

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**DIVISION BENCH  
COURT NO. I**

**APPEAL NO. E/2247/2009-Ex[DB]**

[Arising out of Order-in-Appeal No. 126/ANS/RTK/2009 dt. 11.05.2009  
passed by the Commissioner of C.Ex. (Appeals), Delhi-III, Gurgaon]

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**CCE, Delhi-IV** : **Appellant(s)**

**VS**

**Haryana Concrete Products Ltd.** : **Respondent(s)**

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Appearance:

Present for the Appellant(s): Mr. Bhasha Ram, A.R.

Present for the Respondent(s): Mr. Bipin Garg, Advocate

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

**Hon'ble Mr. Bijay Kumar, Member (Technical)**

**Date of hearing/decision: 06.12.2018**

**FINAL ORDER NO. 63595/2018**

***Per Ashok Jindal :***

The Revenue has filed this appeal against the impugned order, wherein the charge of under valuation on account of profit earned on transportation charges has been dropped by the Ld. Commissioner (Appeals).

2. The facts of the case are that the respondent is the manufacturer of PCC Poles and Beams and clearing their goods on payment of duty. The respondent entered into an agreement with Dakshin Haryana Bijli Vitran Nigam Limited for supply of PCC Poles. As per the invoice, the respondent charged certain amount on account of freight and it was found from the records that the freight charges are higher than the actual expenses incurred by the respondent on

transportation of goods upto the buyer; therefore, it was alleged that the respondent has undervalued the assessable value of the goods supplied. In these sets of facts, the proceedings were initiated against the respondent by issuance of show cause notice dt. 04.05.2007 for proposing the demand of differential amount of duty on the ground that freight charges upto the buyers' premises are includable in the value of clearance of the excisable goods. Both the authorities below dropped the demands proposed in the show cause notice. Against the said order, the Revenue is before us.

3. Ld. A.R. for the Revenue submits that as the respondent is delivering the goods to the buyers' place and transportation charges are includable in the assessable value, which respondent did not include. Moreover, the transportation charges are more than the actual expenses incurred on transportation. In these circumstances, the differential duty is payable by the respondent on the profit earned on transportation charges.

4. On the other hand, the Ld. Counsel for the respondent opposes the contention of the Ld. A.R. and submits that the respondent is transporting the said poles in their own vehicles and on transportation they are earning profit. The said profit earned on the transportation charges is not includable in the assessable value as held by this Tribunal in the case of ***M/s Associated Strips Limited vs. CCE, Delhi-IV*** vide ***Final Order No. A/61904/2017 dt. 11.09.2017***.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both the sides, we find that the respondent has shown transportation charges

separately in the invoices and one of such invoice is extracted herein below:

Gram : CONCRETE  
HANSI

STD Code : 01663  
Fact : 286209, 286242  
Res : 254799, 258448  
Fax : 286242

**HARYANA CONCRETE PRODUCTS LTD.**

Manufacturers of : PCC POLES, RCC PIPES, RCC BEAMS & OTHER ALLIED PRODUCTS

Regd. Office & Factory : V & P.O. HAZAMPUR Tehsil HANSI (Hisar)

Ref. No. HCP/2006/422 Dated 21/1/05

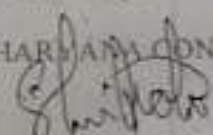
To  
The Chief Engineer/MM,  
Dakshini Haryana Bijli Vitran Nigam Ltd.,  
Vidyut Sadan, Vidyut Nagar,  
Hisar.

Sub.-: Price break-up of 8 Mtr. Long PCC Poles.  
R/Sir,  
As desire by you following is the Price break-up:-  
P.O. No. DH-388/OD-205/Xen/MM-II Dt. 25.11.04 D.H.B.V.N.L. Hisar  
Mtr. Long Pcc Poles Price Break Up.

Sr. No.	Description	Amount
1	Ex. Works Price (Rs./Pole)	803.49
2	Excise Duty @ 16%	128.56
3	Educational Tax @ 2%	2.57
4	HST @ 4%	37.38
5	Freight	125.00
6	<b>Total</b>	<b>1097.00</b>

Thanking you.

Yours faithfully,

For HARYANA CONCRETE PRODUCTS LTD.  
  
DIRECTOR

City Office : Bahind Rattan Singh Melik Advocate, Vakil Colony, Hansi-125033 Ph. : 288448

Moreover, the said PCC Poles have been transported by the respondent in their own vehicle and due to transportation in their own vehicle, the respondent has earned the profit on account of transportation of the goods. The said profit eared by the respondent is not includable in the assessable value of the goods as held by this

Tribunal in the case of **M/s Associated Strips Limited (supra)**, wherein this Tribunal held as under:

*"4. We find that the issue is no more res integra and stands settled by the various decisions. Reliance can be made to the lasted decision of the Tribunal in the case of Indian Sugar & General Engg. Corpn. Vs. CCE, Panchkula-2016 (333) ELT 109 (Tri.-Del.). It stands held that excess freight collected from the customers more than actually incurred will not be includible in the assessable value when goods are sold ex-factory. For holding so, the Tribunal relied upon the Supreme Court's decision in the case of Indian Oxygen Ltd.-1998 (36) ELT 723 (SC), We also find that other decisions of the Supreme Court being judgements in the case of M/s. Baroda Electric Meters Ltd.-1997 (94) ELT 13 (SC) and Escorts JCB Ltd. have held to the same effect. On examination of the records, we find that the freight charges for transportation of the goods to the buyer's premises are shown separately. It is further seen that the freight charges are separately shown in the contract. In such a situation, we find that the ratio of the above decisions are fully applicable to the facts of the present case. Accordingly, by referring to the same, we set aside the impugned order and allow the appeal with consequential relief."*

7. In view of the above, we hold that the transportation charges are not includable in the assessable value of the goods as freight charges are separately shown by the respondent. Therefore, we do not find any infirmity in the impugned order; accordingly, the same is upheld.

8. In result, the appeal filed by the Revenue is dismissed.

*(Operative part of the order pronounced in the court)*

**(Bijay Kumar)**  
**Member (Technical)**

**(Ashok Jindal)**  
**Member (Judicial)**