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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/4620/2004-4621/2004 - EX[DB] Date 20/05/2009

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

To :
M/S G.S. AUTO INTERNATIONAL LTD.
G.T. ROAD, LUDHIANA
M/S G.S. AUTO INTERNATIONAL LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 348-349/2009-**EX[DB]** dated 17-2-09 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. LUDHIANA
F BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult SH. RAVI CHOPRA, ADV.,
181, INDL. AREA-A, DUE COMPLEX,
SUFFIAN CHOWK, LUDHIANA(PB)
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
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 17.2.2009

Central Excise Appeal Nos.4620-4621 of 2004

Arising out of the order in appeal No.439-441/CE/Appl/LDH/2004 dated 13.7.04 passed by the Commissioner (Appeals), Central Excise, Ludhiana.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NA.
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

Appellant		Respondent
M/s G.S. Auto International Ltd.	vs	C.C.E., Ludhiana

Appearance:

Shri Ravi Chopra ,Advocate for the appellant
Shri Amit Jain , Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No. 348-349/09-EX

Per P.K. Das:

The appellant is engaged in the manufacture of auto parts. The finding of the Commissioner (Appeals) is that the appellant had collected excess amount from the buyers in the garb of insurance charges which are to be included in the assessable value in terms of Section 4 (3)(d) of Central Excise Act, 1944. The period of dispute is from February 2002 to December,2002. The original authority confirmed the demand of duty of Rs.96,091/- and imposed penalty of equal amount of duty. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate submits that the Commissioner (Appeals) decided this matter following his earlier Order in Appeal No.392-395/CE/Appl/LDH/2004 dated 26.5.04 in the case of M/s Shreyans Inds. Ltd., which has been set aside by the Tribunal vide Final Order No.1314 to 1317/04-NB-A dated 24.11.04 in the matter of Shreyans Inds. Ltd vs. C.C.E, Ludhiana. He further submits that it is well settled that charging of excess amount of insurance charges from the buyers and paying less, the differential amount would not be included in the assessable value as held by the Hon'ble Supreme Court in the case of Baroda Electric Meters Ltd. vs. C.C.E. reported in 1997 (94) ELT 13 (SC) and M/s Escorts JCB Ltd. vs. C.C.E., Delhi II – 2002 (146) ELT 31 (SC). He also relies upon the following decisions of the Tribunal:

i) TCP Limited vs. C.C.E., Madurai – 2008 (230) ELT 181 (Tri-Chennai)

ii) Transformers & Electricals Kerala Ltd. vs. C.C.E & C., Cochin – 2007 (213) ELT 398 (Tri-Bang.)

3. Learned DR submits that the case laws relied upon by the learned Advocate are prior to introduction of transaction value and therefore, the said case laws are not applicable in the present case. He also submits that the definition of Transaction Value under Section 4 of Central Excise Act, 1944 clearly indicates that the actual amount would be allowed for insurance charges. In this connection, he drew attention of the Bench to show cause notice dated 30.7.03 wherein it appears that the appellant incurred insurance charges of Rs.63,344/- and collected a sum of Rs.3,67, 311/-.

4. After hearing both sides and on perusal of record, it appears from show cause notice dated 30.7.03 that the appellant made clearance of goods amounting to Rs.14,69,24,329/- during the period 1.7.02 to 31.12.2002 against the open marine insurance policy for Rs.29,50,00,000/- on payment of premium of Rs.1,27,184/- to the insurance company. It has been alleged that the appellant collected a sum of Rs.3,67,311/- from the customers whereas the actual premium incurred by the appellant was much less. Learned DR strongly

relied upon the definition of Transaction Value under Section 4 of the Act. Under Section 4 of the Act, "Transaction Value" means "the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale". In the present case, we find that the insurance charge was mentioned in the invoice separately. There is no material available that the excess amount collected as insurance charge is in connection with sale. In other words, it appears that the excess amount was collected in connection with insurance charges as evident from invoice. We find that the Tribunal in the case of Shreyans Inds. Ltd. vide Final order No.1314to 1317/04-NB-A dated 24.11.2004 held as under:

> ***"2. The demand is confirmed on the ground that the applicants are charging more insurance charges from their customers whereas they are paying less. We find that this issue is already covered by the decision of the Hon'ble Supreme Court in the case of Barda Electric Meters Ltd. v. C.C.E.. reported in 1997 (94) ELT 13. In view of the above decision of the Hon'ble Supreme Court, the impugned order is set aside and the appeals are allowed after waiving pre-deposit of duty and penalty."***

We also noted that on the identical issue, in the case of Transformers & Electricals Kerala Ltd. (supra) the Tribunal held that goods delivered at customer's premises, transport, insurance charges or any profit thereon, separately collected from customers are not includable in the assessable value.

5. In view of that, the impugned orders are not sustainable and accordingly, the same are set aside. The appeals are allowed with consequential relief.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/