CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.520 of 2012

(Arising out of Order-in-Appeal No.599-CE/MRT-II/2011 dated 27/12/2011 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut-II)

M/s Century Pulp & Paper, **.....Appellant**
(Lalkuan (Distt. Nainital)

VERSUS

Commissioner of Central Excise, Meerut-II ....Respondent
(Commissionerate, Meerut)

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70136/2023

DATE OF HEARING : 16 October, 2023
DATE OF DECISION : 16 October, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.599-CE/MRT-II/2011 dated 27/12/2011 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut-II.

2. By the impugned order Commissioner (Appeals) has upheld the order of Additional Commissioner upholding the demand of duty in respect of insurance amount recovered by the appellant from their customers by enhancing the assessable value of the cleared goods by the amount collected as insurance over and above the amount actually paid towards insurance.

3. We have heard Shri Kapil Vaish learned Chartered Accountant appearing for the appellant and Shri Sandeep Pandey learned Authorized Representative appearing for the revenue.

3.1 Arguing for the appellant learned Counsel submits that the issue is squarely covered in appellant's own case by the following decisions:-

- Final Order No.52995 of 2017 dated 19.04.2017.
- Final Order No.52473 of 2017 dated 14.03.2017.
- Final Order No.A/56321 of 2013 dated 26.04.2013.

3.2 Learned Authorized Representative appearing for the revenue reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 We find that the issue is no longer res-integra and stands settled by the decision of this Tribunal in series of decisions in appellant's own case and further the issue is also squarely covered by the decision of Hon'ble Supreme Court in the case of M/s Baroda Electric Meters Ltd. Vs CCE 1997 (94) ELT 13 (SC), wherein following has been held:

> *"The Tribunal accepted the position that equalised freight was charged by the appellant from everyone, but proceeded to say that even though freight cannot be a part of the assessable value that* ***wherever freight actually paid was less than the amount collected by way of freight and transportation charges the difference was appropriated by the appellant and, therefore, the same would be a part of the assessable value. In our opinion, the Tribunal proceeded on an incorrect premise. It was clearly held in Indian Oxygen Ltd. v. Collector of Central Excise - 1988 (36) E.L.T. 723 (S.C.) = 1988 (Supp.) SCC 658, that the duty of excise is a tax on the manufacturer and not a tax on the profits made by a dealer on transportation.*** *In view of that decision, the view taken by the Tribunal cannot be sustained."*

The logic of the said decision has been applied by the tribunal in the decisions referred by the counsel for the appellant, in the appellants own cases. We do not see any reason to differ.

5.1 Accordingly, Appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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