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

Date of hearing/decision: 10.07.2017

Excise Appeal Nos. 832 of 2011

(Arising out of order-in-appeal No. 27/SH/CE(A)/GHY/2011 dated 29.06.2011 passed by the Commissioner (Appeals), Central Excise, Guwahati)

CCE, Shillong — Appellant

Vs.

M/s Vinay Cement Limited — Respondent

Ex. Appeal Nos. 75423 of 2015

(Arising out of order-in-appeal No. 51/SH/CE(A)/GHY/2014 dated 29.12.2014 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Guwahati)

M/s Vinay Cements Limited — Appellant

Vs.

CCE&ST, Shillong — Respondent

Ex. Appeal Nos. 22863 - 22864 of 2014

(Arising out of order-in-appeal No. 12&13/2014 dt. 27.03.2014 passed by the Commissioner of Central Excise, Customs & Service tax, Tirupati)

M/s Dalmia Cement (Bharat) Limited — Appellant

Vs.

CCE& ST, Tirupati — Respondent

Ex. Appeal Nos. 40205, 75293, 75422, 75424, 75425, 75773 of 2015

(Arising out of order-in-original No. 7/2014, O-I-A No. 40/SH/CE(A)/GHY/2014, O-I-A No. 52/SH/CE(A).GHY/2014, O-I-A No. 50/SH/CE(A)/GHY/2014, O-I-A No. 49/SH/CE(A)/GHY/2014 & O-I-A No. 56/SH/CE(A)/GHY/2015 dt. 28.10.2014, 09.12.2014, 29.12.2014, 29.12.2014, 29.12.2014 & 31.03.2015 passed by the Commissioner of Central Excise and Service Tax, Tiruchirapalli, Guwahati

M/s Dalmia Cements (Bharat) Limited — Appellant
M/s Calcom Cement India Limited

M/s SCL Cements Limited
M/s SCL Cements Limited
M/s RCL Cements Limited
M/s Calcom Cement India Limited

Vs.

CCE, Tiruchirapalli/ Shillong Respondent

Ex. Appeal Nos. 30366, 31051, 40419 & 76116 of 2016

(Arising out of order-in original No. 5&6/2015,VIZ-EXCUS-003-COM-05-2015-16, 27/2015 & 5//2016 dt. 27.11.2015, 12.07.2016, 27.11.2015 & 31.03.2016 passed by the Commissioner of Central Excise & Service Tax, Nellore)

M/s Dalmia Cements (Bharat) Limited Appellant
Calcom Cement India Limited

Vs.

CCE&C, Nellore, Trichy/ Shillong Respondent

Appearance:

Sh. Sameer Rohtagi, Advocate for the appellant
Sh. H. C. Saini, AR for the Revenue

Coram:

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

Final Order Nos. 55525 – 55538/2017

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

The first appeal is filed by the department and all remaining appeals are filed by the assessee –appellant against orders dated 29.6.11, 29.12.14. 27.3.2014, 28.10.2014, 09.12.2014, 29.12.2014, 31.03.2015, 27.11.2015, 12.07.2016, 27.11.2015 & 31.03.2016 respectively.

2. In all the appeals the common issue is whether the service of transportation upto the customer's doorstep i.e. "FOR destination" sales where the entire cost of

freight is paid and borne by the manufacturer, would be "input service" within the meaning of Rule 2(l) of the CC Rules, 2004.

3. All the appellants are engaged in the manufacture of cements and sold the cement on "FOR destination" basis and claimed cenvat credit which was denied by the department. Being aggrieved, all the appeals before the Tribunal.

4. After hearing the ld. Counsel Sh. Sameer Rohtagi for the appellant and Sh. H. C. Saini, ld. AR for the Revenue and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of ***RCL Cement Limited vs. CCE, Shillong*** Appeal No. E/327/2011 (Final Order No. A/75907/2016 dated 25.08.2016) where the ratio laid down in the case of ***Ambuja Cements Ltd. vs. Union of India – 2009 (236) ELT 431 (P&H)*** was followed. The Hon'ble High Court of Punjab and Haryana observed that –

> Question of law is-
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> "*Whether the service of transportation upto the customer's doorstep, in the case of "FOR destination" sales where the entire cost of freight is paid and borne by the manufacturer, would be "input service" within the meaning of Rule 2(l) of the CC Rules*?."

5. The Hon'ble High Court of Punjab & Haryana answered as under:

> "7. *Having heard learned counsel at a considerable length and perusing the paper book and statutes with their able assistance, we are of the view that the questions of law deserve to be answered in favour of the assessee-appellant and against the revenue. It is undisputed that the appellant being a manufacturer and consigner has paid service tax on the value of goods transported by it by road. The Central Board of Excise and Customs (CBEC) has issued a circular dated 23-8-2007 dealing with the issue concerning 'up to what stage manufacturer/consigner could take credit on the service tax paid on goods transported by it by road'. The issue, in fact, has emerged out of the order of the Tribunal passed in the case of the appellant itself. The Board has opined that the phrase 'place of removal' has to be determined by taking into account the facts of each case. According to the circular, the expression 'place of removal' has been defined by Section 4 of the 1944 Act and according to sub-rule (t) of Rule 2 of the CC Rules, if any words or expression used in those rules are not defined but are defined in the 1944 Act or the 1994 Act then they are to be given the same meaning for the CC Rules as assigned to them in those Acts. Accordingly, reliance on Section 4 of the 1944 Act has been made where place of removal has been defined as under :-*

"place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty;

(iii) A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed."

8. *It is clear from the definition that for a manufacturer/consignor the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal. The circular further contemplates compliance of certain conditions where the sale has taken place at the destination point. The aforementioned part of the circular reads as under :-*

"......However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place."

9. *It is well settled that the circulars issued by the Board are binding and aims at adoption of uniform products. In that regard reliance has been rightly placed on the judgment of Hon'ble the Supreme Court in the case of Paper Products Ltd. (supra) and such circulars are binding on the department. Placing reliance on earlier judgments of the Supreme Court in the cases of CCE v. Usha Martin Industries, 1997 (94) E.L.T. 460 (S.C.) = (1997) 7 SCC 47; Ranadey Micronutrients v. CCE, 1996 (87) E.L.T. 19 (S.C.) = (1996) 10 SCC 387; CCE v. Jayant Dalal (P) Ltd., 1996 (88) E.L.T. 638 (S.C.) = (1997) 10 SCC 402 and CCE v. Kores (India) Ltd., 1997 (89) E.L.T. 441 (S.C.) = (1997) 10 SCC 338, Hon'ble the Supreme Court concluded in para 5 as under :-*

"5. It is clear from the abovesaid pronouncements of this Court that, apart from the fact that the Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is clear that so far as the Department is concerned, whatever action' it has to take, the same will have to be consistent with the Circular which is in force at the relevant point of time."

10. *It is, thus, evident that the revenue is precluded from challenging the correctness of the circular even on the ground of the same being inconsistent with statutory provisions. It goes further to limit the right of the revenue to file an appeal against the correctness of the binding nature of the circular. Therefore, there is no escape from the conclusion that the circular is binding on the revenue.*

11. *The only question then is whether the appellant fulfills the requirement of circular. The first requirement is that the ownership of the goods and the property therein is to remain with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step. The aforesaid condition has to be considered to be fulfilled because the supply of cement by the appellant to its customer is 'FOR destination'. The appellant also bears the freight in respect thereof up to the door step of the customer. The freight charges incurred by it for such sale and supply at the door step of the customer are subjected to service tax which is also duly paid by the appellant. Moreover, the definition of expression 'input service' is available in Rule 2(l) of the CC Rules, which reads thus :-*

"2(l) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of [final products and clearance of final products from the place of removal]

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

> ***12.*** *The 'input service' has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes, inter alia, services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal. It has also remain un-controverted that for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, even the second condition that the seller has to bear the risk of loss or damage to the goods during transit to the destination stand fulfilled.*
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> ***13.*** *The third condition that the freight charges were integral part of the excisable goods also stand fulfilled as the delivery of the goods is "FOR destination' price. This aspect has been specifically pointed out in para 2.2 of the reply dated 12-4-2006 given to the show cause notice. Therefore, we are of the view that the first question is liable to be answered in favour of the assessee and against the revenue*."

6. By following the observation (supra) and settled legal position, the claim of cenvat credit on outward freight of the appellants is allowed .

7. In the result, the Revenue appeal is dismissed and all appeals filed by the appellants are allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant