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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 **18/04/2012**

Appeal No. E/980 /2005 - EX[DB]

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

To :
M/S INSULATORS AND ELECTRICALS COMPANY
PLOT NO-1-8,NEW INDUSTRIAL AREA MANDI-DEEP
DISTT RAISEN M.P.

M/S INSULATORS AND ELECTRICALS COMPANY Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/444/ **2012** **EX[DB]** dated 16.4.2012 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult SH. A.H.ANSARI ADV.
C-134, KOH-E-FIZA, B.D.A
COLONY BHOPAL (M.P).

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 REGISTAR
(EXCISE APPEAL BRANCH)

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

COURT-I

Date of hearing/decision: 16.04.2012

Central Excise Appeal No. 980 of 2005

[Arising out of the order in appeal No.802-CE/BPL/APPL-II/2004/8581 dt. 16.12.2004 passed by Commissioner (Appeals-II), Customs & Central Excise, Bhopal].

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

M/s Insulators and Electricals Company ... Appellants

Vs.

CCE, Bhopal ... Respondent

Present Shri A.H. Ansari, Advocate for the appellants.

Present Shri N. Pathak, A.R. for the respondent.

FINAL ORDER No. A/444/2012-EX(BR)

Per Justice Ajit Bharihoke (Oral)

This appeal is directed against the impugned order of Commissioner (Appeals), Customs and Central Excise, Bhopal whereby he confirmed the order-in-original of the adjudicating authority confirming the central excise duty demand amounting to Rs. 6,32,083/- with interest and also imposed penalty of Rs. 50,000/- under Rule 25 of Central Excise Rules, 2002.

2. The appellant is manufacturer of electrical insulator. During the period April 2002 to December 2003, the appellant had supplied electrical insulator to their customers and charged them transportation charges shown in the invoices in excess of the actual transportation charges paid to the transportation.

3. The Department was of the view that since the appellant has charged excess transportation charges from his customer, in view of Rule 5 of Valuation Rules, 2000, appellant is liable to pay excise duty on excess transportation charges. Accordingly, four show cause notices were issued to the appellants which were contested. The adjudicating authority after affording an opportunity of being heard to the appellants took the view that as per Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 the appellants were liable to pay excise duty on the difference between the amount charged and the actual transportation charges incurred and confirmed the duty demand to the extent of Rs.6,32,023/- in respect of the period of all the four show cause notices.

3. Feeling aggrieved by the order in original, the appellant preferred an appeal but the appellate authority vide impugned orders dismissed the appeal and upheld the view of the adjudicating authority.

4. Ld. Counsel for the appellants submits that it is not disputed that the appellants had sold the goods in question at the factory gate. He was asked by the customers to transport the goods purchased by them to their premises and if he has made profit of transportation charges he cannot be asked to pay the excise duty on the aforesaid profit. Ld. Counsel submits that since this is a case of factory sale for the purpose of excise duty the goods are to be valued in accordance with Section 4(1)(a) of the Central Excise Act as per the rate quoted in the invoices and the respondent cannot demand excise duty on the difference of freight charges paid to the transporter and charges from the customers. It is submitted that the adjudicating authority as well as the appellate authority have misread rule 5 of the Valuation Rules, 2000 as such the demand based upon value done in accordance with Rule 5 is not sustainable. In support of this contention the appellant has relied upon judgement of Supreme Court in **Baroda Electric Meters Ltd., vs. CCE** reported in 1997 (94) ELT 13 (SC).

5. Ld. AR on the contrary has argued in support of the impugned order. He has also submitted that Rule 5 of Valuation Rules, 2000 is clear which provides that in the cases in which the goods are transported to the place of delivery by the assessee, the transaction value for the purpose of excise duty shall be the transaction value mentioned in the invoice excluding the transport charges. Ld. AR has submitted that explanation one to Rule 5

clarifies that transportation cost referred to in rule 5 is the actual transportation cost and not the inflated transportation cost. As such, the difference between the transportation cost charge from the customer and the actual transportation cost is subject to the excise duty. Thus, it is concluded that the impugned order has rightly confirmed the demand.

6. In order to appreciate the contention of rival parties, it is necessary to have a look at Section 4(1)(a) of the Central Excise Act, 1944 as also Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 which are reproduced thus:-

> "Section 4(1)(a) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall-
>
> (a) case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
>
> [**RULE 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 upto 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.]

7. On bare reading of Section 4(1)(a) it is clear the cases where the goods are sold by the assessee for delivery at the time of place of removal and the assessee and the buyer are not related then the price is the sole consideration for the sale and such value shall be the transaction value for the purpose of excise duty. In the instant case also, there is nothing on record to suggest that the appellant or his customer or anyone of them are related parties. It is undisputed that the goods in question was sold at the factory gate, therefore, the factory gate itself is the place of removal by the customer. As such, for the purpose of the excise duty the transaction value is the price of the goods mentioned in the invoice excluding the transport charges which admittedly were separately mentioned. This conclusion of ours does not come with clash with Rule 5 of the Valuation Rules for the reason that Rule 5 deals with those cases in which the invoice give the integrated value of the cost of goods and the transportation charges from the place of removal to the place of delivery. Thus, in our considered view the transaction value of goods supplied in this case is to be calculated on the basis of Rule 4(1)(a) i.e. the sale price of goods charged at the factory gate. Admittedly, on that price the excise duty have been paid. Merely because the appellant has made profit on transportation from the place of removal to the place of delivery, it cannot be said that the aforesaid profit has any co-relation with the goods cleared to factory gate as such he cannot be asked to pay excise duty on the freight. In our aforesaid view we are supported by the judgement of the Supreme Court in Baroda Electric Meters Ltd., vs. CCE (supra) where it was held that the "equalized freight charged from everyone freight actually paid less than the amount collected by way of equalized

freight, differential amount not includible in the assessable value since the duty of excise is on manufacture and not on profit made by a dealer on transportation".

8. The result of aforesaid discussion is that the order in original which has been confirmed by the impugned order cannot be sustained. The appeal is accordingly accepted and order in original as well as impugned order is set aside. Appeal is disposed of accordingly.

(Justice Ajit Bharihoke)

(Rakesh Kumar)
Member (Technical)

Pant