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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/600 /2005-603 /2005 - EX[DB]
E/396&947/2006-EX

Date **15/02/2012**

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

To :
M/S PREM CABLES PVT. LTD.
PIPALIYA KALAN, DISTT. PALI-MARWAR,
RAJASTHAN
306307

M/S PREM CABLES PVT. LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/140-145/ 2012 EX[DB]** dated 07-2-12 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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW 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-3
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. SHRI ABHAY P. SHAH, DIRECTOR OF M/S PREM CABLES
PIPALIYA KALAN, DISTT. PALI-MARWAR, RAJASTHAN

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 18.1.2012

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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?	NO
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

Excise Appeal Nos. 600, 601, 603 of 2005 and Excise Appeal Nos. 396 & 947 of 2006

[Arising out of the Order-in-Appeal No. 691-694(RM)CE/JPR-II/2004 dated 23.11.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

M/s Prem Cables Pvt. Ltd. — Appellants

Vs.

CCE, Jaipur-II — Respondent

AND Excise Appeal No. 602 of 2005

[Arising out of the Order-in-Appeal No. 691-694(RM)CE/JPR-II/2004 dated 23.11.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

Shri Abhay P. Shah, Director — Appellant

Vs.

CCE, Jaipur-II — Respondent

Appearance:

Appeared for Appellant : Shri K.K. Anand, Advocate
Appeared for Respondent : Shri I. Baig, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

FINAL Order No. A/140-145/2012-Ex.(BR) dated............

Per Mathew John :

The Appellants are manufacturers of AAC/ACSR conductors classifiable under Heading No. 7614 of the First Schedule to the Central Excise Tariff Act, 1985. The entire supply of the conductors impugned in the Appeals was made to various State Electricity Boards in India against open tenders. All these goods were supplied against purchase orders quoting prices on FOR destination basis. The contract shows ex-factory prices excise duty, Sales Tax, freight and insurance charges separately. The goods were transported by engaging M/s Miracle Carrier and Trading Co. for transportation of the goods from the factory gate to the place of delivery. M/s Miracle Carrier and Trading Co. was a partnership firm of the Directors of the Appellant company and their wives. The Appellants were not including the cost of transportation in the assessable value for paying excise duty. Revenue was of the view that since transportation is undertaken by related person, charges towards the transportation should be included in the assessable value and excise duty should be paid on such value. Based on such reasoning five Show Cause Notices for different periods viz. (i) April 1997 to August 2001 (ii) September 2001 to March 2002 (iii) April 2002 to March 2003 (iv) April 2003 to March 2004 (v) April 2004 to March 2005 were issued demanding duty short levied and also proposing penalty under Section 11AC of the Act. In the Show Cause

Notice for the period April 1997 to August 2001 there was a proposal to impose penalty on Shri Abhay P Shah, Director of M/s Prem Cables Pvt. Ltd. In adjudication proceedings the ~~duty~~ duties demand for all five periods were confirmed and a penalty of Rs.25,000/- was imposed on Shri Abhay P. Shah. There are six Appeals filed against the said orders five of them filed by M/s Prem Cables Pvt. Ltd. and one Appeal filed by Shri Abhay P. Shah.

2. On Appeal filed with the Commissioner (Appeals), the Appellants did not get any relief and aggrieved by the orders of the Commissioner (Appeals) the present Appeals before the Tribunal have been filed. The submission of the Appellants is that in their case factory is the place of removal and cost of transportation from the place of removal to the buyer's premises cannot form part of the assessable value. The fact that transportation was undertaken by another firm in which the Directors of the main Appellant and their relatives were partners cannot be a reason to include cost of transportation from the place of removal in the assessable value and demand excise duty thereof. The Appellants relied on a large number of decisions in the matter by the Supreme Court and the Tribunal and the main decisions relied upon are the following :-

(1) **Escorts JCB Ltd. Vs. CCE,** - 2002 (146) ELT 31 (SC).

(2) **CCE Vs. Accurate Meters Ltd.** – 2009 (235) ELT 581 (SC).

(3) **CCE, Shillong Vs. India Carbon Ltd.** – 2011 (269) ELT 6 (SC).

He submits that since the issue is already decided in favour of the Appellants all the Appeals may be allowed and duty demanded and penalties imposed may be set aside.

3. The ld. A.R. for Revenue submits that the Appellants have created a separate entity viz. Miracle Carrier and Trading Co. with a view to realise part of the sale proceeds of the goods without payment of any excise duty and since this firm is a proxy for the Appellants the money realised by M/s Miracle Carrier and Trading Co. formed part of the assessable value and the Appellants should have paid duty on such value. It is also argued that since the goods were to be delivered on FOR destination basis, the goods are sold from the premises of the electricity boards and consequently such places are the places of removal for the impugned goods and as per the provisions of Section 4 of the Central Excise Act, the assessable value is the price for delivery at the place of removal and that will include freight from factory to place of removal.

4. We have considered arguments on both the sides and the decisions given by the Apex court in the matter. In the case of **Escorts**

JCB Ltd. (supra) it has been held by Hon'ble Apex Court that the place of removal in such cases is the factory gate and not the place at ~~each~~ which goods are delivered. It has also been categorically ruled by the Apex Court that the cost of transportation from the factory gate to the premises of the buyers will not form part of the assessable value of the excisable goods. The only issue which may have to be looked into is whether the price of the goods is being collected in the guise of cost of transportation. On going through the case records, we find that no such case has been made out therefore the argument that the transporting company is a related person and consideration realised by the transporting company for transportation should from part of the assessable value has no legal support. Section 4 of the Central Excise Act refers to "related person" only in the context of a sale to a related person. The Revenue has not been able to prove that the partnership firm of M/s Miracle Trading Co. is a proxy with no separate entity. Neither ~~it~~ is any case made out that part of the price of the goods is being realised by the transporting company for the benefit of the Appellant company. Therefore in the facts of the case we do not see any merit in the orders of the lower authorities and we are in agreement with the argument of the Appellants that the proceeds realised by M/s Miracle Carrier and Trading Co. towards transportation of the goods will not form part of the assessable value of the goods cleared by Appellants. Therefore the Appeals are allowed, by setting aside the impugned order with consequential benefit.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM