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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/167 /2006 - EX[DB] Date 06/11/2009

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
M/S BHARAT CONDUCTORS. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 863/ 2009 EX[DB]** dated 03-11-09 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 BHARAT CONDUCTORS.
   P-6 INDUSTRIAL ESTATE, AZAMGARH (U.P)
2. Adv. / Consult
   MR.S.P. OJHA
   299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)
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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.167/2006-Ex(Br)

(Arising out of order in appeal No.114/CE/Alld/2005 dated 17.11.2005 passed by the Commissioner of Central Excise (Appeals), Allahabad)

Hon'ble Shri M. Veeraiyan, Technical Member
Hon'ble Shri D.N. Panda, Member Judicial

1. Whether Press reporters 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 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

CCE, Allahabad — Appellant

Vs

M/s Bharat Conductors — Respondent

Appeared for the Appellant : Shri Vijay Kumar, SDR
Appeared for the Respondent : Shri S.P. Ojha, Consultant

Coram: **Hon'ble Mr. M. Veeraiyan, Technical Member**
Hon'ble Mr. D.N. Panda, Judicial Member

Date of Hearing: 28.10.09

Final Order No. 863/09-EX /~~2009~~

Per M. Veeraiyan:

This appeal by the Department involves a duty amount of Rs.40,720/- and equal amount of penalty which has been set aside by the Commissioner (Appeals).

2. Heard both sides.

3. The relevant facts of the case in brief are that the respondent manufacture and supply ACSR Conductors to UP Power Corporation Limited on the basis of contract. The supply was made on FOR destination basis during the period from 1.7.2000 to 28.2.2003. The respondent had a separate contract for transportation and amount of freight and insurance incurred for supply on FOR destination basis was separately collected. The Original Authority included the value of freight and insurance and demanded the duty alongwith interest and imposed equal amount as penalty. On appeal, the Commissioner (Appeals) relied on the decision of Hon'ble Supreme Court in the case of Escorts JCB Ltd Vs CCE, Delhi-II reported in 2002 (146) ELT 31 (SC) and other decisions and allowed the appeal on merits. He also allowed the appeal on grounds of limitation.

4. Learned SDR reiterated the findings of the Original Authority and learned Advocate supports the decision of the Commissioner (Appeals).

5. We have carefully considered the submissions of both the sides and perused the record. The submission on behalf of the Department that in a case of supply on FOR destination basis, the sale is effected at the supplier's end is not acceptable as there is

no legal basis for such claim. The Commissioner has rightly held that the freight incurred from the factory gate to the premises of the buyer which is governed by a separate contract is not to be included in the assessable value. No valid grounds have been adduced to interfere with the said finding of the Commissioner. The Commissioner has also allowed the appeal on ground of limitation. We also agree to this decision. The appeal by the Department is therefore, rejected.

(Order dictated and pronounced in the open Court).

(M. Veeraiyan)
Technical Member

MPS*

(D.N. Panda)
Judicial Member