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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

Date 17/02/2012

Appeal No. E/2443/2005-2444/2005 - EX[DB]

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

To :
NAVBHARAT FUSE CO.LTD.
NAVBHARAT UDYOG BHAWAN RING ROAD NO-1,TELIBANDHA RAIPUR CHATTISGARH

NAVBHARAT FUSE CO.LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/173-174 / 2012 EX[DB]** dated 15-2-12 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. RAIPUR
   CENTRAL EXCISE BUILDING,
   DHAMTARI ROAD, TIKRAPARA,
   RAIPUR 492001.
2. Adv. / Consult
   MR.L.P. ASTHANA & MS REENA KHAIR
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
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. NAVBHARAT EXPLOSIVES CO.LTD.
    NAVBHARAT UDYOG BHAWAN RING ROAD NO-1,
    TELIBANDHA RAIPUR CHATTISGARH

Assistant Registrar
(Excise Appeal Branch)

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

E/Appeal Nos.2443-2444/2005

(Arising out of order in appeal No.6&7/RPR.I/05 dated 20.1.05 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur)

Date of Hearing: 9.2.2012

For Approval and signature:

Hon'ble Mr Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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?	No
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?	No

1. M/s Nav Bharat Fuse Company — Appellants
2. M/s Nav Bharat Explosives Co. Ltd

Vs

CCE,Raipur — Respondent

Appeared for the Appellant: Smt Reena Khair, Advocate
Appeared for the Respondent: Smt. Renu, AR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

FINAL ORDER No. A/173-174/2012-EX(BR)

Per Mathew John:

Two Appeals are being decided in this proceeding. The Appeals are against the same impugned order and the issue involved is also the same. So the appeals are being decided together.

2. The Appellants are engaged in the manufacture of explosives. They sell their goods to Coal India Ltd at prices agreed between the two parties for sale at factory gate. Safety is a matter of utmost importance while transporting explosives to buyer's premises and explosives cannot be transported by ordinary means of transport. So the appellants have specially designed vehicles, licensed by the Explosives Department, for transportation of the goods and they deliver the goods at places where the buyer needs it. Depending of the place where supply is to be made as per buyer's order supplies are made either from the factory or from magazines at selected places where the Appellants store such goods. They were paying excise duty on invoices issued under Rule 11 of the CER 2002 showing the price agreed for sale and paying excise duty. However they were issuing separate commercial invoices charging for the freight of the goods from place of removal to the place of delivery and also for the return charges of the special vehicle from the place of delivery to the place of removal.

3. Revenue was of the view that the appellants should have paid excise duty on the freight charges for delivery at the place of the buyer and also for return of the vehicle and issued Show Cause Notice demanding excise duty to the tune of Rs. 23,929/- for such charges recovered by from Navbharat Fuse Co. Ltd during the period 01-02-2003 to 31-03-2003 and Rs. 1,02,513/- from Navabharat Explosives Co. Ltd for the period July 2000 to March 2003. The demands were confirmed by the adjudicating authority along with appropriate interest. Further penalties equal to the duty amounts were imposed under section 11AC of the Act. On Appeals filed with the Commissioner (Appeal) the appellants did not get any relief. Aggrieved by the order of the Commissioner (Appeal) the appellants have filed these appeals.

4. The contention of the appellants is that the price on which they have paid excise duty is the price for delivery at the time and place of removal. As per provisions of section 4(a) of Central Excise

Act, excise duty is payable on such prices only and there is no need to go to the provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000 ("the Valuations Rules" for short). If at all the Valuation Rules are relied upon Rule 5 of the Valuation Rules provides that cost of transportation from the place of removal to the place of delivery is not to be subjected to duty. The Appellants also rely on the following decisions in this matter,-

(a) Escorts JCB Ltd Vs. CCE-2002 (146) ELT 171 SC

(b) Haldia Petrochemicals Ltd Vs. CCE- 2009 (233) ELT 344 (Tri).

5. The Counsel also submitted that the department seems to rely on Board's Circular No. 634/34/2002-Cx dated 01-07-2002 to argue that the cost of return freight of the containers has to be included in assessable value. But the Board has accepted the above cited decisions and withdrawn the circular dated 01-07-2002 by Circular No. 923/13/2010-CX dated 19-05-2010.

6. The Ld. AR for Revenue argues that deduction towards freight from consideration received from the buyer can be allowed only if such charge is separately shown in the invoice. In this case the Appellants did not show such charges in the invoice at all but collected such charges by issuing separate commercial invoices. So this was a consideration received from the buyer but concealed from the department and hence the same should be included in assessable value. In this case the place of sale is the place of delivery to the customer and therefore the place of removal is the place of delivery to buyer and hence cost of transportation up to the place of delivery is to be included in assessable value as per provisions of section 4 of the Central Excise Act, 1944.

7. We have considered arguments on both sides.

8. In this case the Appellants had entered into contracts between the appellants and Coal India Ltd., a public sector

undertaking, showing the price of the goods and cost of transportation separately. The amounts are also billed separately. The only issue is that in the invoice issued under Rule 11 of CER 2002 the amount recovered towards freight was not shown. Revenue has not made out any case that the freight charged is not known separately or is much more than the expense incurred by the Appellants for transportation and consequently a part of the value of goods is charged as freight.

9. It is already decided by the Apex Court in the case of Escorts JCB (supra) that in this type of situation the place of removal is the factory gate or depot and not the place of delivery to the buyer. The issue that cost of transportation from place of removal to the place of delivery will not form part of assessable value is also decided in the said case and many other decisions. It is also clearly decided by the Apex Court and accepted by the CBEC vide circular dated 19-05-2010, that charges for return freight for the specialized vehicle will not form part of assessable value. Revenue's case is only to the extent that the freight amount is not shown in the excise invoice but is shown in a separate commercial invoice. We do not think that this can change the legal position that charges recovered towards freight, including charges for return of the special vehicles or containers from the place of delivery to the place of removal, will not form part of assessable value.

10. Therefore we allow the appeals filed by the two appellants, by setting aside the orders of the lower authorities.

(Pronounced in Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

MPS*