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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/5789/2004 - EX[DB] Date 18/05/2010

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

To :
M/S LAKSHI ENGINEERING
SHED NO.I-H,INDL,AREA GOVINDPURA,BHOPAL
M.P
M/S LAKSHI ENGINEERING Appellant
Vs
C.C.E.BHOPAL M.P Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 381/ 2010 **EX[DB]** dated 13-5-10 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.BHOPAL M.P
   C.E.HOSHANGABAD ROAD BHOPAL M.P
2. Adv. / Consult

   NONE

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15 HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

16. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
Vasant Kunj, New Delhi-70

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 13.05.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

Excise Appeal No. 5789 of 2004

[Arising out of order-in-appeal No. 681/CE/BPL/2004 dated 14.10.04 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal].

M/s Laxmi Engineering Appellant

Vs.

CCE, Bhopal Respondent

Appearance: None for the appellants.
Rep. by Sh. R.K. Verma, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Oral order No. 381/10-EX

Per: Shri Justice R.M.S. Khandeparkar:

None present for the appellants though served. Learned DR present for the respondent. Heard and perused the record with the help of learned DR.

2. The appellants challenges the order passed by the Commissioner (Appeals) whereby the appeal filed by the appellants against the order passed by the adjudicating authority has been dismissed. The adjudicating authority namely the Assistant Commissioner by his order dated 15.12.2003 has rejected the refund claim of the party for Rs.22336/-.

3. The issue involved in the matter is whether despite non mention of the freight in the relevant invoices during the disputed period the party would be entitled to claim average/ equalized freight and consequently for refund?

4. The facts on record disclose that the appellants had filed refund claim on 05.08.2003 on the ground that the excise duty was paid by them on the value inclusive of freight charges and their customer had deducted duty portion paid by them on the freight charges and that the excise duty was not payable on the freight charges in relation to the period from August to September 2002, which claim came to be rejected by the adjudicating authority on the ground that freight was shown as Nil cost of transportation in the relevant excise invoices and in terms of provision of law, such deduction of any freight is allowable if the same is distinctly shown in the invoices for excisable goods and cost on transportation if charged to the buyer in addition to the price of goods, besides that the party had recovered

full price of the goods from their customer and it was evident from the relevant invoices and hence no refund was allowable.

5. Considering the facts of the case and the law laid down in the Larger Bench **CCE, Mumbai-III** vs. **Supreme Petrochem Limited** reported in 2009 (240) ELT 38 (Tri. LB) which fully and squarely applies to the facts of the case, we find no case for interference in the impugned order.

6. In Supreme Petrochem Limited case it was clearly held thus:-

> "12. We find that expressions like "normal" and "ordinarily", which smacked of a "deemed value" for excisable goods and figured significantly in the text of the old Section 4(1)(a), are conspicuously absent in the new Section 4(1)(a) which came into force on 1.7.2000. The assessable value of excisable goods under the new law is the "transaction value" as defined under Section 4(3)(d). As per this definition, "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, whether payable at the time of the sale or at any other time. Obviously, this definition has to be read as part of Section 4(1)(a), the assence of this provision of law being "transaction value". Accordingly, in a case where the goods are sold by the assessee for delivery at the time and place of removal, the assessee and the buyer are unrelated and the price is the sole consideration for the sale, the assessable value of the goods shall be the transaction value, which is obtained by 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, whether payable at the time of the sale or at any other time. It would thus appear that the transaction value would depend on the terms of the contract of sale of excisable goods between the seller (assessee) and the buyer. The terms and conditions may be had or discerned from the purchase order, invoice and allied documents. Going by the terms "sale" and "purchase" vide Section 2(h) of the Act, we and that, where the possession of goods is transferred by the manufacturer to the buyer in the ordinary course of trade or business for cash or deferred payment or other valuable consideration, the same constitutes "sale" by the former and "purchase" by the latter. It may be useful, in this context to read Section 2(h):
>
> (h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration."

If the buyer, in terms of the contract of sale, lifts the goods from the manufacturer's factory (whether or not by incurring the cost of outward handling of the goods i.e. the cost of loading and outward transportation of the goods), then by virtue of Section 2(h), he will be considered to have "purchased" the goods from the manufacturer and, conversely, the manufacturer will be held to have "sold" the goods to the buyer, for purposes of Section 4(1)(a). For "purchase" and "sale" to happen, it is immaterial as to who incurs the above cost. But it is certainly material to transaction value, for the definition of 'transaction value' indicates that any amount charged by the assessee for outward handling of the goods is one of its components. Transaction value, as defined, includes any amount charged by the assessee for outward handling of the goods by reason of, or in connection with, the sale. This legal position emerged from a conjunctive reading of the main and inclusive parts of the definition. Therefore "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" is an "amount charged by the assessee". If the outward handling charges (which include loading charges within the factory) satisfy this parameter, they shall form part of the assessable value of the goods. Since the Revenue is not privy to the contract of sale between the seller (assessee) and the buyer, the burden is on the assessee who claims exclusion of such charges from assessable value, to prove that such/ charges were incurred by somebody else. In our view, this burden of proof is implied in the definition of transaction value".

7. The Commissioner (Appeals) also has elaborately discussed the provisions of law as well as the facts of the case and has rightly held that there was no case for interference in the findings arrived at by the adjudicating authority.

8. In the circumstances, we find no substance in the appeal and dismiss the same.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/