

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/959 TO 973 / 2009 -SM[BR]

Date 30/07/2010

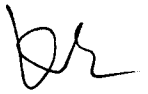
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SUMANGALAM SUITINGS PVT. LTD.
G/134 TO 137, RIICO (EXTN.) INDUSTRIAL AREA,
BHILWARA (RAJ.)
M/S SUMANGALAM SUITINGS PVT. LTD.

Appellant
Vs
Respondent

C.C.E. JAIPUR II

I am directed to transmit herewith a certified copy of Final order No. 818 - 832 / 2010 -SM[BR] dated 24.6.2010 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

3 S.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 Publications 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

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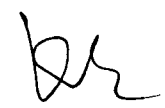
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

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Assistant Registrar
(SM Appeal Branch)

P.T.O. →

- [2] M/S JITENDERA SYNTHETICS PVT. LTD.
VILLAGE-ERANS, POST-SUWEANA, KOTA ROAD BHILWARA-311001.[RAJ.]
- [3] M/S RANJAN SUTTINGS PVT. LTD.
E-148, RIICO INDUSTRIAL AREA. BHILWARA-311001.[RAJ.]
- [4] M/S MANGLAM FABRICS,
G-3/A, RIICO INDUSTRIAL AREA, BHILWARA.311001.[RAJ.]
- [5] M/S SILVER FAB SUTTINGS [P] LTD.
F-276, RIICO INDUSTRIAL AREA, BHILWARA-311001.[RAJ.]
- [6] M/S PUSHPAK TEXTILES [P] LTD.
G-74, RIICO INDUSTRIAL AREA, PUR ROAD BHILWARA-311001.[RAJ.]
- [7] M/S S.B. FAB [P] LTD. F-84,
RIICO INDUSTRIAL AREA, PUR ROAD, BHILWARA-311001.[RAJ.]
- [8] M/S MURARKA SUTTINGS PVT. LTD.
F-259, RIICO INDUSTRIAL AREA, BHILWARA-311001.[RAJ.]
- [9] M/S SRS SYNTEX LTD. 40-41, OM TEXTILS
TOWER PUR ROAD BHILWARA-311001,[RAJ.]
- [10] SHRI RAM SYNTHETICS F-132, I&II PHASE
RIICO INDUSTRIAL AREA BHILWARA[RAJ.]
- [11] M/S SHARDA SPUNTEX [P] LTD.
VILLAGE-DATA NILWARI TEHSIL-BANERA, BHILWARA[RAJ.]
- [12] M/S SAI LEELA SYNTHETICS [P] LTD.
147, NEW CLOTH MARKET PUR ROAD BHILWARA.[RAJ,]
- [13] M/S SUKH SAGAR SYNTHETICS [P] LTD.
F-68 – 69 , RIICO [EXTN] INDUSTRIAL AREA BHILWARA [RAJ.]
- [14] M/S OSWAL SUTTINGS PVT. LTD. GATHILA KHERA,
CHITTORGARH ROAD BHILWARA-311001.[RAJ.]
- [15] M/S SARVODAYA SUTTINGS LTD.
F-207 , IIIRD PHASE RIICO INDUSTRIAL AREA BHILWARA -311001.[RAJ.]

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Date of Hearing/Decision: 24.06.2010

For approval and signature:

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 should 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 Departmental authorities?	

1. Service Tax Appeal No.959 of 2009

(Arising out of Order-in-Appeal No.129(KKG)ST/JPR-II/2009 dated 01.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.Sumangalam Suitings (P) Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

2. Service Tax Appeal No.960 of 2009

(Arising out of Order-in-Appeal No.142(KKG)ST/JPR-II/2009 dated 01.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.Jitendra Synthetics (P) Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

3. Service Tax Appeal No.961 of 2009

(Arising out of Order-in-Appeal No.126(KKG)ST/JPR-II/2009 dated 01.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.Ranjan Suitings (P) Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

4. Service Tax Appeal No.962 of 2009

(Arising out of Order-in-Appeal No.144(KKG)ST/JPR-II/2009 dated 03.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.Manglam Fabrics

Appellant

Vs.

CCE, Jaipur-II

Respondent

5. Service Tax Appeal No.963 of 2009

(Arising out of Order-in-Appeal No.128(KKG)ST/JPR-II/2009 dated 01.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.Silver Fab Suitings Pvt.Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

6. Service Tax Appeal No.964 of 2009

(Arising out of Order-in-Appeal No.234(KKG)ST/JPR-II/2009 dated 15.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.Pushpak Textiles Pvt.Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

7. Service Tax Appeal No.965 of 2009

(Arising out of Order-in-Appeal No.233(KKG)ST/JPR-II/2009 dated 15.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.S.B.Fab Pvt.Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

8. Service Tax Appeal No.966 of 2009

(Arising out of Order-in-Appeal No.149(KKG)ST/JPR-II/2009 dated 03.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s. Murarka Suitings Pvt.Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

9. Service Tax Appeal No.967 of 2009

(Arising out of Order-in-Appeal No.148 (KKG)ST/JPR-II/2009 dated 03.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s.SRS Syntex Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

10. Service Tax Appeal No.968 of 2009

(Arising out of Order-in-Appeal No.147(KKG)ST/JPR-II/2009 dated 03.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s. Sri Ram Synthetics

Appellant

Vs.

CCE, Jaipur-II

Respondent

11. Service Tax Appeal No.969 of 2009

(Arising out of Order-in-Appeal No.146(KKG)ST/JPR-II/2009 dated 03.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s. Sharda Spuntex (P) Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

12. Service Tax Appeal No.970 of 2009

(Arising out of Order-in-Appeal No.145(KKG)ST/JPR-II/2009 dated 03.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s. Sai Leela Synthetics Pvt. Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

13. Service Tax Appeal No.971 of 2009

(Arising out of Order-in-Appeal No.143(KKG)ST/JPR-II/2009 dated 01.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s. Sukh Sagar Synthetics Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

14. Service Tax Appeal No.972 of 2009

(Arising out of Order-in-Appeal No.130(KKG)ST/JPR-II/2009 dated 02.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s. Oswal Suitings Pvt. Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

15. Service Tax Appeal No.973 of 2009

(Arising out of Order-in-Appeal No.127(KKG)ST/JPR-II/2009 dated 02.09.2009 passed by the Commissioner of Central Excise(Appeals), Jaipur-II)

M/s. Sarvodaya Suitings Ltd.

Appellant

Vs.

CCE, Jaipur-II

Respondent

Present for the Appellant : Shri Bipin Garg, Advocate

Present for the Respondent: Shri I.Baig, DR & Sh.S.K.Bhaskar, DR

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final ORDER No. 818-832/2010 SM (B2)

PER: RAKESH KUMAR

Since the issue involved in these appeals is common, the same were heard together.

2. In all these appeals, the appellants are manufacturers of fabrics and purchased yarn from the manufacturers in Nepal. Nepalese suppliers for supply of the yarn issued invoices in two parts – first invoice for value of the goods and the second invoice under heading “statement of expenses” mentioned the amounts for excise duty, transportation from Nepal border to factory premises, clearing expenses, insurance charges, cartage, handling and forwarding charges. On receipt of the goods, the appellants made payment directly to the suppliers for value of the goods and also for other expenses towards excise duty, transportation, clearing expenses, insurance charges, and cartage, handling and forwarding charges. The Department was of the view that the appellants, who reimbursed freight charges to the suppliers being receivers of the GTA through the suppliers as their agents, were liable to pay ^{Service} ~~the~~ ^{the Service Tax} and on this basis SCNs were issued to the appellants for recovery of service tax alongwith interest on the GTA services alleged to have been received by them for transportation of the goods from Nepal border to their factory premises. SCNs also proposed for imposition of penalties on the appellants under Sections 76, 77 & 78 of the Finance Act, 1994. The demands were confirmed by the Assistant Commissioner. On appeal to the Commissioner (Appeals), the Commissioner (Appeals) vide the impugned orders in appeal upheld the Assistant Commissioner’s orders and rejected the appeals. It is against these orders of the Commissioner (Appeals), that the appellants filed these appeals.

3. Heard both sides.

4. Shri Bipin Garg, Advocate, the learned Counsel representing the appellants, pleaded that dispute in these cases is as to whether the appellants are service recipients in respect of GTA services received through Nepalese suppliers from the Goods Transport Agency for the transport for the goods from Nepal border to their factory premises, that the appellants neither engaged the transporters to transport of the goods nor they were liable to pay freight charges to the transporters, that the appellants had not instructed the suppliers to engage the transporters on their behalf and hence the suppliers cannot be called the agents of the appellants, that in terms of Notification No.35/04-ST dated 03.04.2004 issued in respect of GTA service, the person who pays or is liable to pay freight either by himself or through his agent ^{for} the transportation of goods by road in a goods carriage would be liable to pay the service tax in, case consignee or consignor of the goods falls in the category ^{as} mentioned in the notification; that under sub-clause (v) of Rule 2(1) (d) of Service Tax Rules, 1994, in respect of GTA service the person liable to pay service tax, in case when the consignee or consignor of the goods is covered by the category specified at (a) to (g) in the Notification No.35/04-ST dated 03.04.2004, is the person who pays or is liable to pay the freight either himself or through his agent for transportation of goods by road in a goods carriage, that since the appellants have neither engaged the transporters to transport the goods nor they were liable to pay freight charges to the transporters, they cannot be said to be person liable to pay service tax, that it is ^{Suppliers in Nepal} the ⁹ who had engaged the transporters directly and hence it is Nepalese supplier who are recipients of the GTA service; that since the transporters are in India, there is no question of import of service,

that the appellants have only reimbursed the freight expenses paid by the suppliers and therefore the Nepalese suppliers cannot be said to be agents of the appellants in respect of GTA services and in view of this, the impugned orders are not correct.

5. Shri S.K.Bhaskar, and Shri I.Baig, learned DRs, pleaded that the issue involved in these appeals is as to whether the appellants can be treated as recipient of the GTA service and hence the persons liable to pay service tax in terms of the Notification No.35/04-ST dated 03.04.2004 read with Rule 2 (1) (d) (v) of the Service Tax Rules, 1994 on the GTA service, ^{for} the transportation of the goods purchased by them from Nepalese suppliers, from Nepal border to their factory premises, that today about 15 appeals are listed and there are some 25 more appeals also pending, that in view of this, all these must be heard together and disposed of by same bench, that since basic dispute in these appeals is as to ^{whether} the appellants are liable to pay service tax on the GTA services alleged to have been received by them, these cases must be heard by a division bench and single bench is not competent to hear the same, that the appellants' transactions with the suppliers cannot be said to be on FOR basis ^{on} the suppliers for each supply of the yarn issued two invoices one for value of the goods and the other for reimbursement of expenses like transportation from Nepal border to appellants' factory,, insurance charges, handling & cartage; ^{etc} that the appellants have to be treated as recipients of GTA services through Nepalese suppliers as the Nepalese suppliers have engaged the transporters on the instructions of the appellants as their agents;; that the liability to pay service tax on the GTA service is on the person who pays or ^{is} liable to pay freight either himself or through

his agent; that in these cases, the appellants paid transport expenses through Nepalese suppliers as their agents; that in this situation, it is the appellants who have made payment to the transporters and in view of this, service tax demands have rightly been confirmed by the Commissioner(Appeals) and the penalty have been rightly imposed on the appellants.

5.1. Learned DRs also pleaded that earlier in respect of M/s.Sumangalam Suitings Pvt.Ltd., M/s.Jitendra Synthetics Pvt.Ltd. and M/s.Ranjan Suitings Pvt.Ltd., the Tribunal vide its Stay Order No.36-38/2010 SM (BR) dated 22.01.2010 had called for Department's clarification on certain points namely, (1) whether the freight element stands included in the value of the imported goods at the time of clearances at the Customs border, (2) whether the appellants have received services of GTA from Nepal, (3) whether the charges for transportation within Nepal can be treated as GTA services for the purpose of levy of service tax in India and (4) whether service tax for the period prior to 18.4.2006, will be payable if it is held that service tax is payable by the appellants. He pleaded that the Commissioner (Appeals) has submitted his detailed report on these points raised by the bench and the same may also be taken into consideration for deciding these matters.

6. *Shri Bipin Gang.*, in rejoinder, pleaded that the appellants have paid freight expenses to their Nepalese suppliers and Nepalese suppliers cannot be called their agents, when there is no evidence in this regard and no documentary evidence showing that the appellants had instructed the Nepalese suppliers to engage the transporter on their behalf has been produced, that this is simply a case where the Nepalese suppliers had engaged the transporters and

billed the appellants for transport charges and the same were reimbursed by the appellants, and that for this, the appellants cannot be treated as the persons who had engaged the transporter or had received GTA service.

7. I have carefully considered the submissions from both sides and perused the records.

8. As regards bunching of appeals involving common issue, since today 15 such appeals have been listed, and since the issue involved in these appeals is common, the same have been taken up for disposal by a common order and since details of other appeals have not been provided, there is no point ⁱⁿ waiting for further bunching of the ^{other} appeals involving the same issue.

9. As regards the objection raised by the learned DR, with regard to jurisdiction of Single Member Bench to hear these appeals, subsection 3 of Section 35D of Central Excise Act, 1944, is as under

"The President or any other member of the Appellate Tribunal, authorised in this behalf by the President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member, where —

- (a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or*
- (b) the amount of fine or penalty involved, does not exceed Rs.10 lakhs."*

9.1. Thus, the jurisdiction of single Member Bench is over those cases, other than the cases involving an issue relating to rate of duty or the valuation, where differential duty involved or redemption fine

or the penalty involved does not exceed Rs.10 lakh. The point of dispute in these cases is as to whether the appellants, who have imported yarn from Nepalese suppliers and who according to them have only reimbursed the transport expenses mentioned in the supplier's invoices, can be treated as recipients of GTA service in India and hence liable to pay service tax on the same. In my view, it is not the issue relating to rate of duty or valuation, as the question in these cases as to whether the appellants in terms of the provisions of Rule 2 (1) (d) (b) of the Service Tax Rules, 1994 read with Notification No.35/04-ST issued under Section 68 (2) of the Finance Act, 1994 can be said to be the person liable to pay the service tax. Since admittedly ⁱⁿ none of these cases, the duty involved exceeds Rs.10 lakhs and other than this issue, no issue relating to valuation or rate of duty is involved, Single Member bench has jurisdiction to decide this group of appeals.

10. In these cases, the appellants are importers of yarn from various suppliers of yarn in Nepal and for each supply of yarn the suppliers have raised two invoices - one for value of the goods which, as clarified in the Department's report, includes the transport expenses within Nepal upto Indo Nepal border and the second invoice under heading "statement of expenses" mentions the amounts for excise duty, transportation from Nepal border to the appellants' factory premises, clearing expenses, insurance charges, and cartage, handling and forwarding charges. In these cases, service tax has been demanded only on transportation charges from Nepal border to the appellants' factory premises. The point of dispute is as to whether the appellants can be treated as "the person liable to pay service tax" in respect of GTA service for transportation of the

goods from Nepal border to their factory premises. As per definition of the GTA service, as given in Section 65 (105) (zzp) of the Finance Act, 1994, taxable service in relation to "goods transport agency" means any service provided or ~~to~~ be provided to any person by a goods transport agency in relation to transportation of goods by road in a carriage and Section 65(50b) defines "Goods Transport Agency" as any person who provides service of transportation of goods by road in a goods carriage and issues a consignment note by whatever name it is called. Section 66 provides for charging of service tax on specified services mentioned in Section 65 (105). As per the provisions of section 68 (1), every person providing taxable service to any person shall be liable to pay service tax at the rate specified in section 66, in such manner and within such period as may be prescribed. However, sub-section (2) of Section 68 provides that notwithstanding anything contained in sub-section (1), in respect of certain services, the Central Government may, by notification, specify persons liable for payment of service tax. Under Notification No.35/04-ST dt. 3.12.04 issued under Section 68(2), in respect of GTA service, the person who pays or is liable to pay freight either himself or through his agent for transportation of goods by road in a goods carriage would be the person liable to pay the service tax in case consignee or consignor of the goods falls in the categories as mentioned in the notification. Some of the categories mentioned in the notification are – any factory registered under or governed by the Factories Act, 1948; any company formed or registered under the Companies Act, 1956; any corporation established by or under any law etc. There is no dispute that the appellants fall in the category of person enumerated in this notification. The dispute is as to whether the appellants can be said to be the persons who pay or

are liable to pay freight either themselves or through their agent for transportation of goods by road in a goods carriage. According to the department, the appellants have engaged the transporter through Nepalese suppliers and the Nepalese suppliers have acted as their agent in this regard and hence it is the appellants who have to be treated as recipients of GTA service and hence liable to pay service tax.. However, on going through the records, I find that there is no evidence showing that the appellants had instructed the Nepalese suppliers to engage the transporters on their behalf. From the record, of the case, it is seen that it is Nepalese suppliers who had engaged the transporters and billed the appellants for value of the goods and also the transport expenses from Nepal border to their factory premises which were paid by the appellants. I find that the Commissioner (Appeals) in the finding portion of the impugned order has observed that although initially freight /transportation charges had been paid by the consignors (yarn supplier situated in Nepal) on behalf of the consignees (the appellants), ^{but} because so paid transportation charges alongwith other charges ^{stood} recovered/reimbursed from the appellant ^{to} the consignors (suppliers of yarn), ~~the consignors (the Nepalese suppliers) had acted as agents of the consignees and, therefore, on the freight amount paid to the transporters, the service tax is chargeable from the consignees i.e. appellants. But when it is accepted that it is the Nepalese suppliers who had paid the transportation charges to the transporters, the appellants cannot be treated as person who had engaged the transporter and had paid to them, just because they had reimbursed Nepalese suppliers for the transport expenses from the Nepal border to the appellants' factory~~

premises. The consignors in Nepal cannot be treated the appellants' agents ^{as} no evidence in this regard has been produced. ~~Moreover~~, for determining as to which person is liable to pay service tax on GTA services in accordance with the provisions of Notification No.35/04-ST issued under Section 68(2) of the Finance Act, 1994 read with Rule 2 (1) (d) (v), the question which has to be answered is as to who had engaged the transporter and who was liable to pay freight to the transporter. In this group of cases, there is no evidence that it is the appellants who had engaged the transporter either directly or through the Nepalese suppliers and therefore they cannot be treated as recipients of GTA services. In these cases, the appellants imported yarn from the Nepalese suppliers and their contract with the Nepalese suppliers is the contract for supply of the goods i.e. yarn and not any particular service; ^{the} arranging transport of the goods within the Nepal and from Nepal border to the appellants' factory premises by the Nepalese suppliers is an activity incidental to supply of the goods, for which the Nepalese suppliers had engaged transporters. There is no evidence produced to show that Nepalese suppliers had acted as the agents of the appellants for arranging transportation from Nepal border to the factory premises of the appellants. Just because the Nepalese suppliers had billed the appellants ^{Separately} for transportation from Nepal border to factory premises ^{other} alongwith expenses, they do not become the agents of the appellants. In view of this, the appellants cannot be treated as recipients of GTA services in terms of Notification No.35/04-ST and hence liable to pay service tax.

11. As regards the points on which Commissioner's clarification had been sought vide Order No.36-38/2010-SM(BR) dt. 20/1/10 passed

by this Tribunal in respect of Appeal filed by M/s.Sumangalam Suitings (P) Ltd., the points as to ^{whether} the transportation within Nepal can be treated GTA service for the purpose of levy of service tax in India and if so whether service tax on transportation of the goods within Nepal can be charged for the period prior to 18/4/04 are not relevant as the Commissioner has clarified that the charges for transportation of the imported yarn in Nepal upto Indo Nepal border ^{are} included in the value of the goods on which customs duty is charged and the dispute in these ^{se} cases as to whether the appellants are liable to pay service tax on the transportation charges for the transportation of the imported yarn from Indo Nepal border to the appellants' factory premises. Moreover the Commissioner's report confirms that it is the suppliers who arranged the transport of the goods from Indo Nepal border to the appellants' factory premises and made payment for the same to the transporters. Just because the appellants were billed ^{separately} for the transport expenses alongwith other expenses, the suppliers do not become the agents of the appellants.

12. In view of the above discussion, I hold that the impugned orders are not sustainable. The same are set aside and the appeals are allowed.

(RAKESH KUMAR)
MEMBER (TECHNICAL)