(2014) 09 CESTAT CK 0013

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 360 Of 2009, Cross Objection Application No. 275 Of 2009

CCE, Jaipur-I APPELLANT

Vs

M/s Rohit Surfactants Pvt. Ltd. RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2014) 09 CESTAT CK 0013

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Sanjay Jain, A.P. Mathur

Final Decision : Allowed

Judgement

1. The dispute in the present appeal of the Revenue is in respect of availability of Cenvat credit of service tax paid on the GTA services received for

outward transportation of their final product from factory premises to the buyers premises. The Commissioner (Appeals) has granted benefit to the

respondents by observing that the sales are on FOR destination basis and value is inclusive of transportation charges incurred up to the destination. He

has further observed that he has seen some of the invoices, wherein value has been shown FOR destination. As such, by observing that the assessee

remains the owners of the goods till the goods are delivered at the customers premises, the GTA services have to be held as integral part of the

manufacture and has to be held as eligible cenvatable input service.

2. Vide the same impugned order Commissioner (Appeals) disallowed the credit of service tax paid on GTA services availed for movement of the

goods from depots to the buyers premises. The said part of the Commissioner

(Appeals) order was challenged by the assessee and the Tribunal vide

its final order No. 953/2011 (SM) dated 15/12/11 allowed the appeal of the assessee.

3. After appreciating the submissions made by both the sides, we find that there is a categorical finding by Commissioner (Appeals) that the sales

were on FOR destination basis. The said finding was arrived at by the appellate authority after examining the invoices. On the contrary Revenue has

simplicitor taken a plea that the sales were not on FOR basis, without adducing any evidence and without rebutting the findings arrived at by

Commissioner (Appeals). As such, we find no merits in the Revenueâ??s appeal.

4. Otherwise also, the assesseeâ??s appeal filed against the same impugned order of Commissioner (Appeals) having been allowed by the Tribunal,

the impugned order gets merge with the orders passed by the Tribunal and as such no longer available for challenge. On above grounds, we reject the

Revenueâ??s appeal. The Cross Objection application filed by the respondent challenging that part of the impugned order of Commissioner

(Appeals), which is against them have become infructuous in as much as their independent appeal filed against the said part stand allowed. The same

are accordingly disposed of as infructuous.

(Dictated and pronounced in open court)

