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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/3634/2004 - EX[DB] - 3636/04 & 4951/04 Date 14/10/2008

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

To :
C.C.E. INDORE

MANIK BAGH PALACE. P.O.-10. INDORE (M.P.)

C.C.E. INDORE Appellant

Vs

M/S MALWA OXYGEN & INDUSTRIAL GASES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 740-743/08- **EX[DB]** dated 25-9-08

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 MALWA OXYGEN & INDUSTRIAL GASES PVT. LTD.
SECTOR- "C" INDUSTRIAL AREA, RATLAM

2. M/S. PURNA GASES PVT. LTD., SECTOR "C" INDL. AREA, RATLAM (MP) - ~~457~~001

2. Adv. / Consult

NONE

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 - 3
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
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
## WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

## COURT – II

## EXCISE APPEAL NO. 3634-36 & 4951 of 2004

[Arising out of Order-in-Appeal No. 176-178-CE/IND/APPL-II/2003 dated 17.04.2003 passed by the Commissioner (Appeals-II), Customs & Central Excise, Indore]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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? | |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | |
| 3. | Whether their Lordships wish to see the fair copy of the order? | |
| 4. | Whether order is to be circulated to the Departmental authorities? | |

CCE, Indore — Appellant

Vs.

M/s. Malwa Oxygen & Industrial Gases Pvt. Ltd. — Respondents

**Appearance:**

Shri S.N. Srivastava, DR, Departmental Representative, for the Revenue,
None for the respondents

**Coram:**

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

**Date of Hearing: 25th September, 2008**

**FINAL ORDER NO.** 740-743/08-EX **dated** ________

**Per S.S. Kang:**

Heard learned SDR as none appeared on behalf of the respondents.

2. Revenue filed these appeals against common impugned order whereby the Commissioner (Appeals) held that charges, such as service charges, holding charges, unloading charges, transportation charges etc. collected by the respondents in respect of gas cylinders, are includible in the assessable value. Revenue wants to include these charges in assessable value of Dissolved Acetylene Gas manufactured by the respondents. ~~Contention is that excess to the actual amount collected by the respondents is to be added to the assessable value of~~ gas.

3. We find that this issue is already decided by the Hon'ble Supreme Court in the case of M/s. Indian Oxygen Ltd. vs. CCE, reported in 1988 (36) ELT 723 (SC). Hon'ble Supreme Court has held that delivery and collection charges have nothing to do with the manufacture as they are for delivery of the filled cylinders and collection of the empty cylinders. These charges have to be excluded from the assessable value.

4. In the present case there is no evidence on record to show that the value of the gas manufactured was suppressed to the extent the charges

in respect of maintenance of cylinders. In these circumstances we find no merit in the appeal. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 26th September, 2008
RK