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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/3503/2005 Date 24/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S PANKAJ OXYZEN LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 373/2008 **Excise** dated 17-6-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

M/S PANKAJ OXYZEN LTD.

615, URLA INDUSTRIAL AREA RAIPUR(C.G)

2. Adv. / Consult

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI, COURT NO.1

EXCISE APPEAL NO. 3503 OF 2005

Date of Hearing: 17.6.2008
Date of Decision: 17.6.2008

[Arising out of Order-in-Appeal No. 91/RPR-I/2005 dated 12.8.2005 passed by Commissioner of Central Excise (Appeals-I), Raipur.]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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 should 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 Departmental authorities? : Yes

CCE Raipur — Appellant
[Rep. by: Shri S. Kumar,DR]

Versus

Pankaj Oxygen Ltd. — Respondent
[Rep.by : Written submission]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL **ORDER** 373/08-EX

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No.91/RPR-I/2005 dated 12.8.2005.

2. None appears for the respondent. Heard the learned DR.

3. The respondent is a manufacturer of Oxygen Gas and Dissolved Acetylene Gas which are transported in specifically designed vehicles to various customers/destinations. It is stated that the respondent collected totally a sum of Rs.38,48,340/- during January 2002 to March 2003 from their buyers in addition to price indicated in their invoices towards transportation charges. The original authority recorded a finding to the effect that the amounts so collected in excess of the invoiced price were towards loading of filled cylinders, transportation of filled cylinders, unloading of filled cylinders, loading of empty cylinders in the premises of the buyer and transportation of empty cylinders from the premises of the customer to the factory. He, accordingly, held that the same is includible in the assessable value on the ground that the exact amount of freight from their factory gate to the customer's premises has not been indicated in the invoices. He relied on the clarification of the Board vide Circular No.643/34/2002-CX. dated 1.7.2002 (S.No.2) relating to freight charges. On appeal by the party, the Commissioner (Appeals) relying on the decision of the Hon'ble Supreme Court in the case of **Indian Oxygen Ltd. Vs. CCE,** 1988 (36) ELT 723 (SC) allowed the appeal.

4. Learned DR submits that the assessee did not indicate the actual freight from the factory gate, and hence the same cannot be allowed to be excluded. He also submits that the loading charges of the filled cylinders within the factory is definitely includible in the assessable value.

5.1. We have carefully considered the submissions from both sides. It is not disputed that the freight incurred from factory to the customers' premises is excludible to arrive at the assessable value. It is also not disputed that the equalized freight is also excludible. The Board's instructions relied by the learned DR also holds that " if, however, only the cost of transportation has been indicated in the invoice without any breakup for the forward and return journey, normally it should be accepted as the cost of transportation from the place of removal to the place of delivery".

5.2. In this particular case where the gases are transported in a specially designed vehicle, the details furnished by the assessee towards the freight needs to be accepted in the absence of contrary evidence. As regards the submission that the loading charges of the filled cylinders within the factory is definitely includible in the assessable value, it is noticed that there is no contrary findings by the Commissioner (Appeals) . Therefore, the decision of the Commissioner (Appeals) does not warrant any interference.

6. Appeal by the Department is rejected.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

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