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

Date of hearing/decision: 08.06.2017

Excise Appeal No. 55674 of 2014

(Arising out of order- in- appeal No. JAI-EXCUS-001-COM-42-14-15 dated 08.10.2014 passed by the Commissioner (Appeals) Central Excise, Jaipur).

M/s National Engg. Industries Limited Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Ms. Rinky Arora, Advocate for the appellant
Sh. M. R. Sharma, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

F. O. No. 53748 /2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal has been filed against the order- in- appeal No. JAI-EXCUS-001-COM-42-14-15 dated 08.10.2014 passed by the Commissioner (Appeals) Central Excise, Jaipur. The period of dispute is from February 2006 to October, 2008.

2. Brief facts of the case are that during the period under consideration, the appellant was engaged in the manufacture of ball bearing & axle box. The goods manufactured by the appellant are supplied to the customer on FOR destination basis, they bear the freight in respect of the said goods upto the door-steps of the customers i.e. The destination point. On the aforementioned freight the appellant also paid service tax. The appellant has availed cenvat

credit of the service tax paid on the outward freight under Rule 2(l) of the Cenvat Credit Rules, 2004 but the same was not allowed by the Department. Being aggrieved, the present appeal is filed.

3. With this background, we have heard ld. Advocate Ms. Rinky Arora for the appellant and Sh. M. R. Sharma, ld. AR for the Revenue.

4. After hearing both sides and on perusal of record, it appears that undoubtedly in the instant case there is no dispute about the fact that the place of removal in the present case is at the door-step of the buyer. It may be mentioned that the Tribunal in the case of ***D. P. Wires Pvt. Limited vs. CCE, Indore – 2016 (45) STR 206 (Tri Del.)*** has allowed the claim of the assessee on identical issue by observing that –

> "5. *We would like to make it is clear that the period involved in all the three appeals is prior to 1.4.2008 when the expression 'from' appearing in the definition of input service was replaced with the expression 'upto'. Commissioner (Appeals) in the present case has disallowed the credit by relying upon the decision of the Tribunal in the case of Gujarat Ambuja. We note that the said decision of the Tribunal stand reversed by the Hon'ble Punjab & Haryana High Court reported as Ambuja Cements Limited vs. Union of India – 2009 (236) ELT 431 (P&H) = 2009 (14) STR 3 (P&H). By taking note of the Board Circular No. 97/6/2007-ST dated 23.8.2007, it stand held that in case of FOR destination sales, the ownership of the goods remain with the seller till delivery at the customer doorstep and the freight charges forming part of value of the assessable goods and borne by the assessee as sale on FOR destination basis, the outward transportation upto place of removal will be an activity covered under the definition of input service. The Hon'ble High Court also observed that the Board circular issued under Section 37B of Central Excise Act, 1944 are binding on the department and Revenue is precluded from challenging correctness of the same even on the ground that the same are inconsistent with statutory provisions.*
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> *5. We also find another decision of the Karnataka High Court in the case of CCE, C&ST Belgaum vs. Vasavadatta Cements Ltd. – 2011 (24) STR 542 (Kar.) in favour of the assessee. Further, the Hon'ble Chhattisgarh High Court in the case of Ultratech Cement Ltd. vs CCE, Raipur – 2014 (307) ELT 3 (Chhattisgarh) = 2014 (35) STR 641 (Chhattisgarh) has also decided the legal issue in favour of the*

assessee. The said decision stand followed by the Tribunal in number of cases. One such reference can be made to a latest decision in the case of Ultratech Cement vs. CCE&ST, Rohtak – 2015 (37) STR 364 (Tri. Del.)."

5. By following the ratio laid down (supra), we set aside the impugned order and allow the appeal.

6. In the result, appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant