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: 27/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71009/2016-EX[DB] dated 13/10/2016

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
1	E/358/2008	CCE LUCKNOW 7-A, ASHOK MARG, LUCKNOW.
		Name and Address of Respondent
2		SHASHI CABLES LTD. A-3, INDUSTRIAL AREA,AMAUSI,LUCKNOW (UP),,

Copy To

3Advocate(s) / Consultant(s): SH PRAVIN SHARMA,ADV
TAX LASWS TRAINING INSTITUTE
KF-84, KAVI NAGAR
GHAZIABAD-201002

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

23-11-16

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

APPEAL No.E/358/2008-EX[DB]

(Arising out of Order-in-Appeal No. 122-CE/2007 dated 22/11/07 passed by Commissioner of Central Excise (Appeals), Lucknow)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Commissioner of Central Excise, Lucknow **Appellant**

Vs.

M/s Shashi Cables Ltd., **Respondent**

Appearance:

Shri Pawan Kumar Singh, Supdt (AR) for Appellant
Shri Pravin Sharma, Advocate, for Respondent

CORAM:

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

Date of Hearing : 13/10/2016
Date of Decision : 13/10/2016

FINAL ORDER NO. 71009/2016

Per: Anil Choudhary

This appeal is filed by the Revenue against Order-in-Appeal No. 122-CE/2007 dated 22/11/07 passed by Commissioner of Central Excise (Appeals), Lucknow.

2. The brief facts of the case are that the Commissioner (Appeals) while concluding that "the case is covered under Section 4 (1)(a) of the Central Excise Act, 1944 and not under Section 4(1)(b) of the Act" does not appear to have considered the clear and unambiguous terms of the contracts and records of transaction which establish exclusively that the sales were made on FOR destination basis. In other words, the goods were sold for delivery at a place (the buyer's premises) other than the place of removal (the factory gate). The fact of sale on FOR destination basis in clearly evident from the sale contracts and agreements on the basis of which the sales of the goods and the delivery at the premises of buyer have been made. Since the goods were not sold for delivery at the factory gate, the transactions were not covered by the provision of Section 4 (1)(a) of the Central Excise Act, 1944 rather they were governed by the provisions of Section 4(1)(b), specifically by Rule 5 of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000.

2. The Commissioner (Appeals) has also not taken into consideration the fact that exclusion of the cost of transportation under Rule 5 is not absolute but conditional and is subject to the fulfillment

of the laid down requirements. The deduction of transportation charge was available to the extent of actual cost of transportation, which was charged to the buyer in addition to the price for the goods and was shown separately in the invoice for such excisable goods.

3. The Commissioner (Appeals) has not taken into consideration the fact that the equated freight was not actual transportation cost and was accordingly not excludable from assessable value of the goods. He has not appreciated that the Board's vide F. No. 354/81/2000-TRU dated 30.06.2000 has very clearly defined the scope and meaning of valuation Rules 2000. In para 18 of the above letter it has been clarified that exclusion is permissible only for the actual cost of transportation so charged from his buyers. If the assessee has a system of pricing and sale at uniform prices inclusive off equated freight for delivery at factory gate or elsewhere, no deductions for freight element will be permissible".

4. The Commissioner (Appeals) has not appreciated the fact that wherever freight is charged on an average basis, the cost of transportation cannot be shown on an actual basis on every invoice. In such cases, even when any amount attributable to freight is mentioned on any invoice, it would be the amount worked out on an average basis, whereas, the law allows only the deduction of actual transportation cost from the value of the goods. It is precisely for this reason that it has been laid down in the letter of TRU dated

30.06.2000 that "If the assessee has a system of pricing and sale at uniform prices inclusive of equated freight for delivery at factory gate or elsewhere, no deduction for freight element will be permissible".

5. Heard the parties.

6. Learned Counsel for respondent relies on the ruling of this Tribunal in the case of Classic Polytubes Pvt. Ltd. Vs. Commissioner of Central Excise, Lucknow 2016 (336) E.L.T. 180 (Tri.-All.). He also relies on the ruling of Hon'ble Supreme Court in the case of Commissioner of Customs & Central Excise, Nagpur Vs Ispat Industries Ltd. 2015 (324) E.L.T. 670 (S.C.) and urges for dismissal of appeal.

7. Having considered the rival contention we find that freight have been charged separately and received separately. We also take notice that the buyers of the goods-State Electricity Board have issued purchase order specifying the price for the goods separately and also specifying the transportation cost on per Kilometer basis for the supply of goods. Accordingly, appellant have supplied and raised separate invoices for the price of goods and the transportation. Thus, it amounts to showing the cost of transport separately in the invoices. Accordingly, we find no error in the order of the Commissioner (Appeals), holding transport charges are

not includible in the value of the goods. Accordingly, we dismiss the appeal of revenue.

(Dictated in Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

प्रमाणित प्रति / Certified True Copy
16.11
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