IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/70653/2016-EX[DB]

(Arising out of Order-in-Appeal No. 223-CE/APPL-ALLD/LKO/2016 dated 22/03/2016 passed by Commissioner of Central Excise & Service Tax (Appeals), Lucknow)

M/s Abhinav Steels, **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Ms Stuti Saggi, Advocate for Appellant
Shri Gyanendra Kr. Tripathi, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/01/2019
Date of Decision : 28/01/2019

FINAL ORDER NO-70184/2019

Per: Archana Wadhwa

After hearing both the sides, we find that the dispute in the present appeal relates to the legal issue, as to whether the freight charged by the appellant, who is manufacturer of TMT Bar, is required to be added in the assessable value or not.

2. Proceedings initiated against them alleging that since their sales were on FOR basis and hence freight would form the cost of valuation of the TMT bar were originally dropped

by the Assistant Commissioner, by following the Hon'ble Supreme Court's decision in the case of ESCORTS JCB Ltd. Vs Commissioner of Central Excise, Delhi-II reported as 2002 (146) ELT 31 (SC). However, on appeal against the said order Commissioner (Appeals) reversed the same by following the Hon'ble Supreme Court's decision in the case of Commissioner of Customs & Central Excise, Aurangabad Vs Roofit Industries Ltd. reported as 2015 (319) ELT 221 (SC).

3. Aggrieved with the said order of Commissioner (Appeals), the appellant is before us.

4. Learned Advocate appearing for the appellant draws our attention to another subsequent decision of the Hon'ble Supreme Court in the case of Commissioner of Customs, Nagpur Vs Ispat Industries Ltd. reported as 2015 (324) ELT 670 (SC) wherein after considering the earlier decision in the case of Roofit Industries Ltd. (supra), the Hon'ble Supreme Court has held that such freight would not form part of the assessable value of the goods.

5. On going through the said decision in the case of Ispat Industries Ltd. (supra), we note that the Hon'ble Supreme Court has differentiated their view of the earlier order in the case of Roofit Industries Ltd., based upon the terms and conditions of the contract. Though Commissioner (Appeals) has made certain observation about the condition of contract

but we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority to examine the entire factual aspects as reflected in the contract and to decide the issue afresh in the light of the said two decisions of the Hon'ble Supreme Court i.e. in the case of Roofit Industries Ltd. (supra) and Ispat Industries Ltd. (supra).

6. Appeal is thus allowed by way of remand.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

akp