IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/2517/2011-EX [SM]

[Arising out of Order-in-Appeal No.IND/314/2011 dated 28.07.2011 passed by the Commissioner of Central Excise (A) Indore (MP)

Mahle Engine Components (I) Pvt. Ltd. …Appellant

Vs.

C.C.E., Indore … Respondent

Present for the Appellant : Mr. D.K. Tyagi, Advocate
Present for the Respondent: Mr.M.R. Sharma, A.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 28/12/2016

FINAL ORDER NO. _56423/2016_

PER: S.K. MOHANTY

Denial of cenvat credit on CHA and concor service is the subject matter of present dispute.

2. The ld. Advocate for the appellant submits that the said services were utilized by the appellant for exportation of goods from the port of export. He further submits that as per the conditions in the purchase order issued by the buyer, the terms of delivery is FOB destination basis and the insurance

charges to be borne by the appellant. Thus, he submits that the port of export should be considered as "place of removal" and the services so availed will be eligible for the cenvat benefit. To support such stand, the ld. Advocate has relied on the Larger Bench decision of this Tribunal in the case of Honest Bio-Vet Pvt. Ltd. Vs. C.C.E., Ahmedabad-I reported in 2014 (310) E.L.T. 526 (Trib. LB.) and also the Circular No.999/6/2015-CX dated 28.02.2015 issued by the CBEC.

3. On the other hand, the ld. A.R. appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. The fact is not under dispute that the disputed services namely, CHA, concor service were utilized by the appellant for export of goods. Since the contract entered into between the appellant and the overseas buyer specifies the term of delivery i.e. FOB, the services availed/utilized till loading of goods into the vessel should be considered as input service and in terms of the definition contained in Rule 2 (l) of the Cenvat Credit Rules, 2004, the disputed services should merit consideration as 'input service' for the purpose of availment of cenvat credit. I also find that in the similar set of facts, the Larger Bench of the Tribunal in the case of Honest Bio-Vet Pvt. Ltd. (supra) has held that ownership of goods and duty liability in the case of FOR sale is extended upto load port and if goods were not

exported or destroyed before export, exporter had to discharge duty liability; thus, place of removal of goods is port of shipment.

6. In view of above, I do not find any merits in the impugned order and allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita