CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 21/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70037-70039/2016 dated 13/1/2016

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
E/1708,2018&2106/2013	CLASSIC POLYTUBES PVT LTD BINDKI ROAD, FATEHPUR(UP)
Name and Address of Respondent	CCE, LUCKNOW 7-A, ASHOK MARG LUCKNOW.

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s SH L.P.ASTHANA,ADV
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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

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Asstt. Registrar

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/order: 13.01.2016

Excise Appeal Nos. E/1708/2007, E/2018/2007 & E/2106/2007

[Arising out of the Order-in-Appeal No.181 & 182-CE/LKO/06 dated-30.11.2006 passed by the Commissioner of Customs and Central Excise(Appeals, Lucknow]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
Whether their Lordships wish to see the fair copy of the Order?	
Whether Order is to be circulated to the Departmental authorities?	

1) M/s. Classic Polytubes Pvt. Ltd.

..Appellant

Vs.

C.C.E., Lucknow ... Respondent

& Vice Versa

Appearance:

Ms. Shreya Dahiya (Advocate) for the appellant

Shri Pawan Kr. Singh, (Superintendent), A.R..

for the Respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Final Order No. 700[illegible]/70039/20[illegible]

Per: Mr. Mr. H.K. Thakur

Appeals No. E/1708/2007 & E/2018/2007 have been filed by appellant M/s. Classic Polytubes Pvt. Ltd. against Order-In-Appeal No. 181 & 182-CE/LKO/06 dated-30.11.2006 issued on 14/3/2007. Appeal No. E/2106/2007 has been filed by the Revenue against the same Order-in-Appeal.

2. Shri Pawan Kumar Singh, Supdt. (A.R.) appearing on behalf of the Revenue argued that Commissioner (Appeal) has no power to adjudicate the case and the case should have been remanded back by Commissioner (Appeal) to the Adjudicating authority instead of passing a final order.

3. Ms. Shreya Dahiya (Advocate) appearing on behalf of the appellant argued that the issue involved in the present appeals is regarding inclusion of freight/insurance charges from the factory gate to the buyers premises and inspection

HK

charges, at the instance of the buyers, in the assessable value under Section 4 of the Central Excise Act, 1944. Regarding inclusion of inspection charges at the instance of the buyer it was argued by the Advocate that the same is not a compulsory inspection but optional in those cases where buyers want to get such inspection from a particular agency. That initially appellant is paying such inspection charges, as and when asked by the buyer, which are subsequently reimbursed by the buyers. She relied upon the following case laws:

(i) Commissioner of Central Excise, Mysore Vs. M/s. TVS Motors Company Ltd. [2015 TIOL-299-SC-CX]

(ii) Commissioner of Central Excise, Ahmedabad-II Vs. Lubi Submersible Ltd. [2015 (317) ELT 299 (Tri.-Ahmd.)]

3.1 On the issue of freight and insurance from the factory gate to the place of delivery it was argued that the period of demands is from 17/9/2000 to 30/9/2002. That during this period "a depot, premises of consignment agent or any other place or premises from whe~~n~~ re the excisable goods are to be sold" was not existing as the place of removal as per Section 4 of the Central Excise Act, 1944. Learned Advocate made the bench go through Section 4 (3) (c) to argue that first appellate authority has wrongly observed in para 8.2 of the order-In-Appeal dated 30/11/2006 that 'place of removal ' under Section 4 (3) (c) also include a premises when goods are sold. It was her case that the said amendment was carried out in Section 4 (3) (c) only with effect from 14.5.2003. That as per Rule 5 of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000, the cost of transportation to the place of removal is required to be excluded from the transaction value. Learned Advocate relied upon the case law of Apex court in Commissioner of Customs& Commissioner of Customs, Nagpur Vs. M/s. Ispat Industries ltd. [2015-TIOL-238-SC-CX].

3.2 It was also argued on behalf of the appellant that freight and insurance is charged separately in the invoices and the goods are sold at the factory gate which was the place of removal at the relevant time as per Section 4 (3) (C) of the Central Excise Act, 1944.

4. Shri pawan Kumar Singh, Supdt. (A.R.) appearing for the Revenue argued that Inspection of the goods is done in the factory of the appellant before clearance and the contract is on FOR destination basis, therefore, not only the inspection charges are to be included but the freight and insurance charges are also required to be Included in the assessable

value, as the sale of goods takes place at the door steps of the buyers.

5. Heard both sides and perused the case records. The first issue involved in these appeals is whether inspection charges with respect to a specific inspection of the buyer is required to be added to the assessable value. The second issue is whether freight and insurance charges paid by the appellant initially and reimbursed later, are required to be added to arrive at the be assessable value under Section 4 of the Central Excise Act, 1944. The demand was initially dropped by the Adjudicating authority vide order-in-original No. 10/Demand/RBL/05 dated 5/7/2005. Revenue filed an appeal with the first appellate authority who not only confirmed the demand but also imposed equivalent penalty. Commr. (Appeal) after going through the grounds of appeal of the Revenue and the cross objections, filed by the appellant herein, framed the questions and decided the same in final appellable order. Therefore, appeal filed by the Revenue seeking remand of the case to the Adjudicating authority has no merits and is required to be dismissed.

6. Regarding the appeals filed by the appellant M/s. Classic Polytubes Pvt. Ltd., the issues involved is inclusion of inspection charges at the instance of the buyer and

freight/insurance charges from the place of removal, in the assessable value under section 4 of the Central Excise Act, 1944.

6.1 The 'place of removal' during the relevant period was defined in Section 4(3) c) of the Central Excise Act, 1944 as follows:

> " place of removal" means-
>
> (i) a factory or any other place ore premises of production or manufacture of the excisable goods; [* * *]
>
> (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;"

6.2 Rule 5 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2002 (Valuation Rules 2002) is also relevant and is reproduced below:

> "Where any excisable goods are sold in the circumstances in clause (a) 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 transportation is charged to the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods."

6.3 As per the definition of 'place of removal' extracted above, given in Section 4 (3) (c) at the relevant time was a factory or any other place or premises or a warehouse wherein the excisable goods have been permitted to be deposited without payment of duty. There is no mention of place of sale of the goods in Section 4 (3) (c) during the relevant time. It has to be held that place of removal is the factory or a premises from where duty is paid and not where the goods are sold. The words, like 'a depot, premises of consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory" were not existing in Section 4 (3) (6) during the relevant period. Further Rule 5 of the Valuation rules, 2002 also provide that cost of transportation from the place of removal to the place of delivery is required to be excluded from the transaction value. In the present case the sale is effected at the factory gate which is the place of removal and transportation cost is separately indicated in the invoices. Hon'ble Apex court in the case of CC&CE, Nagpur Vs. M/s. Ispat Industries Ltd. (Supra) while deciding this issue held as follows:

> "21. The actual cost of transportation from the place of removal up to the place of delivery of excisable goods is excluded from the computation of excise duty provided it is charged to the buyer in addition to the price of goods and shown separately in the Invoices for such goods. Interestingly, despite the substituted Section 4 not providing for a depot or other premises as a place of removal, Rule 7 deals with the normal transaction value

of goods transferred to a depot or other premises which is said to be at or about the same time or the time nearest to the time of removal of goods under assessment.

22. To complete the picture, by an Amendment Act with effect from 14.5.2003, Section 4 was again amended so as to re-include sub-clause (iii) of old Section 4(3) (b) (PRE 2000) AS Section 4 (3) (c) (iii). This amendment reads as follows:-

"(3) (c) (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;"

Also, Rule 5 of the Central Excise Rules was substituted, with effect from 1/3/2003, to read as follows:

"Rule 5. Where any excisable 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 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 cost of transportation from the place of removal upto the place of delivery of such excisable goods.

Explanation 1 – "Cost of transportation "includes-

(i) The actual cost of transportation; and

(ii) In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2- For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods,",

23. It is clear, therefore, that on and after 14.5.2003, the position as it obtained from 28.9.1996 to 1.7.2000

has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.

24. It will thus be seen that, in law, it is clear that for the period from 28.9.1996 up to 1.7.2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods. As a matter of law therefore the Commissioner's order and Revenue's argument based on that order that freight charges must be included as the sale in the present facts took place at the buyer's premises is incorrect. Further, for the period 1/7/2000 to 31/3/2003 there will be no extended place of removal, the factory premises or the warehouse (in the circumstances mentioned in the Section), alone being places of removal. Under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case.

6.4 The present appeals are squarely covered by above ratio laid by the Apex Court and for the period 1/7/2000 to 31/3/2003, place of removal was only extended to either the factory or a warehouse/premises from where duty was paid. Appeal of the appellant on this account is thus required to be allowed.

7. On the issue of inclusion of inspection charges in the assessable value, it is observed that the same are not mandatory inspections during the manufacture of the goods. A specific mention has been made by the first appellate authority in para 8.1 of the Order-in-Appeal dated 30/11/2006 that these additional inspections

are got done at the instance of the buyers and is not mandatory. Co-ordinate CESTAT Bench at Ahmedabad in the case of Commissioner of Central Excise, Ahmedabad=II Vs. Lubi Submersible Ltd. (supra) held as follows, while distinguishing Larger Bench case law of Maruti Suzuki India Ltd. Vs. Commissioner of Central Excise, Delhi[2010 (257) ELT 226 (Tribunal-LB)]

> "Ld. A.R. has relied upon Larger Bench judgment in the case of Maruti Suzuki India Ltd. Vs. Commissioner of Central Excise, Delhi-III (supra) wherein it has been held that PDI charges are required to be included in the assessable value. However, it is observed from the case law that the issue before the Larger Bench, in the case of Maruti Suzuki India Ltd. (supra) was only on inspection doe on compulsory PDI done in all cases by the appellant in that case. It was not the case before the Larger Bench that PDI inspections were done at the instance of the buyer. In view of the interpretation made by this bench in the case of Commissioner of Central Excise, Ahmedabad-II Vs. Johnson Pumps (I) Ltd. (supra) PDI charges recovered at the instance of the buyer are not includible in the assessable value and accordingly appeal filed by the revenue is required to be rejected and cross objection filed by the respondent is required to be rejected and cross objection filed by the respondent is required to be allowed."

7.1 Hon'ble Apex Court in the case of Commissioner of Central Excise, Mysore Vs. M/s. TVS Motors Company Ltd. (supra) also held that pre-delivery inspection charges cannot be included in the assessable value. In view of the above observations and settled proposition of law, optional inspection charges at the instance of buyer cannot be included in the assessable value under Section 4 of the Central Excise Act, 1944.

8. Based on the reasons recorded hereinabove, appeals filed by the appellant are allowed and appeal filed by the Revenue is dismissed.

(Operative part of the order already pronounced in the open Court)

Sd/-
(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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