CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 55806 of 2013

(Arising out of Order-in-Original No. Commissioner/Cex/81/2012 dated 18.10.2012 passed by the Commissioner of Central Excise, Raipur)

DATE OF HEARING : 08.03.2017
DATE OF DECISION : 08.03.2017

M/s Lafarge India Pvt. Ltd. ….. Appellants
(Rep by Sh. A.N. Haksar, Sr. Adv.)

VERSUS

CCE, Raipur ….. Respondent
(Rep. by Sh. H.C. Saini, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52266/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the impugned order-in-original no. Commissioner/Cex/81/2012 dated 18.10.2012 passed by the Commissioner of Central Excise, Raipur. The period of dispute is April 2006 to July 2010.

2. The brief facts of the case are that the assessee-Appellants were manufacturer of the clinker which was transported to the railway site for onwards transmission to their another unit. The assessee-Appellants paid the Service Tax on the transportation and

claimed the Cenvat Credit which was denied by the Department. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri A.N. Haksar, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Department.

4. After hearing both sides and on perusal of record, it appears that an identical issue has come up before this Tribunal in the assessee-Appellants' own case and the Tribunal vide its Final Order No. 50207/2017 dated 02.01.2017 has observed that :

> *"6. After careful consideration of the facts, the submissions of both 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.*
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> *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."

5. By following our earlier decision (supra), we find no reason to interfere with the impugned order. Hence, the order passed by the Commissioner is hereby sustained along with the reasons mentioned therein.

6. In the result, the appeal filed by the assaessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay