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

Dated: 29/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70079/2016 DB dated 25/02/2016

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/2387/2006DB	COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD 38 M.G.MARG, CIVIL LINES, ALLAHABAD(UP)
	Name and Address of Respondent	SARTHEK ENTERPRISES LTD B-52, INDUSTRIAL AREA STHARIA, JAUNPUR(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH L.P.ASTHANA,ADV
R-163, SECOND FLOOR
GREATER KAILASH-1
NEW DELHI-48

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121005 (Haryana)
11 TaxindiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

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

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

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

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.2387/06

Arising out of O/A No.48-CE/Alld/2006 dated 12.05.2006 passed by Commr. of Central Excise & Customs (Appeals), Allahabad

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK KUMAR ARYA, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

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Commissioner of Central Excise, Allahabad ...APPELLANT(S)

VERSUS

M/s Sarthek Enterprises Ltd. RESPONDENT (S)

APPEARANCE

Shri Rajeev Ranjan, Joint Commissioner (A.R.) for the Department
Ms. Shreya Dahiya, Advocate for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK KUMAR ARYA, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 25. 02. 2016

Final ORDER NO. 70079/2016

Per Mr. Ashok Kumar Arya :

Both the parties have been heard.

2. This appeal has been filed by the Revenue against the order of the ld.Commissioner (Appeals) of Central Excise, Allahabad, where-under deductions for freight element incurred after the point of removal of goods from the factory gate, have been allowed by setting aside the Order-in-Original passed by the Joint Commissioner.

2.1 Thus the issue involved herein is :- the freight element or cost of transportation incurred after the point of removal of goods from the factory gate is to be included in the value of the goods or not.

3. The Revenue represented by ld.A.R., Shri Rajeev Ranjan, mainly argues that the cost of transportation is a part of the value of the goods and transportation cost incurred for transporting the goods to the buyer's place, is to be included in the value of the goods for the purposes of duty of Central Excise. He argues that the freight charges recovered on equalized/average basis though on separate invoices, have to be included in the value of the goods.

3.1 The ld.A.R. further argues that the point of sale shifts from the factory gate to the buyer's premises. Therefore, the transportation charges have to be included in the value of the goods for the purposes of duty of Central Excise.

4. The Respondent represented by ld.Advocate, Ms.Shreya Dahiya, mainly argues that this is the case where sale is completed at the factory gate itself ; thereafter, they have sent the goods on equalized freight basis to the respective customer/buyer; when there is separate invoice and separate contract for transportation, when sale is completed at the factory gate itself, the said freight charges cannot be included in the value of the goods for the purposes of duty of Central Excise. She cites the following decisions in support :

(i) *Commr. of Customs & Central Excise, Nagpur Vs. M/s Ispat Industries Ltd* : 2015-TIOL-238-SC-CX ;

(ii) *Commr. of Central Excise, Mumbai III Vs. EMCO Ltd.* : 2015-TIOL-163-SC-CX ;

(iii) *Commr. of Central Excise, Allahabad Vs. Chandra Metals Pvt. Ltd.* : 2014-TIOL-797-CESTAT-DEL.

5. We have carefully considered the facts on record as well as the submissions made by both the sides.

6. The ld.Commissioner (Appeals) in the impugned order, inter-alia, has mentioned as below :

> "In the present appeal before us, the sale was over at the factory gate itself. There are a separate terms and condition for transportation of the goods between the assessee and the buyer. In such cases, the payment made by the buyer to the assessee on account of "transportation" was not in connection with the sale, as the sake was over at the factory gate itself. It was also possible that the assessee may charge some amount over and above the actual freight and insurance cost incurred by him, even then such additional charge should not be includible in the assessable value of the goods."

6.1 From the record, we note that there are two separate contracts, one is for sale and another is for transportation, packing, forwarding and insurance purposes. One cannot say that the sale of the goods was not completed at the factory gate. Another contract for transportation, packing, forwarding, insurance etc. is only for the purposes of those activities,which are mentioned in the said contract and in the respective invoices as there are separate invoices in this regard. The transportation, packing, forwarding, insurance etc. are not part of the value of the goods, there cannot be any claim of duty of Central Excise on that separate part,which concerns with transportation etc. only.The CESTAT, Delhi in the case of *CCEx., Allahabad Vs. Chandra Metals Pvt.Ltd.* (cited supra), has held that cost of transportation from the place of removal to the place of delivery, is not to be included in the assessable value, even there cost of transportation has been calculated on average basis. In this regard, Para 8 of the said decision is referred below :

> "8. In view of above cited judgement of the Tribunal, it clearly comes out that the cost of transportation from the place of removal to the place of delivery cannot be included in the assessable value even though cost of transportation has been calculated on average basis and not on actual basis. Same finding was reflected by the Tribunal in the case of *Majestic Auto Ltd.* cited supra. We have also perused board's circular wherein it has been stated that

the deductions are permissible only for the actual cost so collected for his buyers. However, with reference to the judgement of Supreme Court in the case of *Accurate Meter*-2009 (275) ELT 585 (SC) = 2009-TIOL-31-SC-CX-LB and the Tribunal's judgement in the case of *Majestic Auto*, this issue has already been decided allowing deduction of equalized freight also."

6.2 Further, the Hon'ble Supreme Court in the case of *M/s Ispat Industries Ltd.*, has held that the actual cost of transportation from the place of removal, upto the buyer's place is to be excluded for valuation of goods for the purposes of computation of Excise duty, provided it is charged separately to the buyer in addition to the price of goods. In this regard, we quote Para 21 of the said decision, as below :

"**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."

7. In the light of the above discussions and considering the facts of the case, when there are separate contract for sale of the goods and for transportation etc., it is held that the said transportation charges can not be included in the assessable value of the goods for the purposes of computation of Central Excise duty. Thus, the appeal does not succeed.

(Dictated and pronounced in the open Court)

Sd/-
(ASHOK K. ARYA)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)