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: 09/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71321/2017-EX[DB] dated 07/09/2017

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/1785/2007 | **Century Laminating Co Ltd**<br>Village-Achheja,P.O.-Hapur<br>GHAZIABAD<br>UP |
| | | Name and Address of Respondent |
| 2 | | C.C.E. & S.T.-Meerut-ii<br>OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND,<br>MEERUT,<br>UTTAR PRADESH- |

Copy To

3Advocate(s) / Consultant(s):

**A. P. Mathur**
**167, TAGORE TOWN,**
**Allahabad,**
**Uttar Pradesh**

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. E/1785/2007-EX[DB]

(Arising out of Order-in-Appeal No. 40-CE/MRT-II/2007 dated 23/03/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

**Century Laminating Co. Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise, Meerut-II** **Respondent**

Appearance:

Shri A.P. Mathur (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 07/09/2017
Date of Decision : 07/09/2017

FINAL ORDER NO- 71321/2017.......

**Per: Anil G. Shakkarwar**

Present appeal is arising out of Order-in-Appeal No. 40-CE/MRT-II/2007 dated 23.03.2007 passed by Commissioner (Appeals), Central Excise & Customs, Meerut-II.

2. Brief facts of the case are are that the appellant were engaged in the manufacture of Laminating sheets of different grades, shapes and designs. The appellants were selling their goods from depot located at different places in the country. Therefore, assessment was ordered to be provisional. The

provisional assessment for the financial year 2001-2002 was finalized through Order-in-Original No. 09/Pov. Ass./ Century/2006 dated 14.02.2006. The Original Authority did not allow freight and delivery expenses, unloading and packing and forwarding expenditures amounting to Rs. 53,79,139/- towards deduction from the assessable value stating that they were not shown separately on invoices and were not available as deduction in view of the definition of transaction value. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) had decided the said appeal through impugned Order-in-Appeal dated 23.03.2007. Learned Commissioner (Appeals) has remanded the matter back to Original Authority regarding admissibility of different discounts for fresh consideration and rejected the appeal in respect of other expenses namely allowable expenses and freight. Aggrieved by the said order appellant is before this Tribunal.

3. Heard learned counsel for the appellant who has submitted that after the introduction of transaction value w.e.f. 01.07.2000 the expenses incurred after the goods are removed from factory gate should be allowed towards deduction. Further he has prayed that with directions of admissibility of allowable expenses the matter may be remanded to Original Authority.

4. Learned AR has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of record we find that valuation under Section 4 of Central Excise Act, 1944 w.e.f. 01.07.2000 is based on concept of transaction value. The definition of transaction value at Clause (d) of sub Section (3) of Section 4 of Central Excise Act, 1944 is as follows:-

"transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

6. On going through the definition of transaction value as stated above or reproduced above we find that all the discounts which have been passed on to the buyers or which were not collected by the appellant cannot become part of

transaction value. Further we also find from the definition that definition includes expenses incurred by the manufacturer till they are cleared from the factory gate including storage and outward handling charges within the factory and we also find that there is no mandate to charge Central Excise duty on the expenses incurred after the goods have been cleared from the factory gate.

7. On perusal of the case record we find that some of the expenses taken into consideration in the finalization of assessment are dealing with expenses incurred after the goods were removed from the factory gate. We hold that all the expenses which are incurred after goods are cleared from factory gate are admissible for deduction. In other words such expenses which are incurred after the goods are cleared from the factory gate do not become part of the transaction value and do not qualified to be subjected to assessment for Central Excise duty. We, therefore, hold that the issue needs ~~the~~ to be remanded ~~order~~ back to the Original Authority by setting aside impugned Order-in-Appeal dated 23.03.2007 for redetermination of assessable value and Central Excise Duty thereon for the year 2001-2002.We remand the matter to the Original Authority with the direction to re-determine Central Excise Duty by re-determining assessable value on the basis of provisions of Section 4 of Central Excise Act, 1944 as

clarified hereinabove. The appeal is allowed by way of remand.

(Dictated and pronounced in Court)

| | |
|---|---|
| -Sd/- | -Sd/- |
| (ANIL CHOUDHARY) | (ANIL G. SHAKKARWAR) |
| Member (JUDICIAL) | Member (TECHNICAL) |

*Anku*

प्रमाणित प्रति/Certified True Copy
04/12/17
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