IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:29.01.2018

Excise Appeals Nos.51790-51799 and 51940/2017

[Arising out of common impugned Order-in-Appeal No.IND-EXCUS-000-APP-041-050-17-18 dated 24.08.2017 in Appeals Nos.E/51790-51799/2017 and Order-in-Appeal No.IND-EXCUS-000-APP-143-17-18 dated 7.9.2017 in Appeal No.E/51940/2017 –EX(DB), passed by the Commissioner (Appeals), Customs, GST and Central Excise , Indore (M.P.)]

M/s.Panasonic Energy India Co.Ltd. Appellants

Vs.

CCE, CGST & ST, Indore Respondent

<u>Appearance</u>:

Rep. by Shri Saurabh Dixit, Advocate for the appellant.
Rep. by Shri K. Podar, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No. 50641-50651/2018

<u>Per S.K. Mohanty:</u>

The issue involved in these appeals are identical. Accordingly, with consent of both the sides, the same are taken up for hearing together and a common order is being passed.

2. The brief facts of the case are that the appellant, M/s. Panasonic Energy India Co. Ltd. is engaged in the manufacture of Dry Battery Cells, falling under Chapter 85 of the Central Excise Tariff Act, 1985. For delivery of the goods at buyer's premises, the appellants avails the services of goods transport agency and pays outward freight on such transportation. In the capacity of recipient of such service, the appellant discharges service tax liability under Reverse Charge Mechanism. The appellant avails cenvat credit of service tax paid on outward

transportation of the goods. In these cases, the Department issued show cause notices for the period April, 2005 to March, 2016 seeking disallowance of cenvat credit on the ground that outward freight paid on the GTA service is not conforming to the definition of 'input service" contained in Rule 2 (l) of the Cenvat Credit Rules, 2004. The ld. Adjudicating Authority has confirmed demand of cenvat credit proposed in the show cause notices along with interest and also imposed penalties on the appellant. Feeling aggrieved with the adjudication orders, the appellant preferred appeals before the Commissioner (Appeals), who vide order dated 28.08.2015 had remanded the matter back to the Adjudicating Authority, with a direction to ascertain the place of removal in each case and allow the credit of service tax paid on outward freight upto the place of removal. Consequent upon the remand directions contained in the order dated 28.08.2015, the Asstt. Commissioner of Central Excise took up the de novo adjudication proceedings and passed the orders dated 31.05.2016 and 31.03.2017 in disallowing the cenvat benefit to the appellant. On appeal, the adjudication orders were upheld by the ld. Commissioner (Appeals) vide the impugned orders 28.04.2017 and 7.9.2017. Being dis-satisfied with the impugned orders passed by the ld. Commissioner (Appeals), the appellant has filed these appeals before the Tribunal.

3. Ld. Advocate appearing for the appellant submits that as per the agreement entered into between the appellant and its buyers, the place of delivery of the goods is at the factory of the buyer and the appellant incurred the freight and insurance element for such transportation of the goods for delivery at the buyers' premises. He further submits that considering the amount of freight as a part of assessable value, the appellant discharged appropriate central excise duty liability. Thus, it is

his submission that freight paid for transportation of the goods for delivery at the buyer's premises should be considered as the "place of removal" for the purpose of consideration as input service, for availment of cenvat benefit. To support such stand that the appellant should be entitled for the cenvat benefit for the freight element, the ld. Advocate has relied on the decision of this Tribunal in the case of **Mahle Engine Components India Pvt. Ltd. – 2017 (51)STR 44 (T-Delhi), Birla Corporation Ltd. – 2016 (45) STR 103 (T-Allahabad), Forace Polymers Pvt. Ltd. – 2016 (45) STR 198 (T-Delhi)** and the **Final Order No.10424-10473/2017 dated 27.0.2017**. The ld. Advocate has also referred to and relied upon the Circular dated 20.10.2014 and 28.02.2015 of CBEC to state that freight paid for transportation of the goods upto the place of delivery should be considered as input service for the purpose of taking of cenvat credit. The ld. Advocate has also produced certificate of the Chartered Accountant to demonstrate that the ownership/title of the goods during the disputed period were passed on by the appellant at its buyer's premises.

4. On the other hand, ld. AR appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that the appellant has only submitted the sample copy of the purchase orders and invoices in relation to one buyer and the same cannot be considered as the proper documents for deciding the issues involved in the bunch of appeals, involving different buyers. Thus, he submits that for verification of the factual aspect, the matter should go back to the Original Authority.

5. Heard both the sides and examined the case records.

6. The term "input service" has been defined under Rule 2 (l) of the Cenvat Credit Rules, 2004. The said definition underwent amendments from time to time. For the period from August, 2005 to March, 2008, the definition of "input service" allowed cenvat credit of service tax paid on transportation of goods from the place of removal. In this case, since the appellant had removed the goods from its factory, for delivery at the buyer's premises, such factory gate should be considered as the place of removal for the purpose of consideration as "input service". I find that the Hon'ble Gujarat High Court in the case of **Parth Poly Woven Pvt. Ltd. – 2012 (25) STR 4 (Gujarat)** and the Hon'ble Karnataka High Court in the case of **ABB Ltd. – 2011 (23)STR 97 (KAR)** have allowed cenvat credit benefit on the freight element in respect of the goods removed from the place of removal i.e. factory gate. Thus, service tax paid by the appellant for the period August, 2005 to March, 2008 should fall under the definition of "input service" for the purpose of cenvat benefit.

7. The definition of "input service" was amended vide **Notification no.10/2008-CE(N.T.),** dated 01.03.2008, w.e.f. 1.4.2008. The effect of amendment was that the Phrase "from the place of removal" was substituted by "upto the place of removal". As per the amended provisions of definition of "input service", service tax paid on freight for transportation of goods "upto the place of removal" should only merit consideration as input service. In this case, I find the purchase order issued by one of the buyers, M/s. Videocon Industries Ltd. shows that the delivery of the goods was on FOR destination basis. As per the terms of the purchase order, the appellant had issued invoice, showing all inclusive rate (including freight) and paid the central excise duty on such assessable value. Since

the goods were delivered at the buyer's premises, the place of delivery should merit consideration as "input service" for the purpose of extending the cenvat benefit of service tax paid on the outward freight amount by the appellant. Therefore, the freight paid by the appellant from 1.4.2008 to 10.07.2014 should merit consideration as "input service" and service tax paid thereon should be eligible for cenvat credit.

8. With regard to the period after 11.07.2014, though the "place of removal" was specifically defined in Rule 2(qa) of the Cenvat Credit Rules, 2004, but on analysis of such definition Clause, the CBEC vide Circular dated 20.10.014 has clarified that the place, where sales have taken place or when the property in goods passes from the seller to the buyer, is relevant consideration to determine the "place of removal". On perusal of the said clarification of the Board, it reveals that there is no difference between the amendment in the definition of "input service" effective upto 10.07.2014 and the amendment brought out on 11.07.2014. In other words, the crucial aspect for consideration of "input service" is the place, where the title of the property passes on by the seller to the buyer. In this case, since copy of the purchase orders /invoices demonstrate that the ownership of the goods were in fact transferred from the appellant to its buyers at their premises and the transaction was on FOR destination basis, the service tax paid on freight element should be eligible for cenvat benefit.

9. However, since the appellant, at this juncture, has not produced all the copies of the purchase orders/invoices in respect of all the buyers and only submitted sample copies issued by few numbers of buyers, I am of the view that the matter should go back to the Original Authority for verification of the purchase

orders/invoices in respect of the buyers, to whom the goods were sold by the appellant on FOR destination basis. If the Original Authority is satisfied that the ownership /title of the goods passed on by the appellant at its buyer's premises, the service tax paid on the freight element should be extended to the appellant as cenvat benefit. Since the period involved in these appeals are very old, the Original Authority should complete the adjudication proceedings, preferably within a period of three months from the date of receipt of this order.

10. In the result, the appeals filed by the appellant are allowed and the impugned order are set aside in respect of denial of cenvt credit upto 1.4.2008. With regard to the period thereafter, the appeals are allowed by way of remand to the Original Authority for verification of documents/records and for passing fresh adjudication order(s). Needless to say that opportunity of personal hearing should be granted to the appellant, before deciding the issues afresh.

11. The appeals are disposed of in the above terms.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

Ckp.