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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 53 of 2017

- Commissioner, Customs, Central Excise & Service Tax Bilaspur, At- Central Excise Bhawan, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh

---- Appellant

Versus

- M/s Ultra Tech Cement Ltd. Hirmi Cement Works, Hirmi, District Raipur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Vinay Pandey, Advocate
For Respondent/State	:	Shri Abhishek Anand and Shri Raja Sharma, Advocates

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

13.07.2017

1) We have heard learned counsel for the appellant-Revenue and the respondent in this appeal under Section 35 G of the Central Excise Act, 1944 (for short, 'the Act').

2) At the stage of admission, we need to first consider whether any substantial question of law worth consideration under Section 35 G of the Act has been made out by the appellant-revenue.

3) The respondent is a manufacturer of cement. It sold cement to certain customers. In paragraph 3 of the impugned order, the Tribunal categorically found that the purchase orders showed that the supply of cement is at the premises of the customers. This means that the supply has to be effected by making delivery of the

goods in the premises of the customer to conclude the sale of goods. That position notwithstanding, the Tribunal further noted that the freight is arranged and paid by the Assessee. The Tribunal also noticed that the freight charges are treated as integral part of the price of the goods. With these materials the Tribunal held, on facts, that the place of removal of goods cannot be treated as the factory gate of the Assessee but the delivery point, which is the door or premises of the customer.

4) With the aforesaid factual situation having been found by the Tribunal, on the basis of the materials on record, even if no reference was made by the Tribunal to the precedents referred to in para 3 of the impugned order, the conclusion could not have been otherwise. Therefore, we do not see that any question of fact or of law, much less a substantial question of law for the purpose of Section 35G of the Act, arises in this case to be decided in favour of the Revenue.

5) This appeal, therefore, fails. In the result this appeal is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

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CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing: 6.10.2016
Date of pronouncement : 18.10.2016

Central Excise Appeal No. 210 of 2012

Arising out of the order-in-original No.COMMISSIONER/RPR/CEX/50/2011 dated 18.10.2011 passed by the Commissioner (Appeals.), Central Excise, Raipur.

Ultratech Cement Ltd. ... Appellant

Vs.

C.C.E., Raipur .. Respondent

Appearance:

Present Shri B.L. Narasimhan, Advocate for the appellant
Present Shri Yogesh Agarwal, A.R. for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, , Technical Member

Final Order No.54127/2016

B. Ravichandran:

This appeal is against the order dated 18.10.2011 of Commissioner of Central Excise,Raipur. The appellants are engaged in the manufacture of cement liable to central excise duty.They are availing cenvat credit of duty paid on inputs and input services. The dispute in the present appeal is regarding appellant's eligibility to credit of service tax paid on GTA services availed for transportation of cement from factory gate to their customer's premises. The impugned order denied the credit on the ground that the place of removal is factory gate and hence no credit on such GTA service is available to the appellants.

2. We have heard both the sides and perused appeal records. The ld. Counsel for appellants pleaded that the sales are on FOR destination basis; during transit the ownership of goods in property remains with the appellants; risk of loss/damage is also with them and

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freight charges are integral part of price of goods. Reliance is placed on Board's Circular dated 23.8.2007 and various decided cases of Tribunal and High Courts.

3. We have perused some of the purchase orders.The supply of cement is at the premises of the customers. The freight is arranged and paid by the appellants. Similar set of facts were examined, in appellants own case, by he Tribunal vide order dated 3.9.2014 [2015 (37) STR 364 (Tri- Del.). The Tribunal held that when sales by the assessee were on FOR they ~~are~~ legitimately availed cenvat credit on the service tax paid on the freight charges, borne for its FOR sales. Reference for similar decisions can be made to Grey Gold Cements Ltd. - 2014 (54)STR 809 (A.P.), Forace Polymers Pvt. Ltd. - 2016 - TIOL - 2123 - CESTAT - DEL, Birla Corporation Ltd. held 2016 - TIOL - 2082 - CESTAT- DEL, Final Order No.A/75907/2016 dated 25.8.2016 of Tribunal in RCL Cement Ltd.

4. In view of the above settled legal position, we find no merit in the impugned order and accordingly the same is set aside. The appeal is allowed.

(Pronounced in the open Court on 18.10.2016)

Sd/-

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

Sd/-

(B Ravichandran)
Member(Technical)

03.11.16

Certified True Copy

Sd/-

(T-K-NATH) 03/05/2017

अधीक्षक (विधि/समीक्षा)
Superintendent (Legal/Review)
केन्द्रीय उत्पाद शुल्क, सीमाशुल्क एवं सेवाकर
(Central Excise, Customs & Service Tax)
बिलासपुर