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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/1330/2009 - EX[DB] & E/S/1339/2009-EX   Date 27/07/2009

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

To :
M/S J.K.TYRE & INDUSTRIES LTD.
C-1, INDUSTRIAL AREA, BANMORE, DISTT.
MORENA PIN-476444 (M.P.)

M/S J.K.TYRE & INDUSTRIES LTD.   Appellant
Vs
C.C.E. INDORE   STAY ORDER NO.747/2009-EX   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 489 / 2009 **EX[DB]** dated 20-7-09 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult SH. R. RAGHVAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29
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)
16. Office Copy
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: 20.7.2009

Stay Application No.1339 of 2009 and
Central Excise Appeal No.1330 of 2009

Arising out of the order in appeal No.IND-I/12/2009 dated 21.1.2009 passed by the Commissioner (Appeals)-I, Central Excise & Customs, Indore.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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?	No
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

M/s J.K. Tyres & Industries Ltd. .... Appellant/applicant

Vs.

C.C. E.
Indore .... Respondent

Appearance:

Shri Ravi Raghvan, Advocate for the appellants/applicants
Shri R.K. Verma, Authorized Departmental Representative (DR) for the Revenue

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

STAY Oral Order No. 747/09-Ex
FINAL ORAL ORDER NO. 489/09-EX
Per M. Veeraiyan:

After hearing both sides for a while on the stay petition, we felt that it is expedient to dispose of the appeal itself on a short point .Accordingly, we waive pre-deposit of the dues as per impugned order and proceed to dispose of the appeal finally.

2. The applicant is a manufacturer of tyre, tube & flap and they are selling to ~~three~~ the dealers as well as making supplies to O.E. customers. The present dispute relates to clearances made on F.O.R. basis to OE buyers, State Transport Undertakings etc. The appellant contended that they are supplying the goods to these category of buyers on F.O.R. basis and the freight upto the premises of the customers are incurred by them; the transport insurances are taken by them and thus covering the risk upto the point of delivery at the customers' premises. The freight element upto the premises of customers is also included in the assessable value for the purpose of paying excise duty. In view of the above, it was submitted that that the GTA's services availed by them till the premises of the customers in this case should be treated as input services and the service tax paid by them should be made available as Cenvat credit.

3. The original authority has noted the above submissions of the appellant in para 4 of his order and recorded that the price structure includes freight upto the destination and the excise duty also paid on the freight element. However, the Commissioner (Appeals) has recorded that no evidence has been produced by the appellants that the freight upto the customers premises stand included in the assessable value.

4. It is submitted by the learned Advocate that they produced the relevant purchase order before the original authority as well as before the Commissioner (Appeals) and the said purchase order clearly indicated that the freight was to be paid by the consignor; that the insurance was taken by the consignor and that the prices are inclusive of these elements.

5. As the above submissions have not been considered, both sides agree that the matter be remanded for fresh consideration to the original authority.

6. After carefully considering the submissions, we accept the above plea and set aside the orders of the lower authorities and remand the matter to the original authority for fresh consideration after granting reasonable opportunity of hearing to both sides. The appellants are free to produce all

the evidence they want to rely upon before the original authority. We express no comments on the merits of the case.

7. The appeal is allowed by way of remand. Stay petition is also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/