

2016 (4) TMI 975 - CESTAT MUMBAI

Bang Data Forms Pvt Ltd, Bang Polypacks Versus Commissioner of Central Excise, Mumbai

No.- Appeal No. E/217 & 218/11

Dated.- March 22, 2016

Raju, Member (T)

For the Appellant : Shri RG Utagikar, Consultant

For the Respondent : Shri H M Dixit, Asst Commr (AR)

ORDER

Per Raju

1. The appellants, M/s. Bang Data Forms Pvt Ltd., & Bang Polypacks were issued show-cause notices seeking to deny credit of service tax paid on the services of transport availed from the factory to the port for export and from the factory to the destination of buyers. The Commissioner (Appeals) dropped the demand in respect of credit taken for the service tax paid on dispatches made to the buyers domestically. However, he confirmed the demand for recovery of credit in respect of dispatches made for export. Aggrieved by the said order, the appellants are in appeal before this Tribunal.

2. The learned Counsel for the appellants argued that CBEC vide Circular No. 999/6/2015-CX dated 28/02/2015 has clarified as follows:

"6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."

3. The learned AR relies on the impugned order. He further argued that the appellants have not produced any evidence regarding incurring the cost of transportation from the factory to the port.

4. I have gone through the rival submissions.

5. I find that the show-cause notice has been issued solely on the ground that the factory gate is the place of removal. The CBEC vide aforesaid clarification pointed out by the appellants clarified that in respect of manufacturers exporters, the place of removal is ICD/ports. In the instant case, there is no doubt that the appellants are manufacturers/exporters. In these circumstances, the only ground raised in the show-cause notice failed. The issue regarding cost of being incurred by the appellants or not is totally irrelevant.

6. In view of the above, the appeals are allowed.

(Pronounced in Court on 22/3/16)