CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing: 25.08.2017

Appeal No. E/1090/2009-EX[SM]

[Arising out of the Order-in-Original No. 24/RPR-I/2009 dated 18.02.2009, passed by the Commissioner of Central Excise, Raipur]

M/s. Bhagwati Power & Steel Ltd. … Appellant

Vs.

C.C.E. Raipur ... Respondent

Appearance:
Present Shri Manish Saharan, Advocate for the appellant
Present Shri G.R. Singh, DR for the respondent

Coram: Hon'ble Mr. Ashok Jindal, Judicial Member

FINAL ORDER No. 56343/2017

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein the Cenvat Credit on motor vehicle assembly at goods transport agency services has been denied to the appellant on the premises that as the appellant is a manufacturer of excisable goods, therefore, they are not entitled for Cenvat Credit on motor vehicle assembly as the same is not capital goods for them as per rule 2(a)(B) of the Cenvat Credit Rules 2004. Further, the GTA services has been availed by the appellant upto the place of the buyer i.e. after the place of removal of goods. Therefore, they are not entitled to avail Cenvat Credit.

2. Heard the parties.

3. Considering the said fact that availment of Cenvat Credit on outward transportation services has been decided by the Hon'ble High Court of Karnataka in the case of ***CCE Vs. ABB Ltd. 2011-TIOL-395-HC-KAR-ST*** wherein it has been held that for the period prior to 01.04.2008 the assessee is entitled to avail the Cenvat credit on outward transportation services upto the place of buyer. Therefore, admittedly the period involved in this case is prior to 01.04.2008. Therefore, I hold that the appellant has correctly availed the Cenvat Credit on outward transportation services.

4. With regard to availment of Cenvat Credit on motor vehicle assembly the claim of the appellant is that they are registered with the Central excise department as GTA service provider. Same is covered under section 65(105)(zzb) of the Finance Act 1994 and as per the rule 2AB of the Cenvat credit rules 2004 motor vehicle registered in the name of the appellant is covered for entitlement of Cenvat credit thereon.

5. Ld. AR raised the objection that they are not outward transportation agency service provider. Therefore, they are not entitled to avail Cenvat Credit. The rule 2(r) of the cenvat credit rules 2004 read as under:

> *"provider of taxable service" include a person liable for paying service tax."*

6. Admittedly, the appellant is liable to pay service tax under goods transportation agency services. Therefore, they are covered under rule 2(r) of the Cenvat Credit Rules for availment of Cenvat Credit. As Rule 2(a)(B)of Cenvat Credit Rules 2004 allows to avail Cenvat Credit on goods transportation agency services as capital goods for motor vehicle assembly. Therefore, on motor vehicle assembly appellant has correctly availed the Cenvat Credit.

7. In these terms, I do not find any merit in the impugned order. The same is set aside. Consequently appeal is allowed.

[Dictated and Pronounced in the open court]

(Ashok Jindal)
Judicial Member

Bhanu