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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/5873,5875,5876,5877,5878,5879,5880&5881/2004 - EX[DB] Date 19/05/2009

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

To :
C.C.E JAIPUR-II
SIMALWARA ROAD,DUNGARPUR(RAJASTHAN0

C.C.E JAIPUR-II Appellant
Vs
M/S SHREE RAJASTHAN TEXCHEM LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 336-343/2009- **EX[DB]** dated 6-5-09

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 SHREE RAJASTHAN TEXCHEM LTD.
SIMALWARA ROAD,DUNGARPUR(RAJASTHAN)

2. M/S. SHREE RAJASTHAN SYNTEX LTD., SIMALWARA ROAD, DUNGARPUR (RAJASTHAN)

2. Adv. / Consult SH. K.K. ANAND, ADV., A-5, BASEMENT, LAJPAT NAGAR-III, N. DELHI-24
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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17 Guard file
18, HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 6.5.2009

Sl.No.	Central Excise Appeal No.	Appellant	Respondent	Arising out of the order in appeal No. & date	Passed by
1.	5873/04	C.C.E., Jaipur II	M/s Shree Rajasthan Texchem Ltd.	556-565(RM)CE/JP-II/2004 dated 14.9.04	C.C.E. (Appeals), Jaipur II
2.	5875/04	- do-	M/s Shree Rajasthan Syntex Ltd.	- do-	- do-
3.	5876/04	- do-	- do-	- do-	- do-
4.	5877/04	- do-	M/s Shree Rajasthan Texchem Ltd.	- do-	- do-
5.	5878/04	- do-	- do-	-do-	-do-
6.	5879/04	-do-	M/s Shree Rajasthan Syntex Ltd.	-do-	-do-
7.	5880/04	-do-	M/s Shree Rajasthan Texchem Ltd.	-do-	-do-
8.	5881/04	-do-	M/s Shree Rajasthan Syntex Ltd.	-do-	-do-

For Approval and Signature:

Hon'ble Mr. Justice, R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

Appearance:

Shri A.K. Rastogi, Authorized Departmental Representative (DR) for the Revenue and Shri K.K. Anand, Advocate for the respondent

CORAM: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 336-343/09-EX

Per M. Veeraiyan:

These eight appeals by the department relating to respondents namely, M/s Shree Rajasthan Texchem Ltd. and M/s Shree Rajasthan Syntex Ltd. involve common issues and therefore, are being disposed of by this common order.

2. Heard both sides.

3. The respondents are manufacturers of yarn; they removed the consignments of yarn on "invoices" to their depots; and in the said invoices, they mention freight and insurance at the rate of 1.3% of the value of the goods; from the depots, they are selling the goods to various customers and the rates mentioned in the "invoices" from the factory to depot and the depot to customers are the same. They are not collecting any amount extra towards freight and insurance from the depot to the premises of the customers. The original authority held that the goods are being actually sold from the depots and the depots should be considered as place of removal and as a result the amount of 1.3% of value of goods collected towards freight and insurance should form part of the assessable value and accordingly, demanded duties along with interest and also imposed penalties. On appeal, Commissioner (Appeals) held that the charges were being collected by the respondents on equalised basis and relying upon the decision of the Hon'ble Supreme Court in the case of VIP Industries Ltd. vs. C.C. & C.E., Aurangabad – 2003 (155) ELT 8 (SC) held that the freight from factory to depot is not includible in the assessable value and allowed the appeals.

4. Learned DR submits that these case on facts are different from the case in VIP Industries in which, with a view to maintain a common price throughout India, party was collecting equalised amount towards freight and insurance. In the present cases, it is not a case of maintaining a uniform price throughout India. Further, the respondents are not collecting any freight in respect of sales made at the factory gate which will go against the claim of equalised freight. He

also relies on the decision in the case of Prabhat Zarda Factory Ltd. – 2002 (146) ELT 497 (SC) based on the judgment of Hon'ble Supreme Court in M/s Escorts JCB Ltd. reported in 2002 (146) ELT 31 (SC) wherein it has been held " ownership in the property may not have relevance in so far as insurance of goods sold during transit is concerned and it would therefore, not be lawful to draw an inference of retention of ownership in the property sold by the seller merely by reason of the fact that the seller had insured such goods during transit to buyer".

5.1 We have carefully considered the submissions from both sides. The "invoices" raised by the respondents to the depots are for the purpose of transfer and no sale is involved. It cannot be considered to be a case of factory recovering freight from the depots as both the are parts of same legal entity. The actual sale in the present case is only from the depots. During the period from 28.9.96 to 30.6.2000, it is admitted that the place of depot is also considered as place of removal and duty was payable based on the sale price at the depots, in respect of clearances made from the factory. That being the case, the exclusion of the freight and insurance element from the factory gate to the depots is not warranted. We are in agreement with the submission by the learned DR that the facts of the case in VIP Industries are different from the present cases as could be seen from the para 7 of the said judgment which is reproduced below:

> ***"7. Thus, in cases where the price remains uniform or constant all over the country, it does not follow that value for purpose of excise changes merely because the definition of the term "place of removal" is extended. The normal price remains the price at the time of delivery and at the place of removal. In cases of "equalised freight it remains the same as per the judgments of this Court set out herein above."***

5.2 Further, for the above period, as the issue involved is pure interpretation of legal provision , we hold that no penalty is warranted.

5.3 However, it is brought to our notice that the definition of place of removal has undergone a change and the depots were not considered as place of removal for the period from 1.7.2000 to 30.6.2003. Therefore, during this period, in our considered opinion, there is no justification to include the amount collected towards freight and insurance. However, during this period, the amount of deduction available should be restricted to the actual amount incurred. To enable the same , we would like remand the matter in appeals relating to this period for quantifying the deduction.

6. In the light of the above,

a) we allow the six Appeals No.E/5873, 5876, 5878, 5879, 5880, 5881 of 2004 of the Department by setting aside the orders of the Commissioner (Appeals) and restore the orders of the original authority. While restoring the orders, we set aside the penalties and uphold the demand of duties and interest.

b) we reject two appeals E/5875, 5877 of 2004 on merits and hold that the respondents are eligible for deduction of freight and insurance on actual basis. Therefore, we direct the original authority to determine the eligible deduction on actual basis and determine differential duty, if any, payable after giving reasonable opportunity to the respondents. The order shall be passed within a period of six months . We also clarify that no penalty shall be imposable in respect of this period.

7. Appeals are disposed of on the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/