in respect of outward freight for transportation of finished goods from the factory gate to the customer's premises, as according to the appellant, their sales are on FOR destination basis and it is the customer's premises which is the 'place of removal'. The Department being of the view that GTA service availed for outward transportation for finished goods from the factory gate to the customer's premises is not covered by the definition of 'input service', as given in Rule 2(l) to Cenvat Credit Rules'2004, issue two show cause notices for recovery of this credit along with interest and also of the imposition of Penalty. These show cause notice were adjudicated by Joint Commissioner/ Additional Commissioner vide orders dated 02.06.06 & 2.03.07 by which the Cenvat Credit demands as made by show cause notices were confirmed along with interest and besides this, penalties under Rule-15 of Cenvat Credit Rule were also imposed on the appellant. On appeals being filed before the Commissioner (Appeal) against the orders of the Joint Commissioner and Additional Commissioner, the CCE (Appeals) by two separate orders-in-appeal dismissed the appeals. The Commissioner (Appeal) in these orders held that in the case whether the transportation of the finished goods is arranged by the manufacturer on the customer's request, the cost of which is reimbursed by the customer, the customer's premises can not be treated as the place of removal. Against these orders of the Commissioner (Appeal), these two appeals have been filed by the appellant.

2. Heard both the sides

3. Sh.R.Santhanam, Advocate, the learned Counsel for the appellant, pleaded that the appellant's sales were on FOR destination basis and, therefore, it is the customer's premises which have to be treated as the 'place of removal', that therefore, the transportation up to the customer's premises has to be treated as "transport up to the place of removal" and the same would be eligible for Cenvat Credit, that Cenvat Credit in respect of out ward transportation is also admissible, in view of the judgment of **Hon'ble Karnataka High Court in the case of Commissioner Central Excise and Service Tax LTU, Banglore V/s ABB Limited, reported in 2011 (23) S.T.R 97 (Kar.) and also the judgment of Hon'ble Gujrat High Court in the case of Commissioner of Central Excise & Customs V/s Parth Poly Wooven Pvt. Ltd., reported in 2012 (25) S.T.R. 4 (Guj.)**, that in these judgments, it has been held in clear terms that during the period prior to 01.03.08, the goods transports service used for transportation of the finished goods from the factory up to the customer's premises would be eligible of Cenvat Credit, that the ratio of these judgment of the High Court is squarely applicable to the facts of these cases and that in view of above submissions, the impugned orders-in-appeal passed by the Commissioner (Appeal) are not correct.

4. Sh.Sunil kumar, the learned departmental representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that in accordance with the

Board's Circular No. 97/06/07-ST dtd. 23.08.07, the customer's premises can be treated as 'place of removal' only when the sales are on FOR destination basis and for which the property in goods during transit must remain with the manufacturer seller and the risk of loss of goods or damage to the goods during transit is of the manufacturer-seller and the transportation cost is integral part of the value of the goods on which the duty has been paid, that relying upon this Circular of Board, **Hon'ble Punjab & Haryana High Court in the case of Ambuja Cement Limited V/s Union of India, reported in 2009 (236) E.L.T. (P&H)**, has held that Cenvat Credit of service tax paid on outward freight up to the buyer's premises would be admissible when the sales are on FOR destination satisfying the criteria prescribed for the same in the Board's Circular 23.08.07, that the above judgment of Hon'ble Punjab & Haryana High Court has been relied upon by Hon'ble Karnataka High Court in the case of **CCE Banglore V/s ABB Ltd (Supra),** that in view of this the Cenvat Credit of service tax paid on GTA service availed for outward transportation of finished goods from the factory gate to the customer's premises would be admissible only when the sales are on FOR basis in term of the criteria prescribed in the above mentioned Circular of the Board, that in these cases there is no evidence that the criteria for the sales being on FOR destination basis, as prescribed on the Board's Circular dtd. 23.08.07 has been satisfied, and that in view of this, there is no infirmity in the impugned orders.

5. We have considered the submissions from both the sides and perused the records. The main submission of the appellant is that their sales were on FOR destination basis and, therefore, it is the customer's premises which would be the place of removal and since during the period of dispute, transportation up to the place of removal was covered by the definition of 'inputs service', they would be entitled for the Cenvat Credit of service tax paid on the GTA service availed for

out ward transportation of the finished goods up to the customer's premises. Since in these cases, the duty on the finished goods is at an ad-valoral rate, the definition of 'Place of Removal' as given in Section 4 of the Central Excise Act, 1944, would be applicable and accordingly if the sales, of the goods take place at the customer's premises i.e. the sales are on FOR destination basis, the customer's premises would be the "Place of Removal", and in that case , the transportation of the finished goods upto customer's premises would be covered by the definition of 'input service'.

5.1 The Board's Circular No.97/06/07 dtd. 23/08/07 prescribed the following three criteria for treating a sale transaction as on FOR destination basis.

(i) During the transit, the ownership of goods remains with the manufacturer seller till the delivery of the goods in good condition to the buyer.

(ii) During transit, the risk of the loss of goods or damage to the goods is of the manufacturer seller.

(iii) The transport charges up to the customer's premises are integral part of the value of the goods that is the value on which excise duty has been paid.

According to the above mentioned Circular of the Board if the sales satisfy the above criteria the same are to be treated as on FOR destination basis and in that case the customer's premises would be the "place of removal" and Cenvat Credit of Service Tax paid on the GTA services availed for transit up to the customer's premises would be admissible.

6. **Hon'ble Punjab & Haryana High Court in case of Ambuja Cement Ltd. Vs. Union of India (Supra)** relying upon the above circular of the Board has held that Cenvat Credit of Service Tax paid

on GTA services availed for outward transportation of the finished goods upto the buyer's premises would be admissible if the sales are on FOR destination basis, in term of the criteria prescribed for this, in the Board's Circular dtd. 23.08.07. Though **Hon'ble Karnataka High Court Judgment, in its judgment the case of CCE Bangalore Vs. ABB Ltd. reported in 2011 (23) S.T.R. 97 (KAR)** cited by the learned counsel for the Appellant, which is in respect of Revenue's appeal against Tribunal (Larger bench)'s Larger bench's judgment reported in 2009 (92) RLT-665 (CESTAT LB), has held that Cenvat Credit of service tax paid on GTA service availed for outward transportation of finished goods upto the customer's premises is admissible, a perusal of the larger bench's judgment and the judgment of Hon'ble Karnataka High Court would show that:-

(a) While the larger bench judgment had held that :-

(i) GTA service availed for outward transportation of finished goods from factory/ depot to the customer's premises is also covered by term "activities relating to business" in the definition of "input service"; and

(ii) The Cenvat Credit in respect of GTA service availed for outward transportation of finished goods would be admissible even if the value thereof is not part pf the value of finished goods subjected to excise duty, as the interpretation of the expression 'input service' can not fluctuate with the change in the definition of "Value" in section 4 of the Central Excise Act;

none of the above findings have been approved by Hon'ble Karnataka High Court. In para 31 of the judgment of Hon'ble High Court has specifically held that – expression- "activities relating to business" in the inclusive part of the definition of input service does not cover,outward transportation from the factory. In this judgment, Hon'ble high Court in para 23 of the judgment after framing the question "The question is upto what stage after manufacturing of the product, the "Service" rendered in transporting the finished goods from the place of removal upto the place of delivery, constitutes "input service" as defined under the Cenvat Credit Rule'2004", has -

(a) in para 29 of the Judgment held that when the sales are on FOR destination basis, satisfying the criteria prescribed in this regard in the Board's Circular dtd. 23.08.07, the transportation from the factory to the customer's premises would fall within the phrase -

"Clearance of the final products from the place of removal" and, therefore, the assessee would be entitled to Cenvat Credit in respect of the same"; and

(b) in para 30 of the judgment, after observing that since the definition of 'input service', contains both the words - 'means' and "includes", and not "means and includes", the portion of the definition to which the words "means" applies has to be construed restrictively, as it is exhaustive and the inclusive portion of the definition has to be construed liberally, has held that the inclusive portion of the definition prescribes an outer limit for outward transportation which is up to the "place of removal". Thus, the ratio of the judgment of Hon'ble Karnataka High Court in the case of C.E.E. Vs. ABB Ltd.,(Supra), is -
that while the expression "Service in relation to clearance of final products from the place of removal" in the main definition, to which the word "means" applies, includes the transportation of final products from the factory, this expression has to be given a restrictive meaning and the outer limit of the meaning of this expression is outward transportation up to the place of removal.

A corollary to this would be that when the sale of the goods chargeable to duty at an ad-valorem rate on value determined under section 4, is on FOR destination basis, the customer's premises would be the 'place of removal' and in that case, GTA service availed for transportation of the finished goods up to the customer's premises would be the 'input service' eligible for Cenvat Credit. Thus, the ratio of the judgment of **Hon'ble Karnataka High Court in the case of C.E.E. Vs. ABB Ltd.,(Supra),** is the same as the ratio of **Hon'ble Punjab & Haryana Court in the case of Gujrat Ambuja Cement (Supra),** and the ratio of both of these judgments is that the Cenvat Credit of Services Tax on GTA service availed for outward transportation of finished goods up to the customer's premises would be admissible only when the sales are on FOR destination basis and duty at ad-valoral rate has been paid on the For destination price. In this regard, observations of the Hon'ble Karnataka High Court in para 15 & 16 of its judgment in case of ABB Ltd. (Supra), are worth noting-

15. **"However, the opening words of sub-heading (3) read as under:-**
**"For the purpose of this, section"**
16. **Therefore, though the expression "place of removal" is defined under section 4 (3) of the Central Excise Act, 1944, its application is to be confined as is clear from the opening word of sub section (3) for the purpose of section 4 only".**

6.2 Thus for the purpose of Rule 2(l) of the Cenvat Credit Rules, the customer's/buyer's premises are to be treated as the 'place of removal' only when –

(a) sales are on FOR destination basis in term of the criteria prescribed in this regard in Board's Circular dtd. 23.08.07' and ;

(b) the goods attract duty at ad-valoral rate on value determined under section 4.

7. In the impugned orders neither any findings have been given on the Appellant's plea that their sales are on FOR destination basis nor the Board's Circular No. 97/06/2007 S.T. dt. 23.08.07 and the judgment's of **Hon'ble Punjab & Haryana High Court in case of Ambuja Cement Ltd., (Supra),** which is the jurisdictional High Court have been discussed. The impugned orders, therefore, are set aside and these matters are remanded to CCE (appeals) for de-novo decision in the light of our observation in para 6.2 above.

**(Justic Ajit Bharihoke)**
**(President)**

**(Rakesh Kumar)**
**Member(Technical)**

**S.Kaur**