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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 4483 2004 Date 16 07 2008

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

To
M S BHARAT HEAVY ELECTRICALS LTD.
P.O.-BHEL. JHANSI (U.P.)
284129

M S BHARAT HEAVY ELECTRICALS LTD. Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 453/2008-Excise** dated 11-7-08

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. KANPUR
   117 7, SARVODYA NAGAR. KANPUR SH. LAJJA RAM, ADV., C/O
2. Adv. Consult SH. Z.U. ALVI, ADV,
   40/159, CR PARK
   N. DELHI-19
3. C.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, Bhushm 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. 4483 of 2004
[Arising out of Order-in-Appeal No.157/CE/Appl/KNP/04 dated 27.3.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Kanpur]

Date of hearing: 08.07.2008
Date of decision 11.07/2008

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

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

M/s Bharat Heavy Electricals Limited ...Appellant
[Rep. by Mr. Z.U. Alvi, Advocate]

Vs.

CCE, Kanpur ...Respondent
[Rep. by Mr. M. M. Singh, DR]

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

FINAL ORDER 453/08-EX

Per: M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 157/CE/Appl/KNP/04 dated 15.5.2004.

2. Heard both sides.

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

(a) The appellant is engaged in the manufacture of high quality and sophisticated engineering electronic and electrical equipment which are supplied to various projects on contract basis.

(b) During the course of finalization of RT-12 returns for the period from 01.03.86 to 31.01.93, it was found that the appellant had collected

M Veeraiyan

Rs.3,62,39,551/- as labour charges, commissioning charges, supervision charges and testing charges from some of their customers. The original authority held that the above charges are includible in the assessable value and accordingly confirmed a demand of Rs. 54,90,641/-. Commissioner (Appeals) has concurred with the findings of the original authority holding that the labour charges/ testing charges etc. which the appellant collected from their customer necessarily become additional consideration which flows from the customer to the appellants.

4. Learned Advocate submits that the appellants' contracts were for sale and delivery at the factory gate. Some of the customers placed separate orders for supervision of erection and commissioning work. The actual work of erection and commissioning was carried out by independent contractors. The charges of supervision, erection and commissioning are not includible in the assessable value. He relies on the decision of the Hon'ble Supreme Court in the case of Thermax Limited vs. Collector of Central Excise reported in 1998 (99) ELT 481 (S.C.).

5. Learned DR reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions and perused the records. The charges recovered by the appellant from their customers are for post clearance activities. Admittedly, it was based on separate contracts with their customers for supervision of erection and commissioning of machinery. In the case cited above by the learned Advocate the issue relating to inclusion of installation and commissioning charges came to be examined. The relevant paras 9, 12, 13 and 14 of the decision of the Hon'ble Supreme Court in Thermax Limited (supra) are reproduced below:-

> "9. The only question, therefore, with which we are left in these appeals is whether the erection and commissioning charges for which the appellants had separately charged from its customers could be legally included in the assessable value of the goods, namely, the Boiler manufactured and supplied by the appellants. Or, to put it differently, whether the installation and commissioning charges are eligible to excise duty? This controversy stands concluded by two decisions of this Court.
>
> 12. In coming to this conclusion, reliance was placed on an earlier decision of this Court in Quality Steel Tubes (P) Ltd., vs.

Yveeraiya

Collector of Central Excise 1995 (75) ELT 17 (S.C) = (1995) 2 SCC 372, in which also it was held that erection and installation charges cannot be included in the assessable value of the goods. It was held thus:-

"erection and installation of a plant cannot be held to be excisable goods. If such wide meaning is assigned it would result in bringing in its ambit structures, erections and installations. That surely would not be in consonance with accepted meaning of excisable goods and its eligibility to duty".

13. In view of the above, the judgement passed by the Assistant Collector as also by the Tribunal that installation and commissioning charges have to be treated as assessable value of the goods supplied by the appellants are not correct and are liable to be set aside. Since we are disposing of these appeals on merits on coming to the conclusion that the installation and commissioning charges could not be included in the value of the goods, the question of limitation relating to the show cause notice issued under Rule 9(2) read with Section 11A of the Act for the period from 1982-83 to 1987-88 is not decided.

14. The appeals are accordingly partly allowed, the judgement and orders dated May 3, 1985; May 17, 1985 and June 1, 1985 as also the show cause notice dated August 4, 1987 issued by the Collector of Central Excise and his order passed thereon together with the judgement passed by the Tribunal in that regard to the extent they relate to inclusion of installation and commissioning charges are set aside without being any order as to costs".

7. As it has been held that installation, erection and commissioning charges are not includible, on the same analogy and grounds, the charges for supervising such erection and commissioning also cannot be included in the assessable value. The orders of the original authority and the Commissioner (Appeals), therefore, cannot be sustained. The orders are set-aside and appeal is allowed with consequential relief.

[Pronounced in the open Court on 11.7-08]

10/7/08

[Archana Wadhwa]
Member [Judicial]

10/7/08

[M. Veeraiyan]
Member [Technical]

[Pant]