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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CEA-53-2016 (O&M)  
DATE OF DECISION:24.03.2017

COMMISSIONER, CENTRAL EXCISE & SERVICE TAX,  
PANCHKULA

... Appellant

*Versus*

POLYPLASTICS INDUSTRIES (INDIA) PVT. LTD.,  
YAMUNANAGAR

... Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE  
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Tajender K. Joshi, Advocate  
for the appellant.

Mr. Amrinder Singh, Advocate  
for the respondent.

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**S.J. VAZIFDAR, C.J. (ORAL)**

**CM-26975-CII-2016**

For the reasons mentioned in the application, the application is allowed and the delay of 121 days in re-filing the appeal is condoned.

**CM-26977-CII-2016**

For the reasons mentioned in the application, the application is allowed and the delay of 13 days in filing the appeal is condoned.

**CM-26976-CII-2016**

Application is allowed as prayed for.

**MAIN CASE**

This is an appeal against the order dated 18.06.2015 (Annexure A/3) of the Customs, Excise and Service Tax Appellate Tribunal (for short

‘the Tribunal’), allowing the respondent’s appeal against the order of the Adjudicating Authority. The appellant claims that the following substantial questions of law arise in this appeal:-

“i) *Whether Hon’ble CESTAT is legally justified in not denying the Cenvat Credit on the Moulds on the basis of a Chartered Engineer Certificate whereas relevant Central Excise invoices clearly indicated that said Moulds were removed by the assessee?*

ii) *Whether, Hon’ble CESTAT is legally justified in taking cognizance of said Chartered Engineer Certificate which was never placed before the Original adjudicating authority during adjudication proceedings? ”*

2. In our view, a substantial question of law does not arise in this appeal. It is purely a question of appreciation of facts. The issue is whether moulds for the manufacture of automobile parts remained with the respondent/assessee or whether they were removed from the assessee’s premises and transferred to the purchasers thereof. The assessee’s case is that it manufactures automobile parts which requires the use of the moulds. Instead of factoring the cost of moulds against each sale of the automobile parts, it sells the mould itself to the purchasers of the automobile parts. However, by an arrangement between the assessee and the purchasers of the automobile parts, the moulds though sold remained with the assessee.

3. The assessee contends that the moulds have never left its premises. In this regard, the assessee relied upon the certificate issued by Chartered Engineer.

4. It is common ground that for the purpose of reversing the CENVAT credit, it was necessary for the moulds to have been physically

removed from the respondent's premises. The only question, therefore, is one of fact, namely whether the moulds were physically removed from the respondent's premises or not?

5. The Adjudicating Authority relied upon the invoices to hold that the moulds had not been removed. The invoices merely evidence a sale. They do not evidence the movement of the goods in respect whereof, they are raised. Delivery challans would indicate the removal of the goods from out of the premises of the seller and to the destination indicated therein.

6. We will presume that absent anything else an invoice prima facie indicates the delivery of possession of the goods sold. However, in the present case, this presumption is rebutted by the certificate issued by the Chartered Engineer. There is nothing that indicates that the certificate issued by the Chartered Engineer is false. The Department could easily have ascertained this fact by an inspection of the assessee's premises itself. Even surprise checks could have been carried out. That was not done.

7. In the circumstances, the Tribunal cannot be faulted for having relied upon the certificate issued by the Chartered Engineer. The Tribunal rightly proceeded on the basis of the balance of probabilities. The finding is far from perverse or absurd. We are, in fact, in agreement with the approach adopted by the Tribunal.

8. The appeal, therefore, is dismissed.

**(S.J. VAZIFDAR)**  
**CHIEF JUSTICE**

**(ANUPINDER SINGH GREWAL)**  
**JUDGE**

**24.03.2017**

*SwamjitS*

Whether speaking/reasoned  
Whether reportable

Yes /No  
Yes/No