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

Appeal No. E/1282/2011-EX(SM)
[Arising out of Order-in-Appeal No. 28/RPR-I/2011 dated 21.02.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Raipur].

M/s. G.R. Sponge & Power Ltd. **....Applicants**

Vs.

C.C.E. Raipur-II **....Respondent**

Appearance:

Ms. Rinki Arora, Advocate for the Appellants
Shri Dharam Singh, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 31.01.2017

FINAL ORDER NO. 50563/2017-EX(SM)

Per Archana Wadhwa:

After hearing both the sides duly represented by Ms. Rinki Arora, Advocate for the Appellants and Shri Dharam Singh, DR for the Respondent, I find that the service tax of Rs.64,116/- stands confirmed against the appellant along with imposition of penalties by denying them service tax credit availed by the applicant in respect of GTA service for transporting coal in their factory on the ground that the said coal is washed outside the factory premises and get reduced in weight. So proportionate credit stands denied to the appellant.

2. After hearing both sides, I do not agree with the reasoning adopted by the lower authorities that the inputs i.e. coal get reduced in weight by 15% and as such transportation charges would also get reduced and the consequent service tax on the same

would get reduced. If that be the reasoning, the assessee would be required to pay less service tax. The appellant has taken Modvat credit of the service tax paid by him to the transporter for transportation of the coal to their factory. The service tax payment or the credit of the service tax paid is not relatable to the quantum of inputs so received but is relatable to the transportation charges paid by the appellant to the transporter. ***Punjab & Haryana High Court decision in the case of CCE Chandigarh Vs. Punjab Steels reported in 2011 (21) STR 5 (P&H)*** has upheld the Tribunal's decision also supports the above view.

3. I also find that the Rule 3(5) of Central Excise Rules 2004 invoked by the lower authorities is not applicable in respect of input services credit as held by the Tribunal in the case of ***Chitrakoot Steel & Power Pvt. Ltd. Vs. CCE Chennai 2008 (10) STR 118 (Tri-Chennai)***. In view of the foregoing, I find no reason to deny the Cenvat Credit.

4. Accordingly the impugned order is set aside and appeal is allowed.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu