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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/1030/2005-1031/2005 - EX[DB]

Date 20/07/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017 — Appellant

Vs

C.C.E. CHANDIGARH
M/S PUNJAB TRACTORS LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 462-463/2010 EX[DB] dated 16-7-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S PUNJAB TRACTORS LTD.
   SCD VILLAGE CHAPPERCHERI TEHSIL KHARAR DISTT ROPAR
2. Adv. / Consult SH. B.L. NARSIMHAN, 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. 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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block 2, R.K.Puram,New Delhi-110066
Principal Bench, New Delhi.

E/1030-31/05

(Arising out of Order-in-Appeal No.842-843-CE/CHD/2004 dt.29.12.04 passed by Commissioner(Appeals), Chandigarh)

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?	:
2.Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.Whether their Lordships wish to see the fair copy of the order?	:
4.Whether order is to be circulated to the Department Authorities:	:

CCE, Chandigarh — Appellants

Versus

M/s. Punjab Tractors Ltd. — Respondent

Appearance
Sh. Amrish Jain, DR For Appellants

Shri B.L.Narsimhan, Adv. for Respondent

Coram: Hon'ble Mr. JUSTICE R.M.S.KHANDEPARKAR, PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of hearing: 25.3.2010
Date of Decision: 16/7/10

FINAL Order No. 462-463/10-EX.

Per Rakesh Kumar:

The facts leading to these appeals filed by the Revenue are, in brief, as under:

1.1 The Respondent are engaged in the manufacture of Tractors, Forklift Trucks, Harvester Combines and parts thereof chargeable to Central Excise Duty under Chapter heading 84 & 87 of Central Excise Tariff. During the scrutiny of their Central Excise records for the period from April'01 to March'03, it was observed that they had been selling their finished product to Government Departments at DGS&D rate contract and as per the sale contract, the responsibility for transportation of the goods lies with the respondent to whom the payment is to be released on receipt of the goods at the buyer's premises. It was also found that while their invoices did not mention the freight charges, they were charging additional amount towards freight by debit notes, but the same was not being included in the assessable value. The Department was of the view that since the sales are on FOR destination basis and as per the terms of the sales contract, the risk during the transit of the goods is of the respondent, the sale takes place at the buyer's premises and hence it is the buyer's premises which would be the "place of removal" and accordingly, duty would be chargeable on the assessable value including freight expenses from the factory gate to the buyer's premises. It is on this basis that five show cause notices dt. 23.8.01, 3.4.02, 20.9.02, 13.3.03 and 11.9.03 were issued for recovery of allegedly short paid duty amounting to Rs.6841/-, Rs.3520/-, Rs.25,566/-, Rs.17,455/- and Rs.14,142/- respectively for the period Sept.'2000 to March'01 from April'01 to Sept.'01, Oct.01 to March'02, April'02 to Sept'02 and Oct'02 to March'03 respectively alongwith interest on duty at the applicable rate, as per the provisions of Section 11AB and also for imposition of penalty on the respondent under Rule 173Q(1) of Central Excise Rules,1944 and Rule 25(1) of Central Excise Rules,2001/2002.

1.1.2. The show cause notices dt.3.4.02, 20.9.02, 13.3.03 and 11.9.03 were adjudicated by a common order-in-original No.100-103/AC/CE/03 dt.6.2.04 by which the proceedings initiated by the above mentioned four show cause notices were dropped. The other show cause notice dt.23.8.01 was adjudicated by order-in-original No.104/AC/CE/2003 dt.17.2.04 by which the proceedings initiated by order dt.23.8.01 were dropped. The Department filed review appeals to Commissioner(Appeals) against order-in-original No.100-103/AC/CE/03 dt.6.2.04 and No.104/AC/CE/2003 dt.30.1.04 passed by the Asstt. Commissioner and the Commissioner(Appeals) by common order-in-Appeal No.842-843/CE/CHD/04 dt.29.12.04 dismissed the Department's appeals, It is against this order of the Commissioner(Appeals) that these two appeals have been filed by the Department.

2. Heard both the sides.

2.1 Shri Amrish Jain, learned DR, assailed the impugned order-in-appeal reiterating the grounds of appeal and emphasised that –

(1) the sales in respect of which these duty demands have been made, were FOR basis and as per the sales contract, not only the respondent were responsible for arranging the transport of the goods to the buyer's premises, they were also responsible for delivering the goods in good condition and the risk during the transit was of the respondent which shows that the sale took place at the buyer's premises only;

(2) while the respondent had sold the goods as per the DGS&D rate contract on FOR basis, invoices do not show the freight charges separately and later on, the Respondent issued debit notes on account of freight, from which it is clear that the amount charged against the debit notes was additional consideration, in addition to the amount shown in the invoices issued at the time of clearance of the goods and hence the same was includible in the assessable value. Shri Amrish Jain also pleaded that extended period under proviso to Section 11A(1) of the Central Excise Act has been rightly invoked as the facts that the sales were on FOR basis and as per the contract terms, during transit of the goods to the buyer's premises, the risk was of the respondent, had never been disclosed to the department and these facts came to the notice only when the records of the respondent were subjected to detailed scrutiny.

2.2 Shri B.L.Narsimhan, Advocate, learned Counsel for the respondent pleaded that though the price charged is FOR price, the delivery of the goods was made to the customers at the factory gate, as per the provisions of the sale of goods act, the transfer of ownership of the goods takes place when the goods are handed over to the transporter; that in this case since the goods were handed over to the transporters at the factory, the sale is deemed to have taken place at the factory gate and hence the charges of transportation from the factory gate to the buyer's premises are not includible in the assessable value; that the GRs ~~is~~ are also in the name of the consignees and not self, which also shows that during transit, the ownership was of the consignees not of the respondent; that Hon'ble Supreme Court's judgment in the case of CCE, Noida vs Accurate Meters Ltd. reported in 2009(235)ELT.581(SC) is squarely applicable to the facts of this case; that the price shown in the invoices did not include the freight which was being separately charged through the debit notes and that since in this case, it is the factory gate which is the place of removal, the freight expenses being charges from the buyers through debit note are not included in the assessable value. He, therefore, pleaded that there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records. The period of dispute in this case is from 1.9.02 to 31.3.03 and point of dispute is as to

whether in respect of sales of finished goods to Government Sector buyers at DGS&D contract rate, the expenses of freight from the factory gate to the buyer's premises are includible in the assessable value or not. While according to the respondent, the sales had taken place at the factory gate and hence it is factory gate which is the place of removal and accordingly, there is no justification for inclusion of the freight expenses for outward transportation in the assessable value, according to the Department from the terms of the contracts, it is clear that the sale had taken place at the customer's premises and hence the outward freight from the factory gate to the place of delivery to the buyers would be includible in the assessable value.

4. During the period of dispute as per the provisions of Section 4(3)(c) the "place of removal" means the factory or any other place or premises of production or manufacture of excisable goods and warehouse or any other place of premises wherein the excisable goods have been permitted to be deposited without payment of duty. It is only w.e.f. 14.5.03 that by amendment to this Section, premises of consignment agent or any other place or premises fromwhere the excisable goods are sold after their clearance, from the factory, were included in the definition of "place of removal". However, even during period prior to 14.5.03, in respect of cases where the sale does not take place at the factory gate and after removal from the factory, the goods are sold from depots or consignment agent's premises or any

other premises, Rule 7 of the Central Excise Valuation Rules,2004 provided that in such cases, the assessable value would be the normal transaction value of such goods sold from such other place at or about the same time and where such goods are not sold at or about the same time, at the time nearest to the time of removal of the goods under assessment. Thus, even during the period prior to 14.5.03, if the goods were not sold from the factory gate but after removal from the factory, the goods were sold, as per the contract terms, at some other premises, the assessable value of the goods would be their sale price at that premises and accordingly, the assessable value would include the expenses of freight and insurance from the factory gate to the premises where the goods were sold.

5. The main question in this case is as to whether the goods were sold at the buyer's premises. According to the respondent, since the goods were handed over to the transporters at the factory gate and the GRs are in the name of the consignees (buyer) and not in the name of the consignor, in terms of the provisions of Section 33 of sale of the goods Act, the goods would be deemed to have been sold at the factory gate when the same were handed over to the transporter, on the transporter the acts as the agent of the buyer. However, on going through the sales contract, we find that in each supply order, which is against the DGS&D rate contract, there is a clause that the goods are to be dispatched by road at the consignors' risk on freight paid basis.

Thus, when during transportation from the factory gate to the buyer's premises, the risk of loss of goods or damaged to the goods, is of the respondent not of the buyer, we are of the view that in such a situation, the sale has taken place at the buyer's premises only, as it is only after handing over the goods in good condition at the buyer's premises, that the consideration for the transfer of property in goods would be received by the Respondent. In view of this, in accordance with the provisions of Rule 7 of the Central Excise Valuation Rules, the assessable value of the goods would be their value at the buyer's premises, which naturally would include the element of freight from the factory upto that premises. Accordingly, the duty was payable on the assessable value including the expenses of freight from the factory gate to the buyer's premises.

6. As regards the question of limitation, we find that the SCN dt.3.4.02, 20.9.02, 13.3.03 and 11.9.03 are within normal limitation period. It is only the first show cause notice dt.28.3.01 in respect of period from 1.9.2000 to March'01 which has been issued by invoking the extended period which in our view would be available to the Department, as the details of the respondent's contract with the buyers were never disclosed to the Department.

7. In view of the above discussion, we are of the view that the impugned order is not correct. The same is set aside. The duty demands raised by show cause notices dt.23.8.01,

3.4.02, 20.9.02, 13.3.03 and 11.9.03 are confirmed. The Appellant, besides the duty, would also be liable to pay interest on duty at the applicable rate as per the provisions of Section 11AB of Central Excise Act. We also impose total penalty of Rs.67,524/- on the Appellant under Rule 11AC of Central Excise Act,1944. The Revenue's appeals are accordingly allowed.

(Pronounced in the open Court on......16/7/10......)

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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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 : 03/03/2011

MISC. Order No . MO/180/2011- EX[DB]

Application E/ROM/40/2010 - EX In

Appeal No. E/1031/2005 - EX[DB]

1. Appellant
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH
   160017
2. Respondent
   M/S PUNJAB TRACTORS LTD.
   SCD VILLAGE CHAPPPERCHERI, TEHSIL KHARAR,
   DISTT-- ROPAR
3. Adv / Consult : SH. B.L. NARASIMHAN, ADV.
   B-6/10, SUFDARJUNG ENCLAVE, NEW DELHI.

4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Company Law Institute of India Pvt Ltd, No.2 (OLD No.36), Vaithyaram Street, T. Nagar, Chennai 600017
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14. Office Copy
15. Guard File
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise ROM Application No. 40 /2010- Ex(BR)
Excise Appeal No. 1030-1031 /2005- Ex(BR)

[Arising out of Tribunal's Final Order No. 462-463/2010 Ex.dated 16.7.2010 passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi.]

CCE, Chandigarh Appellants

Vs.

M/s. Punjab Tractors Ltd. Respondent

Appearance:
Shri Sunil Kumar, DR for the Appellants
Shri B.L. Narasimhan, Advocate for the Respondent

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

Date of Hearing/decision : 18.2.2011

misc **ORDER** /80/2011-EX

Per Shri Justice R.M.S. Khandeparkar (for the Bench):

Heard DR for the appellants and advocate for the respondents. As rightly pointed out by the DR, the word 'appellant' in para 7 was wrongly typed at two places and in fact reference thereto is to the 'respondents' and therefore, the words 'appellant' appearing twice in para 7 in Final Order dated 16.7.2010 should be read as 'respondent'. The final order is to be read along with said corrections. Ordered accordingly.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

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