IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. E/1133/2011-EX [DB]

[Arising out of Order in Appeal No. 40/RPR-I/2011 dated 11.03.2011, passed by the Commissioner (Appeals-I) of Central Excise, Raipur (C.G.)]

For approval and signature:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

CCE, Raipur **....Appellant**

Vs.

Lafarge India Pvt. Limited **....Respondent**

Appearance:

Shri G.R. Singh, DR for the for the Appellant/ Revenue
Shri Saurabh Suman Sinha, Advocate for the Respondent/Assessee

<u>**CORAM**</u>:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing: 27.12.2016

Date of Pronouncement: 30.12.2016

FINAL ORDER NO. <u>56202/2016</u>-EX [DB]

<u>**Per B. Ravichandran**</u>

The Revenue is in appeal against the order dated 11.03.2011 of Commissioner (Appeals-I), Raipur. The respondents were engaged in the manufacture of Cement and Clinker liable to Central Excise duty. They have also availed credit of duty paid on inputs, capital goods and service tax. The dispute in the present appeal relates to eligibility of the respondents to take Cenvat credit on GTA

Services during the period September, 2008 to January, 2009. GTA service is in respect of transportation of finished goods up to the customers' premises under contract. The Original Authority denied the credit on the ground that the sale has happened at the factory gate and the credit of tax paid on GTA cannot be allowed. On appeal, the Commissioner (Appeals) set-aside the order. Aggrieved by this, the Revenue is in appeal.

2. We have heard the Ld. AR for Revenue and Ld. Counsel for the respondents. The only dispute in the present appeal is eligibility of respondent to avail credit on GTA service for transportation of goods from factory to warehouse/depot/ other unit of the respondent. In the appeal, the Revenue emphasized that the term "place of removal" needs determination taking into account the facts of an individual case and relying on the definition under section 4 of Central Excise Act, 1944. It is contended by Revenue that in the instant case, the goods were transported to sister unit of the respondent for further manufacture and as such, the place of removal would be factory of manufacturer and not at receiving unit. We note that the Commissioner (Appeals) examined the legal provisions with reference to "input service" and "place of removal" and recorded his findings after such examination. Regarding transfer of goods to the sister unit, the impugned order recorded that ownership of goods and the property of the goods remained with the seller (respondent) till the delivery of goods to the other unit. The respondent bore risk of loss/damage to the goods during transit to the destination. The freight charges were

an integral part of the price of the goods. Accordingly, it was recorded that all the conditions laid down by Board Circular dated 23.08.2007 have been fulfilled. It was also recorded that in case of transportation of Cement from the respondent's unit to customers' premises on FOR destination basis, the credit was admissible as the sale has taken place when the customer takes delivery of the goods. The cost of transportation has been included in the assessable value and as such, the impugned order permitted the credit as legally eligible. We note that during the arguments, Ld. AR referred to the decision of Hon'ble Chhattisgarh High Court in the respondent's own case reported in 2014 (35) STR 645 (Chhattisgarh). The Hon'ble High Court held that in case of sale at the place of destination, the assessee is only entitled to claim credit of service tax on GTA, provided the amount paid was integral part of price of the goods. We note that in the present case, it has been categorically recorded by the lower authorities that the transportation cost has been included in the assessable value and as such the facts of the case is different from the one referred to by the Revenue. In the said case, it was clearly recorded that the freight charges were not integral part of the price of the goods.

3. In view of the above discussion, we find no merit in the present appeal by the Revenue. Accordingly, the same is dismissed.

[Pronounced in the open Court on 30.12.2016]

(Justice Dr. Satish Chandra) **President**	**(B. Ravichandran)** **Member (Technical)**

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