FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 31/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70103/2017-EX[DB] dated 12/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/536/2008	**R R Heavy Engineering Co Pvt Ltd** C/o Assistant General Manager Cb Ganj Barrailey UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To
3Advocate(s) / Consultant(s):

Kapil Vaish
2nd floor, Part-A Krishna Janki Palace, 35-C, Rampur Garden, Civil Lines, Bareilly, UP
Bareilly
Uttar Pradesh

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4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/536/2008-EX[DB]

(Arising out of Order-in-Appeal No. 257-CE/MRT-II/2007 dated 11/12/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

M/s R R Heavy Engineering Co. (P) Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 12/01/2017

FINAL ORDER NO. 70103/2017

Per: Anil G. Shakkarwar

The present Appeal is filed by the appellant M/s R R Heavy Engineering Co. (P) Ltd. against Order-in-Appeal No. 257-CE/MRT-II/2007 dated 11/12/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II.

2. Brief facts of the case are that the appellants were manufacturers of Sugar Plant & Machinery and were removing its parts for convenience of transportation and paid duty on the value of Sugar Plant & Machinery which was cleared from their factory. It appeared to Revenue that erection & commissioning charges of said Sugar Plant & Machinery at the site of customer should be included in the

assessable value for the purpose of charging Central Excise duty. Therefore, a Show Cause Notice No. V(15)DP/RR/2001 dated 24/02/2005 was issued to the appellants calling upon to show cause as to why Central Excise duty amounting to Rs.1,26,400/- should not be demanded from them by treating installation of erection & commissioning charges of Rs.7.90 lacs, includable in the assessable value in terms of proviso to Section 11A(1) of Central Excise Act, 1944. The said Show Cause Notice was adjudicated through Order-in-Original No. 66/2006 dated 28/11/2006. The Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said Order-in-Original appellant preferred appeal before Commissioner (Appeals). The appeal was decided through impugned Order-in-Appeal No. 257-CE/MRT-II/2007 dated 11/12/2007, wherein the ld. Commissioner (Appeals) did not interfere with the said Order-in-Original No. 66/2006 dated 28/11/2006. Aggrieved by the said Order-in-Appeal appellants is before this Tribunal.

3. Heard the ld. Counsel for the appellants who has submitted that in view of the ruling by Hon'ble Supreme Court in the Case of Commissioner of Central Excise, Mumbai *Versus* Official Liquidator for Brimco Plastic Machinery (P) Ltd. reported at 2015 (324) E.L.T. 637 (SC) wherein it was held that the installation, erection & commissioning charges are not added/included in the assessable value for determination of Central Excise duty, the impugned order is not sustainable.

4. Heard the ld. D. R. who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, we find that the present case is in respect of inclusion or otherwise of erection & commissioning charges in the assessable value of goods for the purpose of levy of Central Excise duty. We also find that Hon'ble Supreme Court

in the above stated case's Para 2, 3, 4, 5 & 6 as held as follows:-

"2. The Department wanted to add certain cost incurred towards installation, erection, etc., for arriving at the transaction value. This was so done by the Commissioner in his Order-in-Original dated 31-8-1998 confirming the demand which was raised in the Show Cause Notice. However, in appeal, the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') has reversed the said order and allowed the appeal of the assessee.

3. The issue which arises for consideration is as to whether the installation, erection and commissioning charges for equipment installed at customer's premises and values thereof can be added/included for determining the assessable value?

4. We find that on the facts of this case, while coming to the aforesaid conclusion, the CESTAT has relied upon the judgments of this Court in *'PSI Data System Ltd. v. Collector'* [1997 (89) E.L.T. 3 (S.C.)], *'Mittal Engineering Works Pvt. Ltd. v. Collector'* [1996 (88) E.L.T. 622 (S.C.)], holding that inclusion of installation, erection and commissioning charges for equipment installed at customer's premises cannot be added/included to determine the assessable value.

5. This is obvious conclusion on reading of Section 4 of the Central Excise 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 present case as noted by the CESTAT.

6. We, thus, do not find merit in this appeal which is

accordingly dismissed."

We find that the above stated ruling of Hon'ble Supreme Court is squarely applicable in the present case.

6. We, therefore, set aside the both impugned Order-in-Original & Order-in-Appeal and allow the appeal. The appellant shall be entitled for consequential relief, if any, as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001