IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.86 of 2013
Date of Decision: 04.02.2015

M/s Beetel Teletech Ltd. Ludhiana ..Appellant

versus

Commissioner of Central Excise, Ludhiana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Puneet Aggarwal, Advocate, for the appellant.

Mr. D.D.Sharma, Advocate, for the respondents.

RAJIVE BHALLA, J. (ORAL)

The appellant challenges the correctness of order dated 5.11.2012 passed by Customs Excise and Tax Appellate Tribunal, Principal Bench, New Delhi.

A perusal of the show cause notice, the order passed by the adjudicating authority and the Appellate Authority reveals that the question that called for an answer from the Customs, Excise and Service Tax Appellate Tribunal was:

> “ Whether Service tax paid on transportation charges for transporting goods from the assessee place, such as a factory, warehouse, depot, to the customer falls within the meaning of input service' as defined under the Rules and can the assessee be allowed to take Cenvat credit?”

Counsel for the parties agree that the Tribunal has fallen into an error as it has wrongly held that in Commissioner of C.Ex &

S.T. LTU, Bangalore versus ABB Limited, 2011 (23) S.T.R. 97 (Kar.), the Karnataka High Court did not approve the opinion of a Full Bench of the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi. Counsel for the parties also agree that the question of delivery of goods on FOR basis, decided by the Tribunal, was not subject matter of the show cause notice and, therefore, it would be appropriate if the matter may be remitted to the Tribunal.

We have heard counsel for the parties and perused the entire paper book, including the impugned order and are satisfied from submissions made by counsel for the parties that the order passed by the Tribunal does not correctly address the issues placed before it. The appeal is, therefore, allowed, the order passed by the Tribunal is set aside and the appeal is restored to the Tribunal with a direction to reconsider the judgment of the Karnataka High Court in ABB Limited's case (supra), in the context of the show cause notice that was served upon the appellant and then proceeded to decide whether service tax paid by the appellant can legitimately be included in the claim for Cenvat credit.

Parties are directed to appear before the Customs, Excise and Tax Appellate Tribunal, Principal Bench, New Delhi on 16.3.2015.

(RAJIVE BHALLA)
JUDGE

(B.S.WALIA)
JUDGE

04.2.2015
VK