

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

Appeal No. E/1816/2005 - EX[DB]

Date 24/11/2011

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

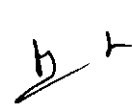
To :
C.C.E.CHANDIGARH
C.R.BUILDING SECTOR-17C,CHANDIGARH
C.C.E.CHANDIGARH

Appellant
Vs
Respondent

M/S MUKAT PIPES LTD.

I am directed to transmit herewith a certified copy of **Final order No.957/**
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

2011 EX[DB] dated 16-11-11


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S MUKAT PIPES LTD.
PATIALA ROAD ,RAJPURA,
DISTT- PATIALA, PUNJAB

2. Adv. / Consult

MR.VIKRANT KACKRIA

H. NO. 5,SACTOR-10A, CHANDIGARH

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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 (Harvana)

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


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III**

E/Appeal No.1816/2005

(Arising out of order in appeal No. 76/CE/CHD/2005 dated 28.2.2005
passed by the Commissioner of Customs & Central Excise (Appeals),
Chandigarh)

Date of Hearing: 12.10 .2011

For Approval and signature:

Hon'ble Mr Ashok Jindal, Member Judicial
Hon'ble Mr. Mathew John, Technical Member

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- | | | |
|----|--|------|
| 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 would 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
Department Authorities? | Yes |
-

CCE, Chandigarh

Appellants

Vs

M/s Mukat Pipes Ltd

Respondent

Appeared for the Appellant: Shri S.R. Meena, DR
Appeared for the Respondent: Shri Vikrant Kackria, Advocate

Coram: **Hon'ble Shri Ashok Jindal, Member (Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

FINAL ORDER No. 957/2011-EX

Per Mathew John;

The respondents are manufacturers of MS pipes falling under Chapter 73 of the Schedule to the Central Excise Tariff Act. The Respondents had entered into contract for supply of MS pipes on FOR destination basis for supply of MS pipes to Gujarat Water Supply and Sewage Board (GWSSB) at various sites as specified by the GWSSB. On examination of the records of the assessee, Revenue noticed that the respondents were not billing the goods at the price agreed to between them and GWSSB but were billing for a lower price and paying excise duty on such value and thereafter adding an amount in the invoices to make it equal to contract price. The period of dispute is 1.7.2000 to 31.3.2001.

2. The Revenue was of the view that the contract was for supply at the project sites and therefore, the place of removal of goods should be considered as project site and therefore, as per provisions of section 4 of Central Excise Act, freight upto each place of removal had to be added in the assessable value and duty was to be paid on such value. The Revenue has interpreted that the respondents were claiming ineligible deduction on account of freight, excise duty and some other element from the prices agreed to in the contract. The Revenue was also of the view that freight was charged on an equalized basis and was not on actual basis and for that reason also, the deduction claimed towards freight, cannot be allowed. Accordingly, a show cause notice was issued demanding excise duty amounting to Rs.

12,75,522/- along with interest. Further imposition of penalty under Section 11AC of the Central Excise Act, was also proposed

3. In reply to the show cause notice, the respondents said that the amount stated in the Show Cause Notice to be unexplained amount was towards gunnitting and epoxy coating of MS pipes to be done at project sites. The Adjudicating Authority relied on the decision of the Hon'ble Apex Court in the case of Escorts JCB Ltd Vs CCE reported in 2002 (146) ELT 31 (SC) and allowed their contention that factory was the place of removal in their case. However, he had confirmed demand for duty amounting to Rs. 20,687/- on account of claim made by respondent on tax to be paid to Gujarat Government but was not paid. Further penalty equal to the same amount was imposed. Aggrieved by this order, the Department filed an appeal with the Commissioner (Appeals). The Commissioner (Appeals) upheld the order of the Adjudicating Authority. Aggrieved by this order of the Commissioner (Appeals), the Revenue has filed this appeal on the following grounds:

- i) That Commissioner (Appeals) has wrongly relied upon the Case law of M/s Excorts JCB Ltd which is not applicable to the facts of this case. In the relied upon case law, Hon'ble Supreme Court has held that 'the place of removal' would be factory premises, when insurance policy is in the name of assessee and the ownership of goods is of no relevance in so far as transit insurance of goods is concerned. However, in this case, the issue is as to where the sale is taking place, when semi-finished goods are transferred to the buyer's premises and finishing is done at the buyer's premises and then, as per contract, finished goods are delivered to the buyer.

- (ii) That the contract entered into by the party with various buyers clearly stipulates that the contract prices were for delivery of ERW/EPW pipes at site, with inside coating (epoxy painting) and outside gunnitting. These processes of inside coating (epoxy painting) and outside gunnitting were carried out at the buyer's premises. As the contract is for supply of pipes after above processes, the sale or transfer of ownership can only take place when pipes are in finished stage after epoxy painting and gunnitting at the buyer's premises. Therefore sale has taken place at the premises of the buyer, where these processes were undertaken and therefore assessable value should include all the elements viz. freight, insurance, finishing charges etc. till sale at the buyer's premises. In view of this, the relied upon case law of M/s Escorts JCB Ltd reported as 2002 (146) 31 is not applicable in this case, as the sale took place at the buyer's premises.

4. It can be seen that the appeal is on the ground that the place of removal was not the factory premises but the project site where the goods were delivered to GWSSB. Revenue is relying on the fact that at the site, the respondents were doing inside coating (epoxy painting) and outside gunnitting and relying on this fact to buttress the claim that the place of sale was the project site.

5. The submission of the respondent is that the goods were sold to the buyers at their factory gate and there was an agreement with the buyers to deliver the goods at their project site and the buyers had agreed to reimburse the cost of freight and insurance. They submit that the fact that they were arranging transport and insurance and getting the amount reimbursed, cannot be a reason to consider the

project site as the place of removal. In the matter of epoxy coating and gunnitting, they submitted that these activities do not amount to manufacture and these activities were done outside the factory and therefore, cannot form part of assessable value as clarified by the Board vide Circular No. 19/09/200 CX IV dated 3.1.2001. They rely on the decision of Sidharth Pipes Ltd reported in 2000 (150) ELT 32 SC) and JG Glass reported in 1998 (97) ELT 5 (SC). They argue that these activities were done outside the factory premises and cannot form part of the assessable value and the fact that they were doing these activities, cannot make the project site the place of removal of the goods cleared by them from their factory. He also submits that the Department has not clearly explained why the decision of the Apex Court in the case of Escorts JCB Ltd will not apply to the facts of the present case.

6. We have considered the arguments of both sides. We have examined the definition of "place of removal" under section 4(3)(c) of the Central Excise Act. As per this definition,

"place of removal means,-

- (i) A factory or any other place or premises of production or manufacture of the excisable goods;
- ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory

from where such excisable goods are removed.

7. Clause (i) and (ii) of the above definition are clearly not applicable to the facts of the case. The Department is canvassing that the project site will fall within clause (iii) of the definition. The interpretation is that this clause means place of removal is the place where the excisable goods are delivered to the buyers. Such an interpretation is not reasonable because the places included in that clause are (i) a depot (ii) premises of a consignment agent or (iii) any other place of removal. Naturally, the expression used in third category has to mean a place of the same nature as a depot or premises of a consignment. Further clause (iii) refers to a place from where the excisable goods are to be sold after their clearance from the factory.

8. In the instant case, the Revenue has not made out any case that at the time of removal from the factory, the clearance is not against sale. What is to be noted is that the expression used is 'place or premises from where the excisable goods are to be sold'. This cannot be interpreted to mean a place or premises where the excisable goods are delivered to the buyers.

9. The fact that the respondent had undertaken to carry out certain processes like epoxy coating and gunnitting, not amounting to manufacture on the pipes at the project site, does not prove that sale was not made at the factory gate. Unless it is proved that ~~if~~ the risk of any damage to the pipes stored at project site till the processes were carried out, was to the respondents account, it cannot be held that the place of sale was the project site.

10. Further, the Revenue has not any argument to show how the facts of this case are different from that decided by the Apex Court in the case of Escorts JCB Vs Union of India (supra). Therefore, we do not see any merits in the appeal filed by the Revenue and the same is rejected.

(Order pronounced in the open Court).

(MATHEW JOHN)
Member (Technical)
MPS*

(ASHOK JINDAL)
Member (Judicial)