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: 10/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70463-70464/2017-EX[DB] dated 25/04/2017

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/827/2010	**MERINO INDUSTRIES LTD.** Village-Achcheja, Delhi-Hapur Road, Distt-Ghaziabad.
2	E/3555/2010	**MERINO INDUSTRIES LTD.** VILLAGE-ACHEHEJA, DELHI-HAPUR ROAD, DISTT. GHAZIABAD.
		Name and Address of Respondent
3		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

S. SUNIL (ADV.)
46, BANK ENCLAVE,
DELHI
110092

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

APPEAL No. E/827& 3555/2010-EX[DB]

(Arising out of Order-in-Appeal No.17-CE/MRT-II/2010 dated 29.01.2010 & 234-CE/MRT-II/2010 dated 23/07/2010 both passed by Commissioner of Central Excise (Appeals), Meerut-II)

Merino Industries Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Meerut-II	**Respondent**

Appearance:

Shri S. Sunil, Advocate	for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR),	for Respondent

CORAM:

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

Date of Hearing : 25/04/2017
Date of Decision : 25/04/2017

FINAL ORDER NO. 70463-70464/2017

Per: Anil G. Shakkarwar

The above said two appeals are involving the same issue but for different period. Therefore, they have taken together for decision.

2. The brief facts of the case are that the appellants are manufacturers of Paper based decorative laminates, Formaldehyde, Post form particle Board, Post form MDF Board, Synthetic resin adhesive, BOPP in lump form, impregnated paper and furniture. It appeared to Revenue that installation charges collected by the appellant either through

invoices by separately mentioning the same in the invoices or by raising debit notes are eligible to be included in the Assessable value for computation of Central Excise Duty on goods manufactured by the appellant. Appellants were therefore, issued with a show cause notice dated 25.04.2008 for the period from 2004 to 2007 demanding duty of Rs.4,99,150/- on the component of installation charges. Another show cause notice for the period 2007-08 upto November 2007 was issued on 25.04.2008 demanding duty amounting Rs. 76,507/-. Third show cause notice was issued on 17.03.2009 for the period ~~for~~ from July, 2008 to December, 2008 demanding duty of Rs. 26,245/-. The show cause notices issued on 25.04.2008 were adjudicated through Order-in-Original No. 184-185/AC/HPR/2009 dated 12/06/2009 wherein demand was confirmed and equal penalty was imposed on appellant. Appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) decided the appeal through Order-in-Appeal No. 17-CE/MRT-II/2010 dated 29.01.2010 which is impugned order-in-appeal in respect of Appeal No. E/827/2010. Learned Commissioner (Appeals) rejected the appeal and upheld the Order-in-Original dated 12.06.2009. The show-cause-notice dated 17.03.2009 was adjudicated through Order-in-Original No. 883/AC/HPR/2010 dated 23.03.2010 wherein the Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals) which was decided through Order-in-Appeal No. 234-CE/MRT-II/2010 dated 23.07.2010 wherein the learned Commissioner (Appeals) upheld the said Order-in-Original dated 23.03.2010 and rejected the appeal. The said order-in-appeal dated 23.07.2010 is impugned order-in-appeal in respect of Appeal No. E/3555/2010.

3. Heard the parties. The learned counsel for the appellant ~~who~~ has submitted that the show cause notice clearly established that the installation charges were separately mentioned in the invoices or were recovered ~~covered~~ through issue of debit notes. He further submitted that the issue is no more resintegra in view of precedent decision of Principal Bench of his Tribunal in the case of Greysham & Company vs. Commissioner of Central Excise Delhi-I reported at 2014(304) ELT 129 (Tribunal, Delhi)

4. Learned D.R. has submitted that the issue of inclusion installation charges is clarified by CBEC vide circular No. 643/34/2002-CX dated 01/07/2002 at serial no.10 wherein it has been clarified that if the expenditure on installation and commissioning has been incurred to bring into existence any excisable goods then ~~their~~ such charges should be included in the assessable value of the goods.

5. Having considered rival contentions we find that in the instant case the goods were not coming into the existence at the premises of purchaser but they had already come into

existence at the manufacturing premises of appellant who has paid Central Excise Duty on the same before the clearance of the same from the factory. Therefore, we find that the said clarification is not applicable in the present case. We find that the decision of Principal Bench of this Tribunal in the above referred case of Greysham & Company is squarely applicable in present case wherein it was held that installation of the Air Break Equipment has nothing to do with the manufacturer of the said equipments and hence the charges for installation of the same are not includable in the assessable value of Air Break Equipment. We hold that the precedent decision in the case of Greysham & Company is squarely applicable in the present case. We therefore, allow both the appeals. The appellant shall be entitled for consequential relief as per law.

(Dictated & Pronounced in Court)

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

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

Ankit

प्रमाणित प्रति/Cerified True Copy
24/05/2017
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