CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 09.03.2017

Excise Appeal Nos. 2958 & 2962 of 2011

(Arising out of order-in-original No. COMMISSIONER/ RPR/ CEX/40 /2011 & COMMISSIONER/ RPR/CEX/39/2011 dated 29.08.2011 & 25.08.2011 passed by the Commissioner of Central Excise, Raipur).

M/s Lafarge India Pvt. Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance:

Sh. S. S. Sinha & Ms. Chitra Y. Parande, Advocates for the appellant
Sh. G. R. Singh, AR for the Revenue

Coram:

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

Final Order Nos. 52314 – 52315/2014

Per: Justice (Dr.) Satish Chandra:

The present appeals are filed against the order-in-original No. COMMISSIONER/RPR/CEX/40/2011; and COMMISSIONER/ RPR/ CEX/39/2011 dated 29.08.2011 and 25.08.2011 passed by the Commissioner of Central Excise, Raipur. The period of dispute is from April 2009 to March, 2011.

2. The brief facts of the case are that the appellant during the period under consideration was engaged in the manufacture of cement

and clinker under Chapter Heading 2523 of the Central Excise Tariff Act, 1985. The appellant availed cenvat credit on duty paid capital goods such as clinker which were transported to their own unit in Jojobera, Jharkhand and Mezia, West Bengal. The appellant have paid the service tax on transportation, and claimed the cenvat credit being an input but the same was denied by the department. Being aggrieved, the present appeals have been filed.

3. With this background, we heard Shri S.S. Sinha and Ms. Chitra Y. Parande, ld. Advocates for the appellant and Sh. G.R. Singh, ld. AR for the Revenue.

4. After hearing both the sides and on perusal of record, it appears that the identical issue has come up for the earlier period in the assessee's own case before the Tribunal in Excise Appeal No. 2143 of 2009 dated 11.01.2017 (Final Order No. 50207 /2017) wherein it was observed that:

> "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 facts 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. -2008 (10) STR 382 (Tri. Mum.) and Ambuja Cements Ltd. vs. Union of India -2009 (236) ELT 431 (P&H) 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 sustain the impugned order and the same is hereby set-aside.

6. In the result, both the appeals filed by the appellant are allowed.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant