

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.3 of 2010

(Arising out of Order-in-Appeal No.114/CE/B-I/2009 dated 24.09.2009 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Pasupati Ispat Private Limited

(Plot No.I, Phase-II, New Industrial Estate, Jagatput, Cuttack-754021, Orissa.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bhubaneswar-I

.....Respondent

(CR Building, Rajaswa Vihar, Bhubaneswar-7, Orissa.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75180/2023

DATE OF HEARING : 22 March 2023

DATE OF DECISION : 29 March 2023

P.K. CHOUDHARY :

The present Appeal is filed by the Appellant against Order-in-Appeal No.114/CE/B-I/2009 dated 24.09.2009 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.

2. The facts of the case in brief are that the Appellant is engaged in the manufacture of Inserts, Steel Plate Flanges, Injserts, SGCI Casting. These products are sold to the different customers, who ultimately supplied the goods to Indian Railways. As per the contract between the buyers and the Indian Railways, the goods are to be inspected by RITES on behalf of customers. In terms of the said contract, after inspection, RITES have raised invoices on the Appellant's customer.

RITES's Eastern Regional Office is located in Kolkata and the Appellant's customers are located at different destinations in India, as such to expedite the process, the Appellant rendered the customers service and made payment to RITES for inspection charges on behalf of their customers and were subsequently reimbursed by the customers on actual basis. It is the case of the Appellant that their goods are marketable even without inspection. The inspection was done at the instance of the buyer. Show Cause Notice dated 28.04.2008 was issued. The period of dispute is 2006-2007 and the amount involved is Rs.72,706/-.

3. Heard both sides and perused the Appeal records.

4. We find that the issue involved in this case is as to whether the third party inspection charges incurred at the instance of the buyers and subsequently recovered from the buyers is includible in the assessable value. It is the case of the Appellant that the inspection charges have been debited to the customers's account for reimbursement. Neither they have realized any inspection charges nor have they availed credit of any Service Tax. The matter was earlier remanded to the Commissioner(Appeals) with the observation that the inspection charges so collected and paid to the Third Party Agency, cannot be treated as additional consideration inasmuch as such receipt results in income to the Appellant. The Appellant's case is that they have submitted the customer's ledger in which the inspection charges are Sundry Debtors debited to the customer's account. The reimbursed receipts do not form part of their income and thus this is not an additional consideration. This is also relevant to observe that RITES raised the bills to the Appellant charging Inspection charges as per agreement amongst RITES, the Appellant and the customer. This is variably from the records that the Inspection charges were paid to RITES by the Appellant on behalf of their customers and the same amount was reimbursed by the customers and there is no difference between the amount paid and the reimbursed receipts. Both the

amounts are matching. The Appellants have relied upon the following decisions in support of their grounds of appeal:-

- (i) Commissioner Vs. Johnson Pumps (I) Ltd. : 2010 (251) ELT 560 (Tri.-Ahmd.)
- (ii) Lubi Submersible Ltd. : 2015 (317) ELT 299 (Tri.-Ahmd.)
- (iii) Johnson Pumps (I) Ltd. : 2013 (294) ELT 263 (Tri.-Ahmd.)
- (iv) Lubi Industries LLP Vs. Union of India : 2016 (337) ELT 179 (Guj)

5. In view of the above discussions, the impugned order is set aside and the Appeal filed by the Appellant is allowed with consequential relief, if any.

(Order pronounced in the open court on 29 March 2023.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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