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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/191 /2005 - EX[DB]   Date **17/04/2012**

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

To :
M/S JINDAL PIPES LTD
JINDAL NAGAR, GHAZIABAD (UP)

M/S JINDAL PIPES LTD Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/441 2012 EX|DB|** dated 04-4-12 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD

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 Registra
(Excise Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT No. I

Date of Hearing / Decision : 04.04.2012.

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, 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?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No.191 of 2005

[Arising out of Order-In-Appeal No.260/CE/APPL/MRT/2004, dated 28.10.04 issued by CCE, Meerut-II)

M/s Jindal Pipes Ltd. — Appellants
Versus
CCE, Meerut-II — Respondent

Coram: Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL **ORAL ORDER No.** A/441/2012-EX(BR)

Present Shri Rajesh Chhibber, Advocate for the appellants.

Present Shri S.R.Meena, DR for the respondent.

Per : Rakesh Kumar

The appellants are manufacturers of MS Pipes and Tubes chargeable to central excise duty. They have sales at the factory gate as well as at depots. The period of dispute in this case is from 1994-95 to March, 2001. The assessments for this period were provisional and the same were finalized by the Assistant

Commissioner vide order dtd. 14.06.04. The dispute in this case is only about deduction of freight expenses from factory gate to depot. In the finalisation order, the Assistant Commissioner allowed the deductions of freight for the period upto 27.09.96 but disallowed the deductions for the period from 28.09.96 to 30.06.2000. As regards the period from 01.07.2000 to March, 2001, while holding the right of the appellants to abatement of freight from factory gate to depot, he disallowed the deduction on the ground that the appellants have not produced sales invoices to show that the freight was indicated on the invoices separately in relation to goods sold during this period. Against this order of Assistant Commissioner, appellants filed the appeal before the Commissioner(Appeals) who vide order dtd. 28.10.04 inter-alia observed that :-

> *"(II) For the period July 2000 to March, 2001, the new Section 4 of the Central Excise Act, introducing the transaction value was in existence. Since their's is a stock transfer to depots as in apparent from the order-in-original and one which is not disputed by the appellants, in terms of Section 4(1)(b) of Central Excise Act, 1944, they are to be guided by Rule 7 of the Central Excise Valuation Rules, 2000. According to Rule 7, the value shall be the normal transaction value of such goods sold from such other place, i.e., depots in this case. This Rule does not allow any abatement on account of freight. Hence the Assistant Commissioner has rightly disallowed this deduction."*

2. Against this order of the Commissioner(Appeals), the present appeal has been filed.

3. Heard both sides.

4. Shri Rajesh Chhibber, advocate, the ld. Counsel for the appellants, pleaded that Assistant Commissioner while holding that deduction of freight expenses from factory to depot is admissible for July, 2000 to March, 2001 period provided such expenses have been shown separately in the sales invoices, has disallowed the deduction of freight on the ground that the appellant have not produced sales invoices so as to show that the freight was indicated separately on invoices in respect of sale of the goods through depots during July, 2000 to March, 2001 period, that while the appellants have filed this appeal against Assistant Commissioner's order disallowing the deduction of freight expenses, no appeal or cross objections has been filed by the Department against the Assistant Commissioner's findings that for July, 2000 to March, 2001, [illegible] deduction of freight expenses from factory to Depot was admissible provided the freight is separately shown in the invoices, that the Commissioner(Appeals), therefore, could not dismiss the appeal holding that in terms of Section 4(1)(b) of Central Excise Act read with Rule 7 of Central Excise Valuation Rules, 2000, freight expenses from factory to depot would be includible in the assessable value, that the lower Appellate Authority has travelled beyond the scope of the appeal, that the Commissioner(Appeals) has not gone into the question of the invoices showing the freight element separately, that the appellants are in a position to give details of the expenses towards freight, that the impugned order

has not considered the appellants' submission that the amount paid during pendency of provisional assessment must be adjusted against the amount held as payable, and that the impugned order is liable to be set aside, as it has been passed on the basis of an issue which was not then before the Appellate Authority.

5. Shri S.R.Meena, ld. DR canvassed in favour of the impugned order and submitted that Commissioner(Appeals) has rightly dismissed the appeal holding that during July, 2000 to March, 2001 period, in terms of Rule 7 of Central Excise Valuation Rules, 2000, the value for the purpose of excise duty of the goods sold from depot would be the value of the goods sold from the depot at the time of removal from the factory and, hence, the freight expenses from factory to depots would be includable in the assessable value.

6. We have carefully considered the rival contentions. On perusal of Order-in-Original as well as the impugned order of Commissioner(Appeals), it transpired that the adjudicating authority concluded that for the period from 01.07.2000 to March, 2001, the appellant/assessee has a right to seek abatement of freight charges from its manufacturing unit to the depot, but he disallowed the claim of abatement on the ground that the appellants have not been able to substantiate their claim for abatement by not producing relevant invoices and documents. The appellate authority instead of deciding the plea of the appellants that they had produced relevant evidence before adjudicating authority, has gone on a tangent and interpreted

Section 4(1)(b) of the Central Excise Act, 1944 in conjunction with Rule 7 of Central Excise Valuation Rules and dismissed the appeal holding that no abatement for freight charges was permissible in law relevant at that time. It is not disputed that the legal issue whether or not the appellants were entitled to abatement of freight charges from the factory premises to the depot, was not an issue raised in the appeal and the respondent have not filed cross objections raising the issue. Therefore, aforesaid finding of the Commissioner(Appeals) which was beyond the scope of appeal, cannot be sustained. But the fact remains that if the law does not permit abatement, the assessee cannot be allowed to take advantage of any interpretation in the order of the adjudicating authority. Therefore, confronted with this peculiar situation, we are left with no alternative but to partially accept the appeal and remand the matter back to the adjudicating authority on the question of abatement of freight expenses from factory to depots with the direction that he shall decide the matter de-novo and while deciding the matter, he shall also consider the legal issue pertaining to entitlement of appellants to seek abatement and he shall also permit the appellants to adduce the evidence to substantiate their claim of the abatement. It is further directed that while adjudicating the matter, the adjudicating authority shall also consider the request of the appellants made to the Commissioner (Appeals) vide his letter dtd. 16.11.04 seeking adjustment of payments made by the appellants during the course of pendency of provisional assessment. Appeal is disposed of in above terms.

(Pronounced in the open court)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

RK-I