CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD
REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12675 of 2018-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-125-2018-19 dated 27.06.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Gujarat Fluorochemicals Limited .... **Appellant**
Plot No., 12-A, Dahej Industrial Estate, Taluka-
Vagra, BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara-ii .... **Respondent**
1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat -390023

APPEARANCE :

Shri Dhaval K. Shah, Advocate for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 09.07.2024
DATE OF DECISION: 23.07.2024

FINAL ORDER NO. 11610/2024

RAMESH NAIR :

The issue involved in the present case is that, in the course of sale from factory gate the freight charged separately over and above the sale price of the excisable goods to their customers, whether the said freight charges is includible in the assessable value for the purpose of charging excise duty or not.

2. Shri Dhaval K. Shah, learned Counsel appearing on behalf of the appellant at the outset submits that in the appellant's own case and in the same set of facts, the Tribunal vide Final Order No. A/10173-10174/2024 dated 18.01.2024 held that freight charges is not includible in the assessable value, therefore the demand is not sustainable.

3. Shri P. Ganesan, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that in the appellant's own case, considering the same nature of transaction, this Tribunal vide Final Order No. A/10173-10174/2024 dated 18.01.2024 held as under:-

> **"6.** The issue to be decided is whether the freight charges are includible in the assessable value or not. On perusal of the Purchase Order, it is seen that delivery of goods is on 'EX-WORKS' basis and its insurance is covered by the appellant. In the case of *Commissioner of Customs & Central Excise vs. Ispat Industries Limited (supra)*, it was noted by the Hon'ble Apex Court that the place of removal is to be determined on the facts of each case. The payment of insurance charges or freight charges cannot be criteria for deciding the place of removal. The documents show that there is mutual agreement between the parties on 'EX-WORKS' price. The contention of the department that because the insurance charges are borne by the appellant upto the buyers premises from factory gate, the transfer of property in the goods has not been passed on to buyer at the factory gate, cannot be accepted. The Circular issued by the Board vide F.No. 988/12/2014-CX dated 20.10.2014 as well as F.No. 999/6/2015-CX dated 28.02.2015 has clarified that handing over the goods to the transporter for the purpose of delivery to the buyer without reserving the right of disposal of goods would be the place of removal. In the present case goods are handed over to the transporter only for carrying the goods up to buyer's premise. As per mutual understanding the price is determined as ex-factory price and therefore, the goods are at the disposal of the buyer after it leaves the factory gate. The decision rendered by the Tribunal in the case of *IDMC Limited (supra)* would be clearly applicable to the facts of the present case. In the said case, it was held that insurance charges borne by manufacturer cannot be the sole reason to decide the ownership of the goods. The relevant paragraphs read as under:-
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> > **"4.** We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute in the fact that the appellant have cleared the goods from their factory and delivered at the buyer's premises. In the invoice the freight was charged separately when the sell invoice was issued from the factory at the time of clearances of goods. The factory gate is the place of removal. Merely because the appellant is under obligation to deliver the goods at the buyer's premises, the place of removal which is a factory gate cannot be extended and buyer's premises cannot be made as place of removal. This issue has been considered by this Tribunal in the *case* of Savita Oil Technologies Ltd. vide order No. A/10755/2022 dated 30.06.2022, wherein the reliance was placed on the Hon'ble Supreme Court judgment in the *case* of Ispat Industries Ltd reported at 2015 324 ELT 670 (S.C). The tribunal in Savita Oil Technologies (supra) has passed the following order:
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> > *"4. We have gone through rival submissions. We find that while the show cause notice alleged that the amount of freight recovered in the invoices is additional consideration, the Commissioner in the impugned order has held that when the freight is collected in invoices for delivery upto the buyer's premises, the buyer's premises become the 'place of removal'. She relies on the decision of Hon'ble Apex Court in the case of Roofit Industries Ltd., 2015 (319) ELT 221 (SC) and Circular No. 1065/4/2018 dated 08.06.2018.*
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> > *4.1 We find that in the case of Ispat Industries (supra), after taking note of the decision of the Hon'ble Apex Court in the case of Roofit Industries (supra) and*

the case of Emco Ltd. 2015 (322) ELT 394 (SC), the Hon'be Apex Court came to the following conclusion:

5 This view of the law was reiterated in Government of India v. Madras Rubber Factory Ltd., (1995) 4 SCC 349 = 1995 (77) E.L.T. 433 (S.C.). Interestingly, in paragraph 39 of the judgment, cost of transportation from the factory gate to the place of removal not forming part of excise duty was conceded by the revenue.

6 Section 4 as substituted by the 1973 Amendment Act suffered a further amendment in 1996. The amendments carried out were to have effect from 28-9-1996, which is also the starting point on facts in the present case. Three important changes were made to Section 4. First a new sub-section (ia) was added to Section 4(1) which reads as follows :-

"(ia) Where the price at which such goods are ordinarily sold by the assessee is different for different places of removal, each such price shall, subject to the existence of other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such place of removal;"

Also, for the first time, "the place of removal" had one more category added to it. Section 4(4)(b)(iii) and 4(4)(ba) state as follows :-

"(4)(b)(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory and,

"(4)(ba) "time of removal", in respect of goods removed from the place of removal referred to in sub-clause (iii) of clause (b), shall be deemed to be the time at which such goods are cleared from the factory;"

***16**. It will thus be seen that where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be the normal value thereof. Sub-clause (b)(iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot, or the premises of a consignment agent of the manufacturer are obviously places which are referable only to the manufacturer. Even the expression "any other place or premises" refers only to a manufacturer's place or premises because such place or premises is stated to be where excisable goods "are to be sold". These are the key words of the sub-section. The place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer. If we are to accept the contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to the buyer's premises.*

***17**. It is clear, therefore, that as a matter of law with effect from the Amendment Act of 28-9-1996, the place of removal only has reference to places from which the manufacturer is to sell goods manufactured by him, and can, in no circumstances, have reference to the place of delivery which may, on facts, be the buyer's premises.*

***18**. By an Amendment Act which came into effect on 1-7-2000, Section 4 was substituted yet again as follows :-*

***"Section 4. Valuation of excisable goods for purposes of charging of duty of excise**. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -*

(a) In a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, by the transaction value;

(b) In any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purpose of this section, -

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) Person shall be deemed to be "related" if -

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly in the business of each other. Explanation. - In this clause -

(i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (64 of 1969); and

(ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);

(c) "place of removal" means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty,

from where such goods are removed;

(d) "transaction value" means the price actually paid or payable for the 'goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in

connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

***19**. A cursory reading of the substituted provision makes it clear that the concept of "normal value" has given way to the concept of "transaction value". Thus, no longer is there a normative price for purposes of valuation of excisable goods. The actual price that is paid or payable on each removal of goods becomes the transaction value. Interestingly, it will be noticed that under Section 4(3)(c), the place of removal is defined as it had been defined in the substituted Section 4 (by the 1973 Amendment) before its further amendment in 1996. What is conspicuous by its absence in the present Section is Section 4(2) and sub-section (b)(iii) in the previous Section 4 (after its amendment in 1996). It is clear therefore, that for the second period in question in the present case, namely, 1-7-2000 to 31-3-2003, the depot, premises of a consignment agent or any other place from which excisable goods are to be sold after their clearance from the factory are no longer places of removal. Also, the definition of "transaction value" makes it clear that freight or transportation expenses are not included in calculating the excise duty payable.*

***20**. It is necessary also to refer to Rules 5 and 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 which came into force on the same date as the amendment to Section 4, i.e., 1-7-2000. These Rules read as under :-*

"Rule 5.

Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the actual cost of transportation from the place of removal upto the place of delivery of such excisable goods provided the cost of transportation is charged to the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods.

Rule 7.

Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

***21**. The actual cost of transportation from the place of removal up to the place of delivery of excisable goods is excluded from the computation of excise duty provided it is charged to the buyer in addition to the price of goods and shown separately in the invoices for such goods. Interestingly, despite the substituted*

Section 4 not providing for a depot or other premises as a place of removal, Rule 7 deals with the normal transaction value of goods transferred to a depot or other premises which is said to be at or about the same time or the time nearest to the time of removal of goods under assessment.

***22**. To complete the picture, by an Amendment Act with effect from 14-5-2003, Section 4 was again amended so as to re-include sub-clause (iii) of old Section 4(3)(b) (pre 2000) as Section 4(3)(c)(iii). This amendment reads as follows :-*

"(3)(c)(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;" Also, Rule 5 of the Central Excise Rules was substituted, with effect from 1-3-2003, to read as follows :

*"**Rule 5**. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.*

Explanation 1. - "Cost of transportation" includes -

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."

***23**. It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.*

***24**. It will thus be seen that, in law, it is clear that for the period from 28-9-1996 up to 1-7-2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods. As a matter of law therefore, the Commissioner's order and Revenue's argument based on that order that freight charges must be included as the sale in the present facts took place at the buyer's premises is incorrect. Further, for the period 1-7-2000 to 31-3-2003 there will be no extended place of removal, the factory premises or the warehouse (in the circumstances mentioned in the Section), alone being places of removal. Under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case.*

***25**. It now remains to deal with some of the judgments cited at the Bar. Escorts JCB Ltd. v. CCE, (2003) 1 SCC 281 = 2002 (146) E.L.T. 31 (S.C.), was strongly relied upon by Shri Bagaria and sought to be distinguished by Shri Panda. The facts of*

Escorts JCB's case are similar to the facts in the present case. The show cause notice in that case alleged that freight and transit insurance were charged from buyers but no central excise duty was paid by misdeclaring the place of removal as the factory gate instead of the buyer's premises. It will be noted that just as in the present case, the price was "exworks" and exclusive of freight insurance, etc. After setting out Section 4 post its amendment in 1996, this Court held :-

"A perusal of the orders passed by the authorities and CEGAT shows that since transit insurance was arranged by the assessee, therefore it was inferred and held that the ownership of the goods was retained by the assessee until it was delivered to the buyer on the reasoning that otherwise there would be no occasion for the seller, namely, the assessee to take risk of any kind of damage to the goods during transportation. To us, the whole reasoning seems to be untenable. The two aspects have been mixed up - one relating to the transaction of sale of the goods and the other arranging for the transit insurance for the buyer and charging the amount expended for the purpose from him separately." [at para 8]

"From the above passage it is clear that ownership in the property may not have any relevance insofar as insurance of goods sold during transit is concerned. It would therefore not be lawful to draw an inference of retention of ownership in the property sold by the seller merely by reason of the fact that the seller had insured such goods during transit to the buyer. It is not necessary that insurance of the goods and the ownership of the property insured must always go together. It may be depending upon various facts and circumstances of a particular transaction and terms and conditions of sale. A reference has also been made to Colinvauz's Law of Insurance, 6th Edn. by Robert Merkin to indicate that there may be insurance to cover the interest of others, that is to say, not necessarily the person insuring the interest must be the owner of the property." [at para 10]

***26**. This Court then went on to follow Bombay Tyre International's case and ultimately held :-*

"In view of the discussion held above, in our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and the transit insurance. Such a conclusion is not sustainable." [at para 12]

***27**. We are inclined to the opinion that the Tribunal was correct in relying upon this judgment on the facts in the present case and on the Circular dated 3-3-2003, which specifically stated, following the said judgment, that insurance of goods during transit cannot possibly be the sole consideration to decide ownership or the point of sale of goods.*

***28**. Similarly in VIP Industries Ltd. v. Commissioner of Customs & Central Excise, (2003) 5 SCC 507 = 2003 (155) E.L.T. 8 (S.C.), this Court was faced with the following question :-*

"The question for consideration in both these appeals is whether in cases where a manufacturer includes equalised freight in the price of the goods and sells the goods all over the country at a uniform price, the Department is entitled to compute value by including the cost of transportation from the factory to the depot. This question was decided by this Court in the case of Union of India v. Bombay Tyre International Ltd. [(1984) 1 SCC 467 : 1984 SCC (Tax) 17 : 1983 (14)

E.L.T. 1896] It was thereafter confirmed in the case of Govt. of India v. Madras Rubber Factory Ltd. [(1995) 4 SCC 349 : 1995 (77) E.L.T. 433]" [at para 3]

***29**. Like the Escorts JCB's case this judgment was also concerned with Section 4 as it stood after the amendment of 1996 but before the amendment of 2000. This Court held :-*

"After the amendment, the Department sought to include in the value the cost of transport from factory to the depot, even in case where the manufacturer sold the goods at a uniform price all over the country by including the element of equalised freight. The Tribunal has upheld the view of the Department on the reasoning that by this amendment the definition of the term "place of removal" has been extended to include the depot. The Tribunal has also held that Section 4(2) which excluded the cost of transportation from the place of removal to the place of delivery was not amended when the definition of the term "place of removal" was extended. According to the Tribunal the result was that only the transport charges from the place of removal to the place of delivery were to be excluded from the value.

We have heard the parties at length. In our view, Section 4 has to be read as a whole. Under Section 4(1)(a), the normal price is the price at which goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and price is the sole consideration for sale. Therefore, the normal price is the price at the "time of delivery" and "at the place of removal". Before the amendment, the place of removal was only the factory or any other place or premises where the excisable goods were produced or manufactured or a warehouse or any other place or premises where any excisable goods have been permitted to be deposited without payment of duty. Thus, the price would be the price at that place. By the amendment proviso (ia) to Section 4(1)(a) has been added. Under Section 4(1)(a)(ia) where the price of the goods is different for different places of removal, each such price was deemed to be the normal price of such goods in relation to "such place of removal". Thus, if the place of removal was the factory, then the price would be the normal price at the factory. If the place of removal was some other place like a depot or the premises of a consignment agent and the price was different then that different price would be the price.

It is because the newly added proviso (i-a) to Section 4(1)(a) was now providing for different prices at different places of removal that the definition of the term "place of removal" had to be enlarged. Thus the amendment was not negativing the judgments of this Court. If that had been the intention it would have been specifically provided that even where price was the same/uniform all over the country, the cost of transportation was to be added.

Thus in cases where the price remains uniform or constant all over the country, it does not follow that value for the purpose of excise changes merely because the definition of the term "place of removal" is extended. The normal price remains the price at the time of delivery and at the place of removal. In cases of equalised freight it remains the same as per the judgments of this Court set out hereinabove.

In our view, the amendments have made no difference to the earlier position as settled by this Court. In this view of the matter, we are unable to uphold the judgments of the Tribunal. They are accordingly set aside. The appeals are *allowed with consequential relief. There shall be no order as to costs." [paras 5 to 8]*

***30**. In Prabhat Zarda Factory Limited v. CCE, 2002 (146) E.L.T. 497 (S.C.), this Court held :-*

"In these matters, the question is whether freight and insurance charges are to be included in the assessable value for the purposes of excise. This question is covered by the judgment of this Court in the case of Escorts JCB Ltd. v. Commissioner of Central Excise, Delhi-II [2002 (146) E.L.T. 31 (S.C.)]. The only difference which has been pointed out is that in the Escorts case (supra) the sale was at the factory gate whereas in these cases, the sale is from the depot. Learned counsel for the appellants admit that the freight and insurance charges up to the depot would be includible in the assessable value for the purposes of excise. However, the sale being at the depot, the freight and insurance for delivery to the customers from the depot would not be so includible as per the said judgment."

This judgment, therefore, also holds that even in a depot sale, freight and insurance for delivery to customers from the depot to their premises cannot possibly be included, and followed the Escorts JCB case supra.

***31**. With this we come to two recent judgments of this Court. In CCE & Customs v. Roofit Industries Ltd., 2015 (319) E.L.T. 221 (S.C.), this Court, after distinguishing the Escorts JCB's case, stated :-*

"The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected, namely, whether it is on factory gate or at a later point of time, i.e., when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of the provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with the Valuation Rules.

In the present case, we find that most of the orders placed with the respondent assessee were by the various government authorities. One such order, i.e., order dated 24-6-1996 placed by Kerala Water Authority is on record. On going through the terms and conditions of the said order, it becomes clear that the goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, Central excise duty, loading, transportation, transit risk and unloading charges, etc. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier, namely, the assessee. As per the "terms of payment" clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. From the aforesaid, it would be *manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.*

The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of the Sale of Goods Act, the property in goods was transferred at that time only. Section 19 reads as under :

*"**19. Property passes when intended to pass**. - (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

These are clear finding of facts on the aforesaid lines recorded by the Adjudicating Authority. However, CESTAT did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in Escorts JCB Ltd. [(2003) 1 SCC 281 : (2002) 146 E.L.T. 31] Obviously the exact principle laid down in the judgment has not been appreciated by CESTAT." [at paras 12-15]

***32**. It will be seen that this is a decision distinguishing the Escorts JCB's case on facts. It was found that goods were to be delivered only at the place of the buyer and the price of the goods was inclusive of transportation charges. As transit damage on the assessee's account would imply that till the goods reached their destination, ownership in the goods remained with the supplier, namely, the assessee, freight charges would have to be added as a component of excise duty. Further, as per the terms of the payment clause contained in the procurement order, payment was only to be made after receipt of goods at the premises of the buyer. On facts, therefore, it was held that the sale of goods did not take place at the factory gate of the assessee. Also, this Court's attention was not drawn to Section 4 as originally enacted and as amended to demonstrate that the buyer's premises cannot, in law, be "a place of removal" under the said Section.*

6.1 It is seen that the above decision of Hon'ble Apex Court covers all the aspects of this issue, holds that the buyer's premises cannot, in law, be a "place of removal" under Section 4. In this matrix of facts, the decision of Commissioner holding buyer's premises as "place of removal" cannot be upheld. The impugned order upholding the demand of duty is therefore set aside. Since the demand of duty is set aside, the demand of interest as well as penalty cannot be sustained.

6.2 In view of discussion above, the appeal is allowed."

From the above decision of the tribunal based on Hon'ble Supreme Court judgment in the *case* of Ispat Industries Ltd (supra), the issue is no longer res integra. Therefore, we are of the view that the freight cannot be included in the assessable value in the facts of the present *case*. Consequently, no demand of duty on freight would sustain. As a result, the impugned order is set aside, and appeal is allowed, with consequential relief.**"**

> **7.** The decision relied by learned AR in the case of *Principal Commissioner, Raipur vs. M/s. Unique Structures and Towers Limited (supra)* is of no assistance to the Revenue for the reasons that in the said case the fact shows that the price was inclusive of freight charges as agreed to between the parties. In Para-19 of the said order it is stated that Purchase Order issued by MPPTC Limited to the assessee, therein shows that price is inclusive of packing and freight charges. It was therefore held that freight charges are includible in the assessable value. In the present case, as discussed above the issue is covered by the decision in the case IDMC Limited (supra).
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> **8.** After appreciating the facts, evidences placed before us and after following the judgment in IDMC Limited case, we are of the view that the freight charges are not to be included in the assessable value. The demand cannot be sustained. Consequently, we set-aside the impugned orders and allow the appeals with consequential relief, as per law.**"**

5. From the above decision in the appellant's own case, the issue is no longer res-integra and from the same it is clear that freight charges collected over and above the sale price of the goods is not includible in the assessable value when sold at factory gate. Accordingly, the demand of differential excise duty is not sustainable. Hence, the impugned order is set-aside and the appeal is allowed.

(Pronounced in the open court on 23.07.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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