IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 2.1.2017
Date of Pronouncement: 11.1.2017

Appeal No. E/2143/2009-EX.(DB)

(Arising out of Order-in-Original No. Commissioner/RPR/14/2009 dated 19.2.2009 passed by the Commissioner (Adj.), Customs & Central Excise, Raipur)

CCE, Raipur — Appellant

Vs.

M/s Lafarge India Pvt. Ltd. — Respondent

Appearance

Shri Yogesh Agarwal, D.R. - for the appellant

Ms. Chitra Y. Prande, Advocate - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50207/2017

Per Ashok K. Arya :

Revenue is in appeal against the Order-in-Original No. 14/2009 dated 19.2.2009 whereunder Cenvat credit of Rs.5,57,224/- has been disallowed and rest of the demand is dropped.

2. Revenue has been represented by ld. DR, Shri Yogesh Agarwal and the respondent viz. M/s Lafarge India Pvt. Ltd. has been represented by ld. Advocate, Ms. Chitra Y. Parande.

3. Revenue is in appeal against the order-in-original on the issue saying that Cenvat credit of Rs.47,99,089/- allowed by the impugned order on the transportation services used for transportation of clinker transferred by the party to their sister unit, M/s Lafarge India Pvt. Ltd., Jojobera is not admissible.

4. Revenue *inter alia* submits that the impugned order is not legal and proper insofar as the Cenvat credit on the transportation service used for transportation of clinker from the factory of the appellant to the premises of their sister unit at Jojobera is concerned.

4.1 The Revenue's further submissions are as follows:

(i) Adjudicating authority has only delved upon the definition of 'place of removal' under sub-clause (iii) of clause (c) of Section 4(3) of the Central Excise Act, 1944. Under the said sub-clause (iii), the 'premises from where the excisable goods are to be sold after their clearance from the factory' have been defined as the 'place of removal'. Thus, sub-clause (iii) does not cover the cases when the goods cleared are not sold from some other premises. Also a 'place of removal' is a place from where the 'goods are removed.' In this case clinker transferred to the sister unit is not 'removed' from there but used in the manufacture of cement. Clearly, the premises of the sister unit to which the clinker is transferred by the party cannot be termed as the 'place of removal' of clinker.

(ii) Under sub-clause (i) of clause (c) ibid, 'place of removal' has been defined as 'factory or any other place or premises of production or manufacture of the excisable goods' from where such goods are removed. The definition under this clause does not require that the goods removed should be sold. Clearly, when the goods removed from a factory are not sold but further used in the manufacture of goods at another premises, as defined under sub-clause (i) ibid, the place of removal would be the factory of production itself.

(iii) The definition of 'input service' only covers the transportation service used up to the 'place of removal'. As in the case of transfer of clinker from factory of the party to the sister unit, the 'place of removal' is the factory of the party itself, the adjudicating authority has erred in allowing Cenvat credit on the transportation service used for transportation of clinker from factory to the premises of the sister unit.

5. The ld. Advocate for the respondent, based on the written submissions, inter alia, submits as under :

(i) Commissioner in the impugned order observes that the transfer of clinker from the respondent's one unit to another cannot be construed as sale. The consignor and the consignee are the same person. The Commissioner, therefore, held that credit of service tax paid on transportation of clinker up to sister unit is admissible as there is no case of sale and transfer of property in goods at the factory gate.

(ii) In this case, there is no transfer of title. The assessee has not removed the goods out of its control. There cannot be a removal, or a place of removal. The place of removal has to be seen in the context of sale it is the point at which the title passes that is considered to be the place of removal. The aspect of sale is inextricably interwoven with the concept of place of removal. The following case laws settle the said issue:

(i) CCE, Aurangabad Vs. Roofit Industries *Ltd*. – 2015 (319) ELT 221 (SC);

(ii) *Ambuja Cements Ltd. Vs. Union of India* – 2009 (236) ELT 431 (P&H);

(iii) *Cadbury India Ltd. Vs. CCE, Mumbai –II* – 2016 (42) STR 155 (Tri.-Mum.);

(iv) *CCE Rajkot Vs. Rajhans Metal P. Ltd.* – 2008 (12) STR 597 (Tri.-Ahmd.)

(v) *Metro Shoes Pvt. Ltd. Vs. CCE, Mumbai-I* – 2008 (10) STR 382 (Tri.-Mum).

(iii) In the light of the aforesaid judgements, stock transfer and sale cannot be equated. Transaction is Revenue neutral as the cost of transportation of clinker to warehouse/sister unit would be treated as input service for the manufacture of cement by the sister unit therefore credit could be available at that stage.

6. After careful consideration of the facts, the submissions of both the sides and the case laws cited, it appears that the facts do not involve any sale of the goods in question. The goods viz. clinker is to be transported from party's premises to their sister unit premises and the respondent viz. Lafarge India Pvt. Ltd. is not taking any consideration for the same as Jojobera unit being their sister unit. It is clear that the definition 'place of removal' is inextricably linked with the fact of 'sale'. When present facts do not involve any sale, one cannot say that the factory premises of the appellant is the 'place of removal'. Therefore, the Revenue's contention that Cenvat credit cannot be allowed on account of transportation services used for transportation of clinker transferred by respondent to their Jojobera unit is without sufficient force.

6.1 The Hon'ble Punjab & Haryana High Court in the case of *Ambuja Cement* (supra) has observed that if ownership of goods remain with seller Cenvat credit would be admissible. CESTAT, Mumbai in case of *Metro Shoes P. Ltd.* (supra) also holds that when there is no sale involved, services used till place of removal are eligible for credit. In the present case, 'place of removal' is to be treated as Jojobera unit of M/s Lafarge India (P) Ltd.

7. In the light of above discussions, the Revenue's appeal has no merits and is hereby dismissed, the impugned order sustains.

(Pronounced in Court on 11.1.2017)

(Ashok K. Arya)
Member (Technical)

((Justice Dr. Satish Chandra)
President

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