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

Dated: 27/1/2016

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

Final Order No. A/ 70054/2016 dated 19/1/2016

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/3490/2006 EX	CCE, ALLAHABAD 38 M.G.MARG, CIVIL LINES ALLAHABAD
	Name and Address of Respondent	VINDHYA CABLES CHILBILA, P.O-MADHOGANJ PRATAPGARH(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH R.C.AGRAWAL,CA
S-203 PRAYAG KUNJ
STRACHEY ROAD,CIVIL LINES
ALLAHABAD-211001

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. Nager, 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, I-8, Sector-10, Faridabad 121003 (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

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

Date of hearing/order: 19.01.2016

Excise Appeal No. E/3490/2006-EX [DB]

[Arising out of the Order-in-Appeal No. 79-CE/ALLD/2006 Dated-11/07/2006 passed by the Commissioner (Appeals), Central Excise, Allahabad,U.P.]

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?

Commissioner of Central Excise, Allahabad

..Appellant

Vs.

M/s. Vindhya Cables

.... Respondent

Appearance:

HK

Shri R.K. Gupta (D.R.)

for the appellant

Shri R.C. Agarwal (C.A.)

for the Respondent/Revenue

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

Final Order No. 70054/2016

Per: Mr. Mr. H.K. Thakur

This appeal has been filed by the Revenue against Order-in-Appeal No. 79-CE/ALLD/2006 Dated-11/07/2006 passed by Commissioner (Appeal), Allahabad as first appellate authority under which Order-in-Original No. 03/adjudicating authority./2006 dated 30/01/2006 passed by the Adjudicating authority has been set aside. Adjudicating authority vide Order-in-Original dated 30/1/2006 confirmed a demand of Rs.15,661.05, alongwith Interest and also imposed equivalent penalty under Section 11AC of the Central Excise Act, 1944.

2. Shri R.K. Gupta (A.R.) appearing on behalf of the Revenue argued that the issue involved in the present appeal is whether freight separately contracted with the Customer, from the place of removal to the place of delivery, is required to be added to the assessable value. Learned A.R. made the

bench go through paras 04 & 05 of the grounds of appeal filed by the Revenue to argue that freight deduction is permissible only if freight is shown separately in the invoices. That the freight is not recovered on the basis of actual but is recovered on average basis and cannot be allowed as deduction to arrive at the assessable value.

3. Shri R.C. Agarwal (C.A.) appearing on behalf of the Respondent argued that the same issue has been decided by this bench in the case of Commissioner of Central Excise, Allahabad Vs. M/s. Anand Transformers (P) Ltd. and others in favour of the assessee under order No. 52184-52185/2015 dated 7/7/2015.

4. Heard both sides and perused the case records. The issue involved in the present appeal is whether freight, separately contracted with the customers, incurred from the place of removal to the place of delivery, is required to be added to the assessable value. It is also the case of the Revenue that freight charged by the Respondent is not on actual basis but has been charged in the invoices on average basis and should not be allowed as deduction. So far as merits of the case are concerned, it has already been held by this bench in the case of Commissioner of Central Excise, Allahabad Vs. Anand Transformers & others (supra) that freight separately shown in the invoices from the place of

removal to the place of delivery cannot be included in the assessable value. It does not make any difference if there is a separate contract for freight or the same is separately shown in the same contract. On the issue of charging freight on average basis, it is observed that there is no restriction in charging freight on equalised or average basis. Even if some higher amount is recovered on account of equalised freight then also it will be an activity in relation to transportation, and cannot be added to assessable value unless it is established by Revenue that freight is artificially collected from the customers at higher rate to deliberately reduce the assessable value. No such evidence has been brought by the Revenue to the notice of the bench. In the absence of any contrary evidence, we hold that the present facts are squarely covered by the ratio laid by us in the case of C CE, Allahabad Vs. M/s. Anand Transformer (P) Ltd. and another (supra). Accordingly, appeal filed by the Revenue is required to be dismissed.

5. In view of the above observations and the settled proposition of law, 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)

mm

प्रमाणित प्रति / Certified True Copy

17.2.16

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