

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

Appeal No. E/6160/2004

Date . 04/07/2008

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

To :
M/S BHARAT HEAVY ELECTRICALS LTD.
(HEEP)P.O.RANIPUR HARIDWAR
249403

M/S BHARAT HEAVY ELECTRICALS LTD.

C.C.E.MEERUT-I U.P

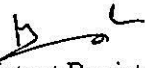
Appellant

Vs

Respondent

Excise dated 3-7-08

I am directed to transmit herewith a certified copy of Final order No. 412/2008-
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E.MEERUT-I U.P

MANGAL PANDAY NAGAR MEERUT-I,U.P
250005

2. Adv. / Consult

MR.Z. U. ALVI

D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

3. S.D.R.

~~4. S.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 Publications (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 & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. III**

Excise Appeal No. 6160 of 2004

[Arising out of Order-in-Original No. 18/COMMR/MRT-I/2004 dated 22.09.2004
passed by the Commissioner, Customs & Central Excise, Meerut]

Date of hearing/decision 30.06.2008

Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
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?	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

M/s Bharat Heavy Electricals Limited

...Appellant
[Rep. by Mr. Z.U. Alvi, Advocate]

Vs.

CC&CE, Meerut

...Respondent
[Rep. by Mr. V. Chaudhary, Jt. CDR]

Coram: Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

FINAL ORDER 412/08-EX.

Per: M. Veeraiyan:

This is an appeal against the order of the Commissioner dated 22.09.2004.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

...and design, manufacture and supply various heavy

(b) They entered into contracts with Electricity Boards, NTPC, NHPC etc. for supply of such machineries; they also entered into separate contracts for undertaking transportation of such equipments indicating the freight charges at lump-sum rates and raised bills for the said amounts on customers.

(c) Commissioner, in the impugned order, found that the applicant has not indicated in their invoices separately freight charges and accordingly held that the freight charges require to be added for the purpose of determining assessable value. On the above finding, he has demanded Rs. 1,49,75,487/- in relation to eight NTPC contracts relating to the period from 01.07.2000 to 28.02.2003 and also imposed equal amount of penalty.

4. Learned Advocate submits that freight actually incurred by them is, in fact, higher than the amount actually collected by them, from their customers. He submits that this fact has been noted in the order of the adjudicating authority as well. In this connection, he draws our attention to the gist of the submissions as recorded by the Commissioner in sub-para 2.5 of para 13 of the order in original to the effect that the actual freight paid was more than the amount of freight billable under the contract to the customer. He also submits that the sales are for delivery FOR factory and, therefore, they are eligible for the abatement of the freight. He also relies on the decision of the Bangalore Bench of the Tribunal in their own case in Excise Appeal No. 973 of 2002 vide order No. 1017 of 2004 dated 03.06.2004.

5. Learned DR submits that the sale is complete only when the goods are delivered at site, therefore, for claiming abatement of the freight they should have indicated the said freight amounts in the invoices. In view of this, he submits the order of the Commissioner requires to be upheld.

6. We have carefully considered the submissions. The stipulation that freight

admittedly, the assessee is incurring more towards freight than the amount they are actually collecting from their customers. The freight amount collected is based on a separate contract and accordingly separately billed. It is not the case of the Department that no freight is incurred in transporting such heavy machinery. It is not the case of the Department that the assessee is claiming inflated amount as freight. In fact, it is the other way about i.e. they are collecting less than what they are actually incurring. The Tribunal in the appellant's own case in Excise Appeal No. 973 of 2002 vide order No. 1017 of 2004 dated 03.06.2004 has decided the issue in favor of the appellant.

7. Under these circumstances, we are not able to uphold the order of the Commissioner. We set-aside the order and allow the appeal with consequential relief.

[Operative part of the order pronounced in the open Court]

[Arcnana Wadhwa]
Member [Judicial]

[M. Veeraiyan]
Member [Technical]

[Pant]