TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1110/2005 - EX[DB] Date 24/02/2011

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

To :
M/S GECO ELECTRICALS CORPORATION
DADA COLONY, INDUSTRIAL AREA, JALANDHAR

M/S GECO ELECTRICALS CORPORATION Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 200/ 2011 EX[DB]** dated 01-7-10 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent CCE, JALANDHAR AT
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017
2. Adv. / Consult MS ASMITA NAYAK, ADV,
A-5, BASEMENT,
LAJPAT NAGAR-III,
N. DELHI - 24
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. Deeparchic 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 No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 1110 of 2005

[Arising out of the Order-in-Appeal No. 595/CE/JAL/2004 dated 29/12/2004 passed by The Commissioner (Appeals), Central Excise, Jalandhar.]

For Approval and signature :

Hon'ble 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 Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Geco Electricals Corporation — Appellant

Versus

CCE, Jalandhar — Respondent

Appearance

Ms. Asmita Nayak, Advocate – for the appellant.

Shri B.K. Singh, Authorized Representative (Jt. CDR) – for the Respondent.

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

DATE OF HEARING : 01/07/2010.
DATE OF DECISION : 01/07/2010.

FINAL Order No. 200/2011 EX Dated : ________

Per. Rakesh Kumar :-

This appeal is against the Commissioner (Appeals)'s order disallowing the deduction of –

(a) freight amount collected by the appellants over and above the assessable value in respect of supplies to Government departments ;

(b) deduction on account of equalized freight which has not been shown separately in the invoice but is claimed to be included in the price charged ; and

(c) deduction of courier charges for despatching copies of sales invoices and other bank documents,

for determining the assessable value.

2. Heard both the sides.

2.1 Ms. Asmita Nayak, Advocate, the learned Counsel for the appellants assailing the impugned order pleaded that the dispute in this case pertains to the period from July 2000 to February 2001, that during this period as per the explicit provisions of Rule 5 of the Central Excise Valuation Rules, 2000, when the goods are sold for delivery at a place other than the place of removal, then assessable value would be the transaction value excluding the actual cost of transportation from the place of removal up to the place of delivery, provided the cost of transportation is charged to the buyer in addition to the price of the goods and is shown separately in the invoice for such excisable goods, that in respect of sales to Government departments, the appellant had shown the freight expenses from the place of removal separately in the invoices and hence the freight expenses cannot be included in the assessable value and the Commissioner (Appeals)'s order disallowing their exclusion from the assessable value is not correct, that as regards the sale to other buyers where the price charged from the buyers includes the freight expenses on equalized basis, though such equalized freight is not separately shown in the invoices, even in such cases the deduction of the equalized freight from the place of removal to the place of delivery is to be allowed, that in this regard reliance is placed on the Tribunal's judgment in the case of **West Coast Paper Mills Ltd. vs. CCE, Bangalore** reported in **2004 (172) E.L.T. 493 (Tri. – Bang.)**, that the Commissioner (Appeals)'s order disallowing the deduction of equalized freight in such cases is not correct, that the postal charges i.e. courier charges for despatching the copies of the invoices and other documents cannot be the amounts charged from the buyers by the reason of or in connection with the sale of the goods and hence these charges are not includable in the assessable value and that in view of this, the impugned order is not correct.

2.2 Shri B.K. Singh, the learned Jt. CDR defended the impugned order reiterating the Commissioner (Appeals)'s findings.

3. We have carefully considered the submissions from both the sides and perused the records.

3.1 So far as the first issue relating to exclusion from the assessable value of the freight expenses from the place of removal to the place of delivery in respect of sales to Government departments are concerned, we find that while the amount claim to be freight expenses from the place of removal to the place of delivery are separately shown in the invoices, the Commissioner (Appeals) has disallowed the exclusion of these expenses from the assessable value on the ground that except for a few invoices in all other invoices the place of delivery is not mentioned and, therefore, it is not possible to ascertain as to whether the amounts claimed to be freight expenses are actually the expenses incurred towards freight from the place of removal to the place of delivery. On going through the impugned order, we find that the Commissioner (Appeals) has given a clear finding that though the appellants were asked to produce the purchase orders and GRs to verify the place of delivery and the amounts claimed as freight expenses, they failed to supply the same. In view of this, we upheld the Commissioner (Appeals)'s order disallowing the exclusion of the amounts claimed to be freight expenses from the assessable value, as in terms of Rule 5 of Central Excise Valuation Rules what is permissible for deduction for determining the assessable value is the actual amount of freight from the place of removal to the place of delivery and not any amount arbitrarily claimed to be the freight expenses.

3.2 As regards the second point of dispute, the same is in respect of sales to certain buyers where the invoices did not separately mention the quantum of freight expenses and the appellant's claim is that the invoice price includes the freight charged from the buyers ~~of~~ on equalized basis. While in terms of provisions of Section 4, as it stood during the period of dispute, the assessable value of the goods is the transaction value for delivery at the time and place of removal, where the assessee and the buyer are not related and the price is sole consideration for sale, and a natural corollary to this provision of Section 4 would be that when the price charged by an assessee from the buyer is for delivery at a place other than the place of removal, the transport expenses from the place of removal to the place of delivery would have to be excluded for arriving at the assessable value i.e. the transaction value at the place of removal, as held by Larger Bench of the Tribunal in the case of **CCE, Mumbai – III vs. Supreme Petrochem Ltd.** reported in **2009 (240) E.L.T. 38 (Tri. – LB)**, since the transaction value depends on the contract between the seller and the buyer and the revenue is not prevy to the transaction of sale, the burden of proving that the transaction value includes some charges like freight expenses from the place of removal to the place of delivery, whose deduction is permissible, would be on the assessee. In this case when the appellant's invoices do not mention the freight expenses separately and the appellant claims that the invoice price includes the freight charged on equalized basis from place of removal to the place of delivery, the burden of proving that the invoice price includes the freight expenses and its quantum would be on the appellant, but in this case no evidence in support of this claim of the appellant has been produced by them. In view of this, we hold that Commissioner (Appeals) has rightly disallowed the deduction of freight expenses.

3.3 As regards the third issue regarding exclusion of the courier charges for despatching copies of the sales invoices and other bank document from the assessable value, we find that as per the provisions of Section 4 (3) (d) of Central Excise Act, the 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 the reason of, or in connection with 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 or selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter, but it does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or payable on such goods. We are of the view that the courier charges for sending the invoice and bank documents cannot be said to be the charges by the reason of or in connection with the sale of the goods and hence the Commissioner (Appeals)'s order disallowing their exclusion from the assessable value is not correct and is liable to be set aside.

4. In view of the above discussion, while we uphold the Commissioner (Appeals)'s order with regard to deduction of the freight expenses in respect of sales to Government departments

and deduction of equalized freight in the cases where the invoice price does not mention the freight expenses separately, we set aside the Commissioner (Appeals)'s order disallowing the exclusion of courier expenses for despatching the copies of the invoices and bank documents from the assessable value. The appeal is, thus, partly allowed.

(Operative part of the order pronounced in the open court.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK