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

Dated: 30/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70115/2015 dated 17/12/2015

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.**

30/12/15

Asstt. Registrar/SPS

Application	Appeal	Name and Address of Appellant
	E/3912/2006	MAHENDRA ENGINEERING LTD 7-B, INDUSTRIAL AREA AMAUSI,LUCKNOW(UP)
	Name and Address of Respondent	CCE, LUCKNOW 7-A, ASHOK MARG LUCINOW(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): RAJESH CHIBBER,ADV
FA-9, KAVI NAGAR
GHAZIABAD(UP)

4 Bar Association, CESTAT, Delhi
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

30/12/15

Asstt. Registrar/SPS
Regional Bench, Allahabad

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

DATE OF HEARING/DECISION : 17/12/2015.

Excise Appeal No. 3912 of 2006

[Arising out of the Order-in-Appeal No. 106/CEX/LKO/2006 dated 18/09/2006 passed by The Commissioner (Appeals), Central Excise, Lucknow.]

For Approval and signature :
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri B. Ravichandran, 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 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

M/s Mahendra Engineering Ltd. Appellant

Versus

CCE, Lucknow Respondent

Appearance

Shri Rajesh Chhibber, Advocate – for the appellants.

Shri D.K. Sinha, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 70115/2015 Dated : 17/12/2015

Per. Anil Choudhary :-

This is an appeal against order-in-appeal dated 18/09/2006, wherein it has been held that the freight collected separately by the appellant on delivery of transformers is exigible to excise duty as the same have not been shown in the excise invoice, for removal of the transformers.

2. The admitted fact is that transformers are manufactured and sold to U.P. Power Corporation Ltd. and other power bodies, wherein the price of the transformer is ex-works and the transport cost, insurance, forwarding charges are paid separately vide separate contract. Show cause notice dated 06/7/2005 was issued for extended period July 2000 to March 2003 as it appeared to Revenue that transport charges Rs. 1,52,000/- collected separately from the buyers, vide separate invoice/bill and not shown separately in the excise invoice is exigible to tax under Central Excise Valuation Rules, 2000. The appellant contested the show cause notice, but the same was confirmed by order-in-original dated 27/3/2006 confirming demand of Rs. 24,320/- alongwith equal amount of penalty against the appellant. Being aggrieved the appellant preferred an appeal before Learned Commissioner (Appeals) who was pleased to dismiss the appeal observing that ownership of goods is transferred to the buyer and

sale is completed only at the time of the delivery of goods at destination and payment for supply of the goods is due on that point only.

3. Being aggrieved, the appellant is before this Tribunal. The learned Counsel Shri Rajesh Chhibber pleaded that the issue is no longer res-integra and in the similar facts and circumstances in the case of **CCE, Noida vs. Accurate Meters Ltd.** reported at **2009 (91) R.L.T. 653 (S.C.)** it is held that such freight and insurance charges are not to be added. The Apex court held that there are two separate contracts one for sale of goods and the other governing transportation of the goods. The charges for transportation of the goods were not on actual basis. Assessee was bound to transport the goods from the factory gate to the place of State Electricity Board at the rate specified in the tender. Prior thereto, the State Electricity Board Authorities were to make inspection of the goods. The Apex Court relied on the ruling in the **Associated Strips Ltd. vs. CCE, New Delhi** reported at **2002 (48) R.L.T. 506 (CEGAT – Del.)**, wherein the goods manufactured were inspected by the representative of buyer (Electricity Board) and thereafter the manufacturers has to mark the name of the buyer on the goods before they are handed over to the transporter; for the purposes of transportation to the buyers. In the light of the provision Section 23 of the Sale of Goods Act it has to be taken that goods are unconditionally appropriated to the contract when the above procedure was followed and the goods handed over to the carrier resulting in the passing of the

property in the hands of the buyer. The learned Counsel also relies on the ruling of this Tribunal in the case of **Motorola India (P) Ltd. vs. CCE, Bangalore** reported at **2007 (209) E.L.T. 86 (Tri. - Bang.)**, wherein also freight charges were collected through commercial invoices and the same had not been reflected in the excise invoices, It was held by this Tribunal that merely because details not mentioned in the Excise invoice that by itself is not ground for adding the freight charges in the assessable value of the goods.

4. The learned AR for Revenue relies on the impugned order.

5. Having considered the rival contentions, we hold that collection of freight by separate bill or invoice is also equal to shown separately. The Valuation rules nowhere says that freight has to be shown on the same invoice. We find that the issue is squarely covered in favour of the appellant by ruling of the Apex Court in the case of **Accurate Meters Ltd.** (supra). Accordingly we hold that the learned Commissioner erred in holding that freight charges are includible in the assessable value. Appeal is allowed and the impugned order is set aside.

(Order dictated and pronounced in the open court.)

Sd/-

(Anil Choudhary)
Member (Judicial)

Sd/-

(B. Ravichandran)
Member (Technical)

PK

सत्यापित प्रति / Certified True Copy
19.1.16

सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपीलीय अधिकरण / (C.E.S.T.A.T)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001