IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. E/1226/09

(Arising out of Order-in-Original No. 08/BR-04/Th-I/2009 dated 24.8.2009 passed by the Commissioner of Central Excise, Thane-I).

M/s Blue Star Limited	Appellant

Vs.

Commissioner of Central Excise, Thane-I	Respondent

Appearance:

Shri Narendra Pati, C.A.	for Appellant
Shri A.B. Kulgod, Asstt. Commissioner (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 21.02.2018

Date of Decision: 21.03.2018

ORDER NO. **A/85765/2018**

Per: Ramesh Nair

The issue involved in the present case is that whether demand under Rule 6(3)(b) of CENVAT Credit Rules, 2004 is maintainable in respect of goods supplied to SEZ Developers during the period 2005-08.

2. Shri Narendra Pati, learned C.A. appearing on behalf of the appellant submits that this issue has been settled by various

judgments of this Tribunal according to which the demand of CENVAT Credit under Rule 6 is not sustainable, even prior to 31.12.2008 when the Rule 6 was amended vide Notification No. 50/2008-CE (NT). He placed reliance on the judgment of the Hon'ble Karnataka High Court in the case of *Commissioner of Central Excise, Bangalore-III vs. Lotus Power Gears (P) Ltd. – 2017 (346) ELT 347 (Kar.)*.

3. Shri A.B. Kulgod, learned Asstt. Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both sides and perusal of the records, we find that the issue is no longer *res integra* as the same is settled in various judgments including the judgment cited by the learned Counsel in the case of *Lotus Power Gears (P) Ltd. (supra).* The Tribunal has taken consistent view that the supply made to the SEZ Developers is considered as export even prior to Notification No. 15/2008-CE (NT) applying the provisions of SEZ Act, 2005. Therefore, the impugned order is not sustainable, hence the same is set aside. Appeal is accordingly allowed.

(Pronounced in Court on 21.03.2018)

(Raju) **Member (Technical)**	**(Ramesh Nair)** **Member (Judicial)**

Sinha