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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/470,660-662 /2006 - EX[DB]   Date **20/01/2012**

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

To :
LAXMI UDHYOG, JODHPUR
22-23 INDUSTRIAL AREA JODHPUR

LAXMI UDHYOG, JODHPUR   Appellant
Vs
Respondent
C.C.E. JAIPUR II

I am directed to transmit herewith a certified copy of **Final order No. A/38-41/ 2012 EX|DB|** dated 19-1-12 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.OM P.AGARWAL & CO.
56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)

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

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 : 23.11.2011
Date of Pronouncement : 19-01-12

Excise Appeal No. 470 of 2006

[Arising out of Order-in-Appeal No. 73/HKS/CE/JPR-II/06 dated 23.1.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

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

M/s Laxmi Udyog — Appellant

Vs.

CCE, Jaipur — Respondent

Excise Appeal No. 660 to 662 of 2006

(Arising out of common Order-in-Appeal No. 562-564/HKS/CE/JPR-II/2005 dated 20.10.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Laxmi Udyog — Appellant

Vs.

CCE, Jaipur — Respondent

Appearance:

Appeared for Appellant : Shri O.P. Agrawal, C.A.
Appeared for Respondent : Shri N. Pathak, DR

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

FINAL Order No......A/38-41/2012-Ex(BR).dated............

Per **Mathew John**:

There are four appeals of the same assessee on the same issue being decided in this proceeding. The appellants are engaged in the manufacture of articles of iron and steel, parts of power driven pumps for liquids and other similar items. On scrutiny of the records, Revenue noticed that they were collecting an amount of 1% of the value of the goods on equalised basis from all the buyers. They were showing it as "forwarding charges" and they were not paying excise duty on such charges. Revenue was of the view that such forwarding charges formed part of the assessable value for paying excise duty. Based on such reasoning demands were issued for the period (i) 1.2.2003 to 30.6.2003 (ii) 1.7.2003 to 30.6.2003, (iii) 1.7.2003 to 31.1.2004 and (iv) 1.2.2004 to 31.10.2004 demanding excise duty on such amounts. The duty demanded was confirmed by the adjudicating authority. The appellant filed appeal with the Commissioner (Appeals). The Commissioner

(Appeals) gave benefit of cum-duty prices on such value realised and reduced the duty demanded in these four appeals from 88,666/- to Rs.76,435/-. Aggrieved by the order of the Commissioner (Appeals), the Appellants have filed these Appeals.

2. The Counsel for the Appellants submits that their sales were at factory gate. However, they were making arrangements for transportation of goods to the premises of the buyers and recovering cost of such transportation from the buyers. He submits that the transportation takes place in two stages. First stage is transportation of the goods from the factory to the transporter's godown and the second stage is transportation from the transporter's godown to the buyer's premises. He submits that the dispute is about the cost incurred for transportation of the goods from their factory to the transporter's godown. For a part of the period involved in this dispute, such transportation was made using their own vehicle. For another part of the period transportation was done engaging another transporter. During the transportation from the factory to the transporter's godown goods meant for different destinations are transferred in one truck. However, onward transportation is done by the transporting agency using different trucks to different destinations where different buyers are situated. Their argument is that though the charges are called as

"forwarding charges" it is in fact transportation cost from factory to the transporter's godown and such transportation cost will not form part of the assessable value. He relies on the following decisions to support his argument :-

(1) **PSL Ltd. & Anr. Vs. CCE** – 2005 (70) RLT 389.

(2) **Union of India Vs. Hindalco Industries** – 2003 (56) RLT 744.

(3) **LML Ltd. Vs. CCE, Kanpur** – 2007 (211) ELT 440

3. He also relies on the clarification issued by CBEC vide letter F.No. 354/81/2000-TRU, dated 30th June 2002 which clarified on the issue of freight charges as under :-

> "In such cases the cost of transportation can be calculated through costing method following the accepted principles of costing. A cost certificate/Chartered Accountant/Company Secretary Accountant/Company Secretary, may be accepted. The cost of transportation should, however, be separately shown in the invoice."

4. The ld. Authorised Representative for Revenue points out the legal provision applicable in Rule 5 of the Central Excise Valuation Rules. The provisions of this rule reads as under prior to 1.3.2003:

> "5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstance in which the excisable goods are sold for delivery at a place other

than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the **actual cost of transportation** from the place of removal up to the place of delivery of such excisable goods provided the cost of transportation is charged to the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods."

5. He submits that since the appellants have not been indicating the actual freight the said amounts have to be included as assessable value and duty paid thereon. He relies on the following decisions of the Tribunal:-

(1) **Chandras' Chemical Enterprises Pvt. Ltd. Vs. CCE** – 2007 (212) ELT 519 (Tri.-Kolkata)

(2) **Standard Chrome Ltd. Vs. CCE, Raipur** – 2005 (179) ELT 366 (Tri.-Del.)

6. We have considered arguments on both sides. Rule 5 of the Valuation Rules itself was changed from 1.3.2003. Amended Rule reads as under :-

"5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods.

Explanation 1. - "Cost of transportation" includes -

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."

Most of the period relevant for deciding the case falls after 1.3.2003, as per this rule cost of transportation from place of removal to place of delivery does not form part of value. If such charges are recovered on averaged basis cost as arrived at by accepted principles of accounting is allowed to be deducted. Even for previous periods CBEC has clarified vide Circular dated 30.6.2002 that such charges on averaged basis could be excluded of ascertained properly.

7. The Appellant has submitted photocopies of bills of carriers, who had transported the goods from factory to the godown of the transporters agency to do the final leg of the transportation to the buyer's premises. This is seen recorded in para 4(1) of the adjudication order dated 20.10.2005. This submission is rejected on the ground that invoice shows that the goods were delivered at the factory gate but still the appellants collected forwarding charges. There is no finding that the charges recovered as forwarding charges were for in excess of what was recovered. The decisions quoted by Revenue were given for the

reason that the assessee did not produce evidence to show that "forwarding charges" were in fact transportation charges. That is not the case in these appeals.

8. So we do not see any merit in the argument of revenue suggesting that the impugned charges should form part of value and we see merit in the arguments of the appellants. So the appeal is allowed with consequential benefit, if any.

(Pronounced in Court on 19/01/12)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM