

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70625 of 2019

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-139-19-20 dated 08.05.2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

**Commissioner of Central Tax, GST &
Service Tax, Gautam Buddha Nagar**

.....Appellant

(C-56/42, Renu Tower, Sector-62, Noida-201301)

VERSUS

M/s Telecom Network Solutions Pvt. Ltd.,Respondent

(A-10, UPSIDC Industrial Area,
Sikandrabad, Distt.-Bulandshahar)

APPEARANCE:

Shri Manish Raj, Authorized Representative for the Revenue
Absent on Call, for the Respondent

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

FINAL ORDER NO.- 70061/2024

DATE OF HEARING : 17 October, 2023
DATE OF DECISION : 14 February, 2024

P. K. CHOUDHARY:

The Respondent is engaged in the manufacture of "M.S. Fabricated Hot Dip Galvanized Steel Structures (Tower)". The Officers of AGUP, Lucknow visited the factory premises of the Respondent from 13.12.2010 to 18.12.2010 and conducted audit of Books of Accounts and Central Excise records for the period from April, 2008 to March, 2010. During the course of Audit, it was observed by the Audit party that the Respondent charged freight from their buyers but did include the same in the transaction value in terms of Section 4(3)(d) of the Central Excise Act, 1944¹ which provides that "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

¹ The Act

that the buyer is liable to pay, or on behalf of the assessee by reason of, or in connection with the sale, whether payable at the time of sale or at any other time, including, but not limited to, any amount charged towards 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. Further, Section 4(3)(c)(iii) *ibid* stipulates that the place where delivery is given to buyer, will be the place of removal and value will be price at that place include transport, handling and insurance charges upto that place. Accordingly, Show Cause Notice² covering period up to October, 2015 demanding Central Excise duty amounting to Rs.20,90,082/- has been issued under C. No. IV(9)Adj/Telecom/N-II/186/2015/4824 dated 04.12.2015. For the further period i.e. November, 2015 to June, 2017 statement of demand dated 30.11.2017 has been issued demanding central excise duty amounting to Rs.51,81,676/- alongwith applicable interest and also proposal to impose penalty under the provisions of Rule 25 of Central Excise Rules, 2002³ readwith Section 11AC of the Act. The Adjudicating Authority vide Order-in-Original dated 25.04.2018 confirmed the demand as proposed in the show cause notice and imposed penalty of Rs.51,81,676/- under the provisions of Rule 25 of the Rules readwith Section 11AC of the Act.

2. Being aggrieved, the assessee filed appeal before the first Appellate Authority and the learned Commissioner (Appeals) allowed the appeal before him by setting aside the Order-in-Original.

3. Being aggrieved by the impugned Order-in-Appeal, the Revenue has filed the present appeal before the Tribunal. When the matter was called none appeared on behalf of the Respondent-assessee.

4. Heard the learned Departmental Representative and perused the appeal records.

² The SCN

³ The Rules

5. The learned Departmental Representative reiterated the grounds of appeal and relied on the discussions and findings of the Additional Commissioner of Central Tax, GST, Central Excise, Gautam Buddha Nagar in the Order-in-Original dated 25.04.2018. We find that the Respondent had entered into contract with respective customers for manufacture and supply of goods, thereafter goods were supplied on the terms and conditions of contract. The customers carried out inspection/testing of the goods in Respondent's factory before the same is discharged to the destination specified in the purchase order. At the request of the customers, the transporters were engaged by the Respondent and they were always paid separately for the same. The price of goods depends upon the transaction value of goods and the element of freight has no bearing whatsoever on the value of goods. It is the case of the Department that the excess of transportation (Freight Element) of the excisable goods from the factory to the buyer's premises was liable to be included in the assessable value of the goods for computation of duty. Further, in the delivery terms, it is mentioned freight at actual. Accordingly, the place of removal is the factory gate and not the premises of the buyers. We find that the issue is no more *res integra* and is covered by the decision of this Bench in the case of Flaktwoods ACS (India) Pvt. Ltd. 2016 (341) E.L.T. 404 (Tri.-All.). We further find that the issue has already been decided by the Hon'ble Supreme Court in the following cases:-

"CCE, Shillong vs. India Carbon Ltd. [2011 (269) E.L.T. 6 (S.C.)], wherein it was held that transportation charges after the sale of goods from the factory gate were not includible in the assessable value.

CCE, Mumbai vs. Official Liquidator for Brimco Plastic Machinery Pvt. Ltd. 2015 (324) E.L.T. 637 (S.C.), wherein the Hon'ble Supreme Court in the case of the assessee, manufacturing and clearing Plastic Machinery and installing and commissioning it at the factory sites of their customers, and most of the components of the machineries

were manufactured by them, including some components, bought from market and brought to their factory. All such components were taken in unassembled form for the purpose of convenient transportation to the site of their customers, where such machinery is assembled and installed. The assessee has been supplying the machinery in unassembled form and was assembling and not installing at buyer's place on contract basis and recovering the contract price by raising invoice. The Revenue wanted to add certain cost incurred towards installation, erection, etc., for arriving at the transaction value. The Apex Court held that the Tribunal was correct in holding that the expenses of installation is not includible in the transaction value, as it is obvious conclusion on reading of Section 4 of the Act. As per which, the transaction value is to be arrived at the time of clearance of the goods at the factory gate. All the expenses which are incurred post clearance (that too, after the supply of equipment) in respect of installation, etc., could not have been taken into consideration in the facts of the case."

6. In view of the ratio as laid down by the Hon'ble Supreme Court, it is our considered view that as per Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000- wherein excisable value of 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 value of goods are sold for delivery at a place other than the place of removal, then the value of such excisable value shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods. We find that the Respondent had arranged for the transport of goods to buyer's addresses and the freight charges were mentioned separately in the invoices. The goods after manufacturing in the plant of the Respondent were subject to pre-delivery inspection by the buyer and were ascertained in favour of the particular buyer before the

delivery. In the invoices, the Respondent have charged sales tax and have reflected freight separately in most of the cases. We hold that transfer of ownership takes place at the factory gate when the goods are delivered. Accordingly, we do not find any reasons to interfere with the impugned Order-in-Appeal passed by the learned Commissioner (Appeals) and the same is sustained. The appeal filed by the Appellant Revenue is rejected.

(Order pronounced in open court on **14th February, 2024**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS