

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3  
**Excise Appeal No.10835 of 2020**

(Arising out of OIA-CCESA-SRT-APPEAL-PS-125-2020-21 dated 27/11/2020 passed by  
Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**GUJARAT POLYSOL CHEMICALS PVT LTD**

**.....Appellant**

Plot No 1734 3rd Phase Gidc  
Vapi, Gujarat

*VERSUS*

**C.C.E. & S.T.-SURAT-I**

**.....Respondent**

New Building...Opp. Gandhi Baug,  
Chowk Bazar,  
Surat, Gujarat-395001

**APPEARANCE:**

Shri S J Vyas, Advocate for the Appellant

Shri Tara Prakash, Assistant Commissioner (AR) for the Respondent

**CORAM:        HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
                  HON'BLE MEMBER (TECHNICAL), MR. RAJU  
                  Final Order No. A/ 12236 /2022**

DATE OF HEARING: 15.09.2022

DATE OF DECISION: 22.12.2022

**RAJU**

This appeal has been filed by M/s. Gujarat Polysol Chemicals Pvt Ltd against demand of excise duty on the freight charges collected by the appellant while supplying the goods to their customers on FOR basis.

02. Learned counsel for the appellant pointed out that they are engaged in manufacture of chemicals and they were supplying their finished goods on payment of central excise duty at the door steps of the buyers. The appellants were recovering freight charges on actual basis from buyers. The appellants were discharging excise duty without including in the assessable value the freight amount collected by them on actual basis. Learned counsel pointed out that the original adjudicating authority as well as first appellate authority both held that the factory gate is the place of removal in their case. It was argued that having held factory gate as place of removal, it was open to the authorities to include the freight charges in the assessable value of the excisable goods. He relied on the decision of hon'ble Apex Court in the case of ISPAT INDUSTRIES- 2015 (324) E.L.T. 670 (S.C.).

03. Learned AR relies on the impugned order.

04. We have considered the rival submissions. We find that both the original adjudicating authority and the first appellate authority have held that the factory gate is the place of removal in the instant case. However, the original adjudicating authority has treated the amount of freight collected from the buyers as an additional consideration and demanded central excise duty on the same. The first appellate authority relied on Rule 5 of Central Excise Valuation Rules to hold that the freight charges are includable in the assessable value. The first appellate authority has remanded the matter to the original adjudicating authority. The appellants are aggrieved by the observation made in Para 11 of the impugned order and therefore, they are in appeal before tribunal. Para 11 of the impugned order is reproduced below:-

*11. For better appreciation, the Rule 5 of Central Excise Valuation Rules, 2000 is reproduced as under:-*

*"Where any excisable goods are sold in the circumstances specified in clause (W) 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."*

*The said Rule 5 is very clear as per which if the goods are sold for delivery at the time and place of removal the actual cost of transportation from place of removal up to the place of delivery shall be excluded **but if the goods are sold for delivery at a place other than the place of removal then the cost of transportation will be included in the transaction value**. The term 'place of removal' is clearly defined as above under Section 4(3)(c) of Central Excise Act, 1944 in which buyer's premises is nowhere covered. The Honble Supreme Court has also held the same in Ispat Industries case (supra). The adjudicating authority has also recorded in the impugned order that the appellant does not have any depot or warehouse or any other place from where goods are sold after clearance from their factory, hence, the factory gate is the 'place of removal' and not any other place. The appellant is also not disputing the same but their contention is that transportation cost should be excluded from place of removal up to place of delivery of the goods. This contention would be acceptable only if it is established that the goods were sold for delivery by the appellant at the time and place of removal i.e. factory gate. Although it is stated by them that in their case the sale of goods took place at the factory gate and the dealer /buyer was liable to take delivery of the goods at factory gate and in some cases the cost of transportation was initially incurred by them. and subsequently recovered from the buyer, however, no documentary evidence like contracts/ agreements, purchase orders, invoices etc. has been produced in the present appeal to verify the facts and genuineness of their contention that sale took place at the factory gate for delivery at the time and place of removal (factory gate) contrary to the allegation based on verification of purchase orders done by CERA Audit that the goods were sold for delivery at the customer's premises*

It is noticed that the Commissioner (Appeals) has come to the conclusion that Rule 5 of the Central Excise Valuation Rules, 2000 prescribes that if the goods are sold for delivery at a place other than place of removal then the cost of transportation will be included in the transaction value. It is noticed that the said observation of the Commissioner is opposite to the prescription in Rule which states that

*"the goods are sold for delivery at a place other than the place of removal then the charge of excisable goods shall be deemed to be the transaction value **excluding** actual cost of transportation from the place of removal upto the place of delivery of such excisable goods."*

We find that the impugned order does not interpret Rule 5 correctly. In the above facts of the case, the assessment needs to be done on the basis of Rule 5 of Central Excise Valuation Rules. Rule 5 requires that where goods are delivered at a place other than place of removal then the cost of transportation from the place of removal upto the place of delivery of the excisable goods needs to be excluded from the assessable value. The said rule also prescribes the following conditions:-

- (i) The cost of transportation is charged to the appellant in addition to the price of the goods and
- (ii) The said cost is shown separately in the invoice for such excisable goods.

Both the lower authorities have not disputed that the factory gate is the place of removal and therefore, in our considered view the cost of transportation if collected in addition to the price of the goods and shown separately in the invoice, needs to be excluded from the assessable value. Since the original documents are not with us, therefore, we set aside the impugned order and remand the matter to the original adjudicating authority to reassess the issue in terms of Rule 5 of Central Excise Valuation Rules as interpreted in the para above.

05. The appeal is allowed by way of remand.

(Pronounced in the open court on 22.12.2022 )

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**