

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/581 /2005,656 /2005 - EX[DB]

Date 21/03/2012

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

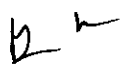
To :
M/S TRIVENI GLASS LTD
IRADATGANJ, ALLAHABAD
M/S TRIVENI GLASS LTD

Appellant
Vs
Respondent

C.C.E ALLAHABAD

I am directed to transmit herewith a certified copy of **Final order No.328-329/**
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

2012 EX[DB] dated 27-2-12


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.V.LAKSHMI KUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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 AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI**

COURT NO. III

Excise Appeal Nos.581 of 2005 & 656 of 2005

[Arising out of Order-In-Appeal No.654/CE/Apl/Alld/2004, dated 30.11.2004 issued by CCE, Allahabad]

Date of Hearing/decision : 27.02.2012

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Judicial Member

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?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Triveni Glass Ltd.

Appellants

Vs.

CCE, Allahabad

Respondent

Vice-versa

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

Appearance:

Shri B.L.Narsimhan, Adv. & Shri Shankey Agrawal, Adv. for the Appellants

Shri N.Pathak, DR for the Respondent

FINAL ORDER NO. 328-329/2012 ^{EX(BR)} **DATED**

Per Ms. Archana Wadhwa:

Both the appeals, ^{one} filed by the appellants and other by the Revenue are being disposed of by a common order, as they arise of the same impugned order of the Commissioner(Appeals). We have heard Shri Narsimhan, Id. advocate appearing for the appellants and Shri Pathak, Id. DR appearing for the Revenue.

2. As per the facts on record, appellants are engaged in the manufacture of glass sheets classifiable under Heading 70.01 and 70.02 of the Schedule to the Central Excise Tariff Act, 1985. They entered into a contract with various government departments under the Directorate General of Supplies & Disposal (DGS&D) at a contract rate for ~~FOR~~ ^{at factory gate} delivery of the goods. It is seen that in addition to the contracted value, the appellants were also charging sound delivery charges from their clients which varied from 30% to 40% of the total value of the goods. According to the appellants, the sound delivery charges consisted of freight, insurance/transit risk and open delivery expenses. As per the terms of the contract, customers were free to transport the goods themselves if it is more economical to them. It was also a part of the contract that opting for sound delivery charges is solely the discretion of the intenders.

3. Revenue entertaining ^{ing} ~~the~~ ^a view that such sound delivery charges are required to be included in the assessable value of the appellants' final products. Accordingly, proceedings were initiated against them by way of issuance of a show cause notice (SCN) dtd. 03.10.01 for confirmation of demand in respect of goods cleared during the period September, 1996 to June 2001. The said SCN ~~was~~ culminated into confirmation of demand of duty of Rs.15,55,649/- along with confirmation of interest and imposition of penalties. The said confirmation was made by the adjudicating authority by relying upon the Tribunal's decisions in the case of Escort (JCB) Ltd. - Final Order No.1222/99-A, dtd. 24.08.99 as also on the Tribunal's decision in the case of Prabhat Zarda Factory Ltd. reported in 2000(119)ELT191.

4. The said order of the original adjudicating authority was appealed against by the appellants before ~~the~~ Commissioner (Appeals). It was brought to the notice of the Commissioner (Appeals) that the Tribunal's decisions relied upon by the lower authority stands reversed by the Hon'ble Supreme Court as reported in 2002(146)ELT31(SC) in the case of Escorts (JCB) Ltd. and in the case of Prabhat Zarda Factory Ltd. reported in 2002(146)ELT497(SC). The appellate authority took note of the above decisions but by relying upon the subsequent decisions of the Hon'ble Supreme Court in the case of Surya Roshini Ltd. reported in 2000(122)ELT3(SC) and in the case of Vikram Detergent Ltd. reported in 2001(127)ELT641(SC) held that Central Excise duty is not chargeable on the amount of freight and insurance charges but the same is chargeable on the amount of transit breaking loss/damage charges collected by the appellants during September, 1996 to June, 2001. He also rejected the appellants' plea on the issue of time bars, hence the present appeal⁽⁵⁾ Ld. Advocate appearing for the appellants fairly agrees that an identical issue was considered by the Tribunal in the case of Gujarat Borosil Ltd. reported in 2007(217)ELT367(Tri.) and by relying upon the Hon'ble Supreme Court's decision in the case of Surya Roshini Ltd., the decision was held against the appellants. However, Id. Advocate submits that the said decision was arrived at on the ground that the conditions of the agreement as regards option to avail the benefit of transit^{charges} were not clear. He submits that subsequently the said decision of the Tribunal was considered by the Ahmedabad Bench in the case of Gujarat Borosil Ltd. reported in 2010(253)ELT610(Tri.-Ahmd.),[↓] it was held that charges for transit

insurance were not includable in the assessable value. He submits that the appeal filed by the Revenue against the said decision of the Tribunal in the case of Gujarat Borosil Ltd. stands rejected by the Hon'ble Supreme Court vide their order dtd. 19.07.10. As such he submits that the issue stands decided right upto Hon'ble Supreme Court and should be followed. He also clarifies that Hon'ble Supreme Court's decision in the case of Surya Roshini Ltd. relied upon by the Commissioner(Appeals) was also considered by the Tribunal in the subsequent case of Gujarat Borosil Ltd. which stands confirmed by the Hon'ble Supreme Court.

6. Apart from above, it is the contention of the Id. Advocate that such payment of sound delivery charges were optional as is clear from the terms of the agreement. If that be so, goods were available at factory gate and their customers were free to pick up the goods from factory and undertake the transportation of the same. We have also examined the invoices issued in some of the cases, where no sound delivery charges stand raised and received by the appellants. As such the contract price being available at the factory gate and the sound delivery charges being optional in nature, we find no reasons to add the same in the assessable value of the goods.

7. At this stage, we may refer to the Tribunal's decision in the case of Triveni Glass Ltd. reported in 2004(178)ELT268(Tri.-Del.) wherein after taking note of the facts, it was observed that as the assessee has undertaken transport and insurance of the goods after their sale from the factory or depot, such charges cannot be included in the assessable value of the goods. We also find that the transit

breakage is covered under the sound delivery charges and the same were in nature of insurance to breakage of the goods.

8. As we have already held that sound delivery charges recovered by the appellants were not to be added to the assessable value, the bifurcation of the same into freight, insurance and transit breakage, by the Commissioner(Appeals) was not justified. We accordingly, set aside the impugned order and allow the appeal filed by the assessee. The Revenue's appeal against that portion of the impugned order of Commissioner(Appeals) expending the benefit in respect of freight and insurance is required to be rejected in the light of the findings arrived at by us in the preceding paragraphs. Both the appeals are disposed of in above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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