IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 1428 of 2012

[Arising out of Order-in-Appeal No 49/ BPL/2012 dated 12.3.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

M/s. Prism Cement Ltd. **Appellants**

Vs.

Commissioner of Central Excise Bhopal **Respondent**

Appearance:
Ms. Sukriti Dass, Advocate for the Appellants
Shri U Sengraj, AR for the Respondent

<u>CORAM</u>:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 28.08.2017

FINAL ORDER NO.56311 /2017

<u>Per Ashok Jindal:</u>

The appellant is in appeal against the impugned order wherein Cenvat credit has been denied to the appellant on outward transportation service for the period December, 2007 to April, 2008.

2. Brief facts of the case are that the appellant is engaged in manufacturing clinker and cement at their plant located at Satna, MP. The appellant is availing Cenvat credit on outward transportation service as appellant cleared the cement in loose bulk to their packing

unit in terms of notification No. 4/2006 CE as amended by Notification No. 4/2007-CE with effect from 1.3.2007. The Government notified cement under the 3rd Schedule for assessment under Section 4A of the Central Excise Act, 1944, wherein the goods falling under 2523.29, packing, repackaging, labeling, etc. amounted to manufacture. Therefore, the appellant got themselves registered for their packing plant and also availed Cenvat credit on Goods Transport Agency service for outward transportation of loose cement from their factory premises upto the packing plant from where the packed cement was sold in market. During the course of audit, it was noticed that the appellants were availing cenvat credit on service tax paid on outward transportation agency service used for transportation of goods from their factory to the packing unit at Allahabad. Therefore, two show cause notices were issued for the period December, 2007 to April 2008 by invoking the extended period of limitation. The matter was adjudicated and Cenvat credit on outward transportation service was denied. Consequently, demands were confirmed along with interest and penalties were also imposed on the appellant.

3. Against the said order, appellant is before me

4. Learned Counsel for the appellant submits that for the period prior to 1.4.08, the appellant is entitled to avail the Cenvat credit on Outward transportation service in the light of decision of Hon'ble Gujarat High Court of Karnataka in the case of ***ABB Ltd. [2011 (23)***

STR 97 (Kar)]. Therefore, for the period upto 1.4.2008, they are entitled to avail cenvat credit. For the period post 1.4.2008, it is their contention that the cost of transportation has been included in the assessable value of the goods. Therefore, they are entitled to avail the cenvat credit on the said goods. The only contention for denial of cenvat credit is that as the appellant's rate of duty is specified therefore place of removal is factory gate. For that, learned Counsel relied on the decision of ***Ultratech Cement Ltd. vs. CCE, Raipur [2014 (307) ELT 3 (Chhattisgarh)].*** Therefore, it is their contention that they are entitled to cenvat credit on outward transportation of goods as goods were not sold but sent to their packing plant.

5. On the other hand, leaned DR reiterated the findings of the impugned order.

6. Heard both sides. Considered the submissions.

7. On careful consideration of submissions of both the sides, I find that in this case, the goods in question cleared from the factory of the appellants to their packing plant, the appellant remained the owner of the said goods. And it is a fact that the cost of goods transportation agent services has been included in the assessable value of the goods, therefore, in the light of CBEC Circular No. 97/8/07 dated 23.8.07, the appellant is entitled to avail cenvat credit as held by Hon'ble Allahabad High Court in the case of ***Parth Poly Wooven Pvt. Ltd. [2012 (25) STR***

318 (Guj)]. Further in another decision of Hon'ble High Court of Karnataka in the case of ***ABB Ltd. (supra)*** wherein it has been held that assessee is entitled to avail cenvat credit on outward transportation service prior to 1.4.2008. In that circumstances, appellant is entitled to avail cenvat credit for the period up to 31.3.2008. Further, in the case of Ultratech Cement Ltd. (supra), the Hon'ble High Court has answered the issue that in case where the rate of duty is specified, the place of removal would be customers premises. The observations of the Hon'ble High Court are as under:

> ***"24.*** *Rule 2(l) of the Rules provides 'input services' to mean, apart from other things, the service used by the manufacturer for clearance of the final product upto the place of removal. It further clarifies that input service includes an outward transportation upto the place of removal.*
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> ***25.*** *In this case, the Tribunal has held that in case where the excise duty is charged on the specified rate, then the place of removal is the gate of the factory. It has been held as presumption of law.*
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> ***26.*** *There is no provision in the Act or in the Rules or in any circular issued by the Board of Central Excise and Customs, New Delhi (the Board) to hold that in case the duty is charged on the specified rate, then the place of removal will be factory gate.*
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> ***27.*** *If the legislature or the Central Government, or the Board wanted the 'place of removal' to be the factory gate in case of payment of excise duty on specified rate then they could so define it in the Act or in the Rules or in any of the circulars. They*

having failed to do so have clarified their intention that in such a case factory gate cannot be place of removal as a presumption of law.

28. *In view of above, the presumption by the Tribunal that the place of removal is factory gate of the manufacturer in case the excise duty is charged on the specified rate, is incorrect.”*

8. Therefore, I hold that appellant has correctly availed the cenvat credit on outward transportation service. In the facts and circumstances of the case, the impugned order deserves no merits, hence set aside. Consequently, the appeal is allowed.

(operative part of the order pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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