

IN THE CUSTOMS, EXCISE AND SERVICE TAX

APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 54516 of 2015- Ex(SM)

[Arising out of Order-In-Appeal No. DDN/EXCUS/000/APPEAL-I/205/2015-16 dated 07.09.2015 passed by Commissioner of Central Excise, Dehradun]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether Their Lordships wish to see the fair copy of the Order?
4. Whether Order is to be circulated to the Departmental authorities?

Commissioner of Central Excise, Dehradun

Appellants

Vs.

M/s. Hindustan Zinc Ltd.

Respondent

Appearance:

Ms. Kannu Verma, Commissioner for the Appellants

Shri Vipul Agarwal, Advocate for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing/ Decision: 01.03.2016

ORDER NO . FO/ 50919 /2016-Ex(SM)

Per Ms. Archana Wadhwa :

Being aggrieved with the order passed by Commissioner (Appeals), Revenue filed the present appeal.

2. After hearing both the sides duly represented by Ms. Kannu Verma, learned AR appearing for the Revenue and Shri Vipul Agarwal, learned Advocate appearing for the hearing, I find that the short issue involved in the present appeal is as to whether the respondents are entitled to avail the cenvat credit of service tax paid on the outward transportation of their product up to the customers premises. The appellate authority by appreciating that the assessee's sales are on FOR basis and by following the Larger Bench decision of the Tribunal, in the case of ABB Ltd. as reported in [2009 (15) STR 23 (LB)] as upheld by the Hon'ble Karnataka High Court reported as [2011 (23) STR 97(Kar)] has extended the benefit to the respondent by holding that inasmuch as the sales is on FOR basis, the place of removal get extended upto the consignees doorstep. The appellate authority has also taken into consideration the circular No. 97/8/07 dated 23.8.07 issued by the Board, as also the earlier decision of the Tribunal in the same assessee's case upholding the admissibility of such credit.

3. Revenue in their memo of appeal again raised the same legal issue by submitting that the place of removal is the factory gate and the transportation of the final product manufactured by the assessee beyond the factory gate will not get covered by the definition of input service. Apart from that, they have contended that for the subsequent period, the Commissioner has himself confirmed the demand against the same assessee, by denying the cenvat credit.

4. I, after going through the impugned order of Commissioner (Appeals) find that a detailed order stand passed by her, taking note of the Larger Bench decision of the Tribunal in the case of ABB Ltd. (supra) as upheld by the Hon'ble Karnataka High Court read with the Board's circular. Not only that the appellate authority has also referred to the earlier order of the Tribunal, passed in the same assessee's case holding that they would be entitled to avail the cenvat credit of service tax paid on the outward transportation of their final product. Revenue, in their memo of appeal have nowhere referred to the said decision and it is not their case that the said decision of the Tribunal stand either not accepted by them or stand reversed by any higher appellate forum. It is also not disputed as seen from the show cause notice that appellant's sale are on FOR basis. Inasmuch as the issue stand decided in favour of the assessee by the decision of the Tribunal in their own case, I find no justifiable reason to interfere with the finding of the impugned order. Revenue's Appeal is accordingly rejected.

(dictated and pronounced in the open court)

(Archana Wadhwa)

Member(Judicial)