

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

Dated: 04/03/2016

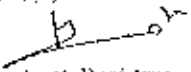
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70104/2016 SM dated 1/03/2016

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
	1/3502/2006SM	COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD 38, M.G. MARG, CIVIL LINES ALLAHABAD
		HINDUSTAN CABLES LTD UPSIDC INDUSTRIAL AREA PO KADSARA, KARCHANA ALLAHABAD
		Name and Address of Respondent

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s) SH A.P. MATHUR, ADV
167, TAGORE TOWN
ALLAHABAD.-

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. 16), Vaithyanam Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rontak Road, New Delhi-110005

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

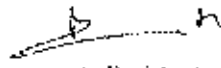
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

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

Ex. Appeal No.3502/06

Arising out of OIA No.68-CE/Aild./2006 dated 14.06.2006 passed by
Commissioner of Central Excise (Appeals), Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982?
 2. Whether it should be released under Rule 27 of the
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not?
 3. Whether His Lordship wishes to see the fair copy
of the Order?
 4. Whether Order is to be circulated to the Departmental
Authorities?
-

Commissioner of Central Excise, Allahabad

...APPELLANT(S)

VERSUS

M/s Hindustan Cables Ltd.

RESPONDENT (S)

APPEARANCE

Shri H.M.Dixit, A.C. (A.R.) for the Department
Shri A. P. Mathur, Advocate for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 01.03.2016

Final ORDER NO. 70/04/2016



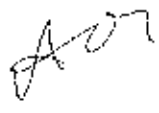
Per Mr. Anil Choudhary :

The revenue is in appeal against order of the Commissioner (Appeals) dated 14/6/2006 whereby it was held that extended period of limitation is not attracted and accordingly, the order-in-original are set aside.

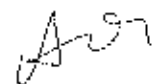
2. The brief facts are that the respondent assessee is engaged in the manufacture of optical fibre cable/accessories/poly insulated jelly filled cables. On scrutiny of records for the period July,2000 to October,2003, the revenue found that the assessee had cleared their products to BSNL on the basis of composite prices for sale of goods on FOR basis. For arriving at the assessable value, the respondent assessee deducted transportation charges on percentage basis. It appeared to revenue that as per rule 5 of Central Excise Valuation Rules, 2000, deduction of transportation charges on equalized basis is not admissible.

2.1 Accordingly, show cause notice dated in 11/3/05 was issued invoking the extended period of limitation for the period July, 2000 to October, 2003, demanding duty of Rs.8,96,423 proposed to be recovered under proviso to section 11 A (1) of the Act along with proposal to impose penalty under Rule 25 read with section 11 AC of the Act.

2.2 The appellant appeared and contested the show cause notice. It was contended that the goods were cleared to BSNL on the price as per the agreement and transportation charges as actually incurred,



which fact is verifiable from the copies of Invoices and that transportation charges was shown separately on the invoices and mentioned actual transport in all the invoices. Accordingly, they complied with the requirement of Rule 5 of the Valuation Rules, 2000. Reliance was placed on the ruling of the Tribunal in the case of J.B.M. Industries Ltd. versus CCE : 2002 (14) ELT 379 (T), wherein it was held that freight and insurance are not includible in the assessable value if goods sold at the factory gate on invoices bearing purchaser's name, and that they dispatched to purchasers by road in accordance with terms of contract. Reliance was also proposed on the ruling of Honourable Supreme Court in case of CCE versus Flexton Cables India , wherein it was held that delivery of goods/transfer of possession to buyer takes place when goods are handed over to carrier for being transported to buyer/Seller no longer remained the owner of the goods mainly because the purchase order shown dispatched at his risks. Reliance was also placed on Order No. 59/1/2003-CX dated 3.3.2003 circulated by Ministry of Finance & Company Affairs holding the ruling of Honourable Supreme Court in Escort's JCB Ltd. Vs. CCE : 2002 (146) ELT 31 (SC), on the question of inclusion of freight and insurance charges in the assessable value, the Honourable Apex Court in its judgement have held that the Commissioner of Central Excise and this Tribunal erred in drawing an inference that ownership in the property continue to be retained by the assessee for the reason that the assessee had arranged for the transport and transit insurance. Such a conclusion is not sustainable. 2.3The SCN was adjudicated and the proposed demand was confirmed with equal amount of penalty



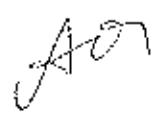
under section 11 AC of the Act and further penalty of Rs.10,000/- was imposed under Rule 25 of CER.

3. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order, pleased to allow the appeal on the ground of limitation observing as follow :

"The issue for determination in the case is whether the show-cause notice was barred by limitation and whether the cost of transportation which was deducted by the appellant was liable to Central Excise duty as per provisions of Section 4 of the Central Excise Act, 1944 and Rules made thereunder.

On the issue of limitation, it may be seen that the issue pertains to the period July, 2000 to October, 2003 and the show-cause notice invoking the extended period was issued on 11.03.2005. In the show-cause notice, it has been alleged that the appellant have willfully suppressed/deliberately mis-used the provisions of Central Excise Rules with a view to avoid detection. It has not been specifically pointed out as to what were the facts which were suppressed by the appellant justifying the invocation of the extended period of limitation.

On the contrary, the appellant have submitted two letters dated 11.09.2001 and 30.11.2001 addressed to the Assistant Commissioner of Central Excise Division II, Allahabad with a copy to the Superintendent, Central Excise Division II, Naini, Allahabad and both letters have been duly acknowledged in the respective offices. In the both the letters, they have informed that they have received purchase orders No.C-



01/PIJF/HCL/(380)21 dated 14.05.2001 and No.C-01/PIJF/HCL/45.0/21 dated 15.10.2001 from BSNL and copy of the said purchase orders were also enclosed along with these letters. On perusal of these documents, it is established that the facts were well within the knowledge of the department.

Even otherwise, it has been held in catena of decision that there is no suppression of facts, if facts, which are not required to be disclosed, are not disclosed.

Since the demand is not sustainable on the grounds of limitation, I do not want to go into the merit of the case..

As such, I fully agree with the contention of the appellant that since the copy of the contracts were supplied to the Department, the charge of suppression of the facts are not established and the demand invoking extending period of limitation is time barred.

In view of my foregoing discussion and findings, the Order-in-Original No.MP(Dem-38/2005) 31 of 2005 dated 22.12.2005, passed by the Joint Commissioner, Central Excise, Allahabad, is set aside and the appeal of the party is allowed."

4. The Id.A.R. for revenue urges that the Commissioner (Appeals) while allowing the appeal of the assessee has not considered the fact that the assessee did not disclose any vital facts to the Department that they were not including freight and insurance charges in the assessable value while making the delivery at FOR destination. The plea taken by the assessee that they submitted two letters to the Department enclosing the purchase orders, are not sufficient grounds

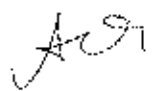
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to allow the appeal on the ground of limitation as the assessee never disclosed that they would not be including freight and insurance charges in the assessable value. Further, reliance was placed on the rulings in the cases of I.A.E.C.Brokers Private Ltd. Vs. Collector of Central Excise : 1990 (48) ELT 388 (Tribunal) and Shree Krishna Pharmaceuticals Ltd. Vs. CCE, Hyderabad : 1998 (36) ELT 190 (Tribunal), wherein it has been held that the non-disclosure of existence of contract by an assessee or whether different value of clearances are adopted, amounts to suppression of facts.

5. The Id.Advocate for the respondent assessee have filed the paper book enclosing the two letters dated in 11.09.2001 and 30/11/2001 along with annexure for copies of purchase contracts. He takes me through the contents of the contract wherein clause 4.1, it is clearly mentioned as follows :

"4.1 The ordering prices for the various size of cables are provisionally 90% of the approved rates of 2000-2001 Cable Tender. The provisional prices are Composite prices inclusive of Sales Tax, Excise duty and other statutory levies, packing, forwarding, freight, insurance, loading & un-loading. However, the final applicable prices shall be the approved rates of 2001-02 Cable Tender Schedule to be opened on 22.05.2001." (emphasis supplied).

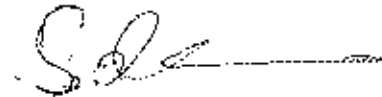
He further emphasizes that in view of the clear and legible disclosure with regard to the basis of pricing and the terms of contract the



allegation of revenue of suppression of the facts does not stand. Accordingly, he prays for dismissal of the appeal of the Revenue.

6. Having considered the rival contentions, I hold that the respondent assessee have sufficiently disclosed the facts to the Revenue. As such, agreeing with the findings of the Ld.Commissioner (Appeals), the appeal of Revenue is dismissed. The respondent assessee will be entitled to consequential benefit, if any.

(Dictated and pronounced in the open Court)



(Anil Choudhary)
Member (Judicial)

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प्रमाणित मॉड / Certified True Copy
15-3-16
सहायक रजिस्ट्रार / Asst. Registrar
सामान्य, आयकर एवं सेवा कर
अधीन अधिकारी / (C.R.S.T.A.T.)
38, एन. जी. मार्ग, अलहाबाद-211001
38, N. G. MARG, ALHABAD-211001