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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/5543/2004-5545/2004 - EX[DB]   Date **24/01/2011**

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

To :
M/S BETUL TYRES
& TUBES IND.LTD.
SOHAGPUR DISTT BETUL

M/S BETUL TYRES
& TUBES IND.LTD.   Appellant

Vs

C.C.E BHOPAL   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 95-97/ 2011 EX[DB]** dated 21-1-11 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
HOSHANGABAD ROAD, 48.
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult SH, JEERESH KUMAR, ADV, CLO
SH. BIPIN GARG, ADV,
B-1/1289-A, VASANT KUNJ, N. DELHI-70
3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications. Customs, Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8,Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. 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

COURT NO. I

Excise Appeal No. 5543-5545 of 2004

[Arising out of the Order-in-Appeal No.24-26/CE/BPL/2004 dated 09/02/2004 passed by The Commissioner of Central Excise (Appeals), Bhopal.]

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? :
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 Lordship wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

M/s Betul Tyres and Tubes Industries Ltd. Appellant

Versus

CCE, Bhopal Respondent

Appearance

Shri Jeeresh Kumar, Advocate- for the appellant.

Shri Sunil Kumar, Authorized Representative (DR) – for the Respondent.

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

DATE OF HEARING : 08/07/2010.
DATE OF DECISION : .

FINAL- Order No. 95-97/2011-EX Dated :

Per. Rakesh Kumar:-

The appellants are manufacturer of pneumatic rubber tyres and tubes chargeable to Central Excise Duty under Chapter 40 of the Central Excise Tariff. The period of dispute in this case is from March 1997 to June 2001. The appellant sell the goods manufactured by them through depot after Clearance of the goods on stock transfer basis. They had filed price declarations under Rule 173C of the Central Excise Rules, 1994, wherein they had claimed certain deductions from the selling price at the depot on account of freight, warranty charges, bank charges, trade discounts, loading and unloading charges incurred in course of transportation of the goods. The Deputy Commissioner while finalising the provisional assessment for this period, disallowed the deduction of freight from the place of removal, warranty charges, bank charges, cash discounts etc. The cash discounts were disallowed on the ground that the same were special discounts to certain specific buyers and those discounts were not known prior to clearance, as the same had not been declared in the price list of the appellants. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide the impugned order dismissed the appeal holding as under:-

(1) The appellant are not eligible for deduction of freight from the factory gate to the depot as during the period of dispute, as per the provisions of Section 4, in case of goods sold from the depot it is the price of the goods at the depot at the time

of removal from the factory which was the assessable value and this would include the cost of transportation from the factory gate to the depot. As regards, the deduction of freight from the depot to the customer's premises, the same is to be disallowed as the same was not separately shown in the Central Excise invoice and though the appellant claim that the freight has been shown separately in the commercial invoices, this claim is not backed by the evidence in form of transporter's bill etc.;

(2) The deduction of additional or special discounts whose existence was not known prior to the removal of the goods is not admissible. As regards, the turnover discount claimed by the appellants, as no evidence has been produced that the same was actually passed on to the customers, its deduction cannot be allowed ;

(3) Any deduction from the assessable value of the warranty charges is not allowable as repeatedly held by Hon'ble Supreme Court ;

(4) The deduction of bank charges/demand draft commission cannot be allowed unless the evidence that the same had been incurred is produced ;

(5) There is no provision in the Central Excise Law for deduction from the assessable value on account of old dues from the buyers and paying duty on the remaining assessable value. Such deduction from assessable value, therefore, is not allowed ;

(6) The deduction on account of handing charges which are basically loading and unloading charges incurred in course of transportation of the goods, but in the absence of any corroborative evidence, these deductions ~~is~~ are not admissible. As such, the original Adjudicating Authority has correctly disallowed the same.

2. Heard both the sides.

3. So far as the question of exclusion of warranty charges from assessable value is concerned, as held by Hon'ble Supreme Court in the case of **Union of India vs. Bombay Tyre International Pvt. Ltd. reported in 1983 E.L.T.1896 S.C.** the warranty charges are part of the assessable value and their deduction cannot be allowed. As regards, the other issues we find that this Tribunal in the case of Wearwell Tyres and Tubes Industries Pvt. Ltd. vs. CCE, Bhopal decided vide final order No. 1397-98/09-Ex dated 18/12/09, where the facts and the issue involved are identical, had remanded this matter to the original Adjudicating Authority for denovo adjudication, as per directions in that order. In view of this, while the Commissioner (Appeals)'s order with regard to the inclusion of warranty charges in the assessable value is upheld, the rest of the order is set aside and the matter is remanded to the original Adjudicating Authority for denovo adjudication taken into consideration our directions on various issues in our order No.1397-98/09-Ex dated 18/12/09 in the case of Wealwell Tyres and Tubes Pvt. Ltd. vs. CCE. Bhopal.

(Pronounced in open court on 21|1|11.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK