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: 28/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70800/2017-EX[DB] dated 03/08/2017

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/2598/2009	ARUN ENTERPRISES, B-48, SISTE-IV, INDUSTRIAL AREA, SAHIBABAD, GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To
3Advocate(s) / Consultant(s):

Stuti Saggi, (Adv.) (ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-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. 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 Guard File

Asstt. Registrar

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

APPEAL No.E/2598/2009-EX[DB]

(Arising out of Order-in-Appeal No. 143-CE/GZB/2009 dated 29/05/2009 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Arun Enterprises — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

Appearance:

Ms Stuti Saggi, Advocate — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 03/08/2017
Date of Decision : 03/08/2017

FINAL ORDER NO.-70890/2017

Per: Anil G. Shakkarwar

This appeal is directed against the impugned order of Commissioner (Appeals), Customs and Central Excise, Ghaziabad, whereby, she confirmed the Order-in-Original dated 31.03.2008 of the adjudicating authority, confirming the Central Excise duty amounting to Rs.22,06,738/- with interest and also imposition of penalty of Rs.22,06,738/- under Rule 25 of the Central Excise Rules, 2002.

2. The appellant was manufacturer of Brass Furniture Parts and Meter Pillar Boxes. During the period from 2003-04, 2004-05, 2005-06, 2006-07, the appellant had supplied the meters to State Electricity Boards. In certain cases customers asked the appellant to deliver the goods at their premises but at the same time element of freight was determined by the respective Electricity board and they gave them fixed amount towards freight irrespective of the fact as to whether the appellant incur loss or gain on account of such payment of amount towards freight.

3. It appeared to Revenue that since the appellant had charged excess transportation charges from his customer, in view of Rule-5 of Valuation Rules, 2000, appellant was liable to pay excise duty on excess transportation charges. Accordingly, a show cause notice dated- 06.12.2007 was issued proposing demand of excise duty on the difference between the amount charged and the actual transportation charges incurred.

4. Aggrieved by the Order-in-Original, appellant preferred an appeal but the appellate authority vide

impugned order dismissed the appeal and upheld the view of the adjudicating authority.

5. Learned Counsel for the appellants submits that 'Duty of excise is a tax on the manufacture, not a tax on profit made by a dealer on transportation'. In support of this contention the appellant has relied upon judgment of Hon'ble Supreme Court in the case of Indian Oxygen Ltd. Vs Collector of Central Excise reported at 1988 (36) E.L.T. 723 (S.C.) and Baroda Electric Meters Ltd. Vs Collector of Central Excise reported at 1997 (94) E.L.T. 13 (SC) and also relied upon Commissioner of Central Excise, Noida Vs Accurate Meters Ltd. reported at 2009 (235) E.L.T. 581 (SC).

6. Learned A.R. has supported the impugned Order-in-Appeal.

7. Having considered the rival contentions and on perusal of records, we find that the issue is to be decided is whether the deferential amount between the equalized freight collected and actual cost incurred for transportation is to be added to the assessable value. We find that the issue has been decided by the Hon'ble Supreme Court in the case of M/s Baroda Electric Meters

Ltd. (supra) wherein relying on the ruling by Hon'ble Supreme Court in the above reported case of Indian Oxygen Ltd. the Hon'ble Supreme Court has ruled that duty of excise is a tax on manufacture and not tax on profit made by a dealer on transportation. Since the issue is already settled, we do not find the impugned Order-in-Appeal sustainable.

8. We therefore allow the appeal by setting aside the impugned Order-in-Appeal.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)