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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/4505/2004 - EX[DB]

Date **12/07/2011**

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

To :
M/S MIRZAPUR ELECTRICAL INDS. LTD.
DANKEENGANJ, MIRZAPUR

M/S MIRZAPUR ELECTRICAL INDS. LTD. Appellant
Vs
C.C.E. ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.601/ 2011 EX[DB]** dated 08-7-11 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. ALLAHABAD
38, M.G. MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult SH. MAYANK GARG, ADV., C/O
MR.BIPIN GARG,
B-1/1289,A-VASANT KUNJ, NEW DELHI

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

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

PRINCIPAL BENCH
COURT-1

Central Excise Appeal No.4505 of 2004

(Arsing out of Order-in-Appeal No.143-CE.APPL/ALLD/2003 dated 28.03.03 passed by the CCE(A), Allahabad)

For approval and signature:
Hon'ble Mr.M.Veeraiyan, Member (Technical)
Hon'ble Mr.D.N.Panda, Member (Judicial)

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?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Mirzapur Electricals industries Ltd. Appellant

Vs.

CCE, Allahabad Respondent

Present for the Appellant: Shri Mayank Garg, Advocate
Present for the Respondent: Shri B.k.Singh, JCDR

Coram: Hon'ble Mr.M.Veeraiyan, Member (Technical)
Hon'ble Mr.D.N.Panda, Member (Judicial)

Date of Hearing: 6.07.2011
Date of Decision: 8-07-2011

FINAL **ORDER NO.** 601/2011-EX

PER: M.VEERAIYAN

This appeal is taken up for fresh consideration in pursuance of order dt.10.12.10 of the Hon'ble Supreme Court in Civil Appeal No.5133/ 2009.

2. Heard both sides.

3.1 When the matter was heard on 27.1.11, the following directions were given to both sides:

> *"4. Learned Advocate for the appellant submits that the law regarding eligibility of deduction of equalized freight to arrive at the assessable value is settled by the decision of the Hon'ble Supreme Court in the case of Accurate Meters reported in [2009 (235) 581] and several other decisions. He also seeks time to produce copies of impugned contract/purchase orders/invoices which are being relied upon while issuing the show cause.*
>
> *5. Learned SDR also to produce the adjudication file."*

3.2 Learned JCDR produced the adjudication file for perusal and submited copies of 4 contracts entered between the appellants and Delhi Vidyut Board and the copies of 4 contracts entered into between the appellants and U.P. Power Corporation which were relied upon in the show cause notice.

3.3 Learned Advocate produced copies of 6 sample invoices.

4. The appellants manufactured transformers and supplied the transformers on contract to U.P.Power Corporation and Delhi Vidyut Board Delhi at their different locations. As per the terms of the contract, the freight element has been agreed upon as a consolidated amount applicable for each piece supplied irrespective of location at which it was delivered. The original authority held that the actual freight has not been indicated in the invoices but only freight at flat rate has been mentioned as per the contract. He accordingly, held that freight element cannot be abated and he demanded differential duty of Rs.49,712/- and also imposed penalty of Rs.5,000/-. The

Commissioner (Appeals) concurred with the findings of the original authority.

5.1 Learned Advocate for the appellants, referring to the contract, submits that the price of different products have been specifically agreed to as per the contract and the amount of freight and transit insurance has also been agreed upon at the rate of Rs.2000/-2600/-4000/-etc. depending upon volume and weight of different model of transformers. In respect of supply made to Delhi Vidyut Board, from the factory at Mirzapur city, the question of difference in freights for same model does not arise. He submits that in respect of supply made to U.P.State Corporation, the fright actually incurred, only in three cases referred by the Commissioner(Appeals), are lower than the freight and insurance collected from U.P.Power Corporation. He also submits that over all, in respect of supply made relating to the two contracts, they have collected a sum of Rs.3,10,700/- towards freight and insurance charges from the buyers whereas they have actually paid Rs.6,17,860/- as the cost of transportation to the transporters which is nearly double the amount shown in the invoices, separately as cost of transportation. This fact has been recorded by the Commissioner (Appeals). He fairly submits that there is no evidence that this submission on factual position was made before the original authority.

5.2 Learned advocate for the appellants, relying on the decision of the Tribunal in the case of Bhopal Wires Pvt.Ltd vs. CCE, Bhopal reported in 2010 (253) ELT 681, submits that exclusion of transportation cost is permissible even when such freight charge was on equalized basis. He submits that the freight collected by them is actually lower than what is incurred by them and the same has been collected as per the terms of the contract and as separately mentioned in the invoices. He also relied on the decision of Hon'ble Supreme Court in the case of CCE, Noida vs. Accurate Meters Ltd. reported in 2009 (235) ELT 581 to contend that amount recovered by way of transportation charges and insurance cannot be included in the value of transformers supplied.

6.1 JCDR fairly submits that though the show cause notice relate to supplies made to both Delhi Vidyut Board and U.P.Power Corporation, the analysis of the fact by the authorities below relate only to supply made to U.P.Power Corporation. Whether the freight supplied in different locations in Delhi could be different [illegible] has not been considered by the authorities below.

6.2 Relying on the decision of the tribunal in the case of CCE, Chandigarh vs. Punjab Tractors Ltd. reported in 2010 (259) ELT 123, CCE, Jaipur-II vs. Shree Rajasthan Texchem Ltd. reported in 2009 (244) ELT 438 and Bhopal Wires Pvt.Ltd. vs. CCE, Bhopal reported in 2010 (253) ELT 681. Ld.JCDR submits that the appellants are eligible for deduction of freight and insurance only on actual basis. He fairly submits that the authorities below have not given any deduction towards freight and insurance. However the appellants have not produced any evidence of actual freight and insurance before the original authority. The claim by the appellants before the commissioner (Appeals) that they have incurred a some of Rs.6,17,860/- towards freight while they collected only a sum of Rs.3,10,700/- from the buyers as freight and insurance has not been cross checked for its accuracy.

6.3 Ld. JCDR suggests that the mater may be remanded for proper appreciation of facts.

7.1 We have carefully considered the submissions. Transformers as high volume and heavy products definitely involve considerable freight in transporting to the various destination. We find that freight has been agreed to between the appellant and buyers on the basis of contract. The authorities below have totally disallowed deduction claimed on account of freight and insurance. Further, there was a submission by the appellant before the Commissioner (Appeals) that the actual freight incurred was more than the overall amount from the buyers.

7.2 Further, we find that the authorities below have dealt with the facts relating to U.P.Power Corporation only and not in respect of contract with Delhi Vidyut Board. We also find that the appellants have not made the submissions before the original authority regarding excess payment to transporters when compared to what has been collected by them. The Commissioner (Appeals) while holding that in three cases the amounts collected was more than the amount of freight and insurance has only taken freight paid to the transporters without considering the amount incurred towards insurance.

7.3 In view of the above, we hold that the factual basis on which the orders have been passed by the authorities below are not clear. We deem it appropriate to accept the suggestion of the learned JCDR to remand the matter to the original authority.

8. To enable the same, order of the Commissioner (Appeals) and order of the original authority are set aide and the mater remanded to the original authority for fresh consideration after granting reasonable opportunity of hearing to the appellants and taking into account our observation as above.

9. The appeal is allowed by way of remand on the above terms.

(pronounced in the open court on 8/7/11)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(D.N.PANDA)
MEMBER (JUDICIAL)

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