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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

Date 20/07/2010

Appeal No. E/826 /2010 - EX[DB] WITH
E/S/872/2010-EX

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

To :
M/S. MERINO INDUSTRIES LTD.
VILLAGE-ACHCHEJA, DELHI-HAPUR ROAD, DISTT-
GHAZIABAD.

M/S. MERINO INDUSTRIES LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

STAY ORDER NO.488/2010-EX

I am directed to transmit herewith a certified copy of **Final order No.** 458 2010 EX[DB] dated 12-7-10 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. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult SH. S. SUNIL, ADV., CLO
   MR.C.HARISHANKAR
   46, BANK ENCLAVE,DELHI-110092
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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Stay Application No. 872 of 2010 in
Excise Appeal No. 826 of 2010

DATE OF HEARING : 12.07.2010
DATE OF DECISION : 12.07.2010

M/s Merino Industries Ltd. .... **Appellants**
(Rep by Sh. S. Sunil, Adv.)

VERSUS

CCE, Meerut-II .... **Respondent**
(Rep. by Sh. Nitin Anand, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

STA X **ORAL ORDER NO.** 988/10-Ex

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the appellants and the learned DR for the respondent.

2. As we proposed to dispose of the appeal itself, the application is allowed while waiving the requirement of pre-deposit and directing the Registry to place the appeal for final hearing forthwith. Application stands disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 826 of 2010

(Arising out of Order-in-Original No. 425-426-CE/MRT-II/2009 dated 24.12.2009 passed by the Commissioner of Central Excise (Appeals), Meerut).

DATE OF HEARING : 12.07.2010
DATE OF DECISION : 12.07.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. 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 ?	No
4.	Whether Order is to be circulated to the Departmental Authorities?	Y

M/s Merino Industries Ltd. .... **Appellants**
(Rep by Sh. S. Sunil, Adv.)

VERSUS

CCE, Meerut-II .... **Respondent**
(Rep. by Sh. Nitin Anand, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 458/10 - Ex

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the appellants and the learned DR for the respondent.

2. This appeal arises from the order dated 24.12.2009 passed by the Commissioner (Appeals), Meerut. By the impugned order, the appeal filed by the appellants against the order of the adjudicating authority has been dismissed. The adjudicating authority by its order dated 13.05.2009 had confirmed various demands against the appellants while finalizing the provisional assessment, and in the course had rejected the claim for deduction of the octroi paid by the appellants in the course of transportation of the goods from depot to depot. The ground on which it was rejected was that, such payment of octroi does not relate to the sale of the goods and, therefore, beyond the scope of the deductions in terms of Section 4A(3)(d) of the Central Excise Act, 1944.

3. The expression 'transaction value', as comprised under Section 4A(3)(d) of the said Act, provides thus :

> **"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, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and**

other taxes, if any, actually paid or actually payable on such goods."

3. Plain reading of the said definition of the expression 'transaction value' would disclose that, the same does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods. In other words, whatever tax or duty is lawfully payable and is paid by the manufacturer would not form part of the transaction value for the purpose of ascertaining the assessable value to determine the duty liability. Law as comprised under the said provision being abundantly clear, we fail to understand as to how the claim for octroi, which was actually paid by the appellants in the course of the transportation of the goods from one depot to another, can be disallowed for deduction while ascertaining the assessable value of such goods. The finding in that regard arrived at by both the authorities below is clearly unsustainable and is liable to be set aside and the matter remanded to the adjudicating authority to finalize the assessable ~~while~~ value after deducting the said amount disallowed under the impugned order. The appeal accordingly succeeds. The impugned order is hereby set aside with consequential relief, if any.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay