FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building ~~Room 24-210 & 220 2nd Floor~~, 38,M.G.Marg, Civil Lines
~~Office Of Commissioner Of Central Excise,Customs,Service Tax~~, Allahabad-211001
~~ABC~~ APPEAL BRANCH

To

Dated: 17/09/2015

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70013 /2015- dated 16/09/2015

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.

Asstt. Registrar(~~ABC~~ Appeal Branch)

Application	Appeal	Name and Address of Appellant
	E/943/2007	RAKO MERCANTILE TRADERS B-2, GOVERNMENT INDUSTRIAL ESTATE,TALKATORA, LUCKNOW-11

Name and Address of Respondent	CCE LUCKNOW, 7-A ASHOK MARG, LUCKNOW.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s): SH KAPIL VAISH,ADV
B-51, BUTLER PLAZA
95 CIVIL LINES, BAREILLY
UP

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise, I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

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

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar(A&S Appeal Branch)

...Respondent

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALLAHABAD

APPEAL NO: E/943/2007

[Arising out of Order-in-Appeal No: 179-CE/LKO/06 dated 29/11/2006 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.]

For approval and signature:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether Their Lordships wish 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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Rako Mercantile Traders ...*Appellant*

versus

Commissioner of Central Excise
Lucknow ...*Respondent*

Appearance:

Shri Kapil Vaish, Chartered Accountant for the appellant

Shri Bharat B. Sharma, Asstt. Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri P. S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

Date of hearing:	**16/09/2015**
Date of decision:	**16/09/2015**

Final **ORDER NO:** 70013/2015

Per: P. S. Pruthi:

This appeal arises from the impugned order-in-appeal dated 29/11/2006.

2. The facts are that the appellant manufacture paints and varnishes. During the period July 2000 to March 2003, they collected freight charges from different buyers without incorporating them in the invoices. The goods were supplied to Railways only. After inspection of goods and issue of inspection notes, the seal is put on each container of the goods and GR is issued in the name of railways. The case of the Revenue is that the freight charges were not shown in

the excise invoices. The freight charges were recovered separately and therefore, are includable for arriving at the assessable value in terms of Section 4 of the Central Excise Act, 1944 read with Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The Dy. Commissioner confirmed the demand of duty by including the freight charges in the assessable value. The Commissioner (Appeals) upheld this order. The appellant is in appeal against this order of the Commissioner (Appeals).

3. Heard both the sides and considered the submissions.

4. The law on this matter is governed by Section 4(1)(a) which says that the duty of excise is chargeable on any excisable goods with reference to their value. Such value shall be the transaction value where the goods are sold for delivery at the time and place of removal. 'Place of removal' is defined under Section 4(3)(c) to mean a factory or any other place or premises of production or manufacture of the excisable goods. The Commissioner (Appeals) held, in para 12 of his order, that the sale took place at the time of removal of goods from the factory. This finding is not challenged by Revenue and, therefore, is to be accepted. Having accepted the 'place of removal' as factory, the value is to be determined under Rule 5 *ibid* which states that:

> *"except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the*

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value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods provided the cost of transportation is charged to the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods."

4.1. The issue that remains to be addressed is whether the substantive benefit of exclusion of transportation charges to arrive at the assessable value is to be allowed. The appellant has shown the contract/purchase order with the railways which indicate freight charges as Rs. 3/- per liter. The corresponding excise invoice does not indicate the freight charges but for each consignment there is a corresponding GR which indicates the freight amount. Further, a separate commercial invoice is raised for freight corresponding to the purchase order. This commercial invoice indicates the value and freight amount separately. We find all these documents tallying in respect of a particular consignment. Only because the freight amount was not indicated separately in the excise invoice, although it is clearly reflected in the commercial invoice and GR, is not sufficient ground to deny the substantive benefit. The law does not require charging of duty on freight for technical lapse of not indicating the freight charges separately on the excise invoice. Reliance is placed on the judgments in the case of *West Coast Paper Mills Ltd. vs. Commissioner of Central Excise, Bangalore* 2004 (172) ELT 493 (Tri. Bang.) and *Goodyear India Ltd. vs. Commissioner of Central Excise,*

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Delhi – IV 2014 (301) ELT 410 (Tri.Del.).

5. In view of the above, we set aside the impugned order and allow the appeal.

(Pronounced in Court)

Sd/-
(S.S. Garg)
Member (Judicial)

Sd/-
(P.S. Pruthi)
Member (Technical)

प्रमाणित प्रति / Certified True Copy
14.10.15
Asstt. Registrar
38, M.G. Marg