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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/990/2005-EX[DB]

Dated: **29/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E Bhopal
Hoshangabad Road, 48, Administrative
Area, Area Hills, Bhopal (M.P.) 462011

C.C.E Bhopal (Appellant)

VS

TESLA TRANSFORMERS LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/982/2012-EX[DB]** dated **27/08/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
TESLA TRANSFORMERS LTD.
30-B,Govindpura Industrial Area Bhopal
M.P.

2. **Advocate(s) / Consultant(s):** SH. L.P. ASTHANA, ADV., R-163, IIND FLOOR, G.K. PART-I, N. DELHI-48

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. Gaurd 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.
Principal Bench, New Delhi

COURT NO. I
DATE OF HEARING/DECISION : 27/08/2012

Excise Appeal No. 990 of 2005

[Arising out of the Order-in-Appeal No. 696-CE/BPL/2004 dated 15/10/2004 passed by The Commissioner (Appeals – II), Customs & Central Excise, Bhopal.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities?	:

CCE, Bhopal — Appellant

Versus

M/s Tesla Transformers Ltd. — Respondent

Appearance

Shri I. Baig, Authorized Representative (DR) – for the appellant.

Shri L.P. Asthana, Advocate - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 982/2012-Ex(B) Dated : ___________

Per. Rakesh Kumar :-

The respondent manufactured transformer chargeable to Central Excise duty., Beside this they also carried out repairs of the transformers. The appellant had supplied transformers to the MP State Electricity Board against a contract during the period from September 2003 to December 2003 at a particular price and the duty was paid accordingly. The respondent subsequently filed a refund claim claiming that the price during the period of dispute had been revised downwards by the MP State Electricity Board. The Jurisdictional Assistant Commissioner vide order-in-original dated 7/5/2004 rejected the refund claim on the ground that there was no provisional assessment during the period of dispute and, therefore, the assessment cannot be revised just because the prices were revised downward from back date. On appeal being filed to CCE (Appeals), this order of the Assistant Commissioner was set aside vide order-in-appeal dated 15/10/04. Against this order of the Commissioner (Appeals), this appeal has been filed by the Revenue.

2. Shri I. Baig, the learned Departmental Representative, pleaded that during the period of dispute there was no provisional assessment, though the supplies to Electricity Board has been made against the contract with price variation clause, that the Hon'ble Punjab & Haryana High Court in the case of **Mauria Udyog Ltd. vs. CCE** reported in **2007 (207) E.L.T. 31 (P&H)** has held that when clearances of the goods were not

based on provisional basis, the reduction of price at a later date could not be made foundation for seeking refund under Section 11B, that SLP filed by M/s Mauria Udyog Ltd. vs. Commissioner against this judgment of the Punjab & Haryana High Court was dismissed by the Apex Court vide judgment reported in **2008 (221) E.L.T. A120 (S.C.)** and that in view of this, the impugned order is not correct.

3. Shri L.P. Asthana, Advocate, the learned Counsel for the respondent, pleaded that the price had been revised only from 20th October 2003, that bulk of the clearances had been made after this date, that since the respondent were not aware of the denying revision of price, they issued invoices at the higher price and paid duty accordingly, though the payment was made to them by MP Electricity Board at the reduced price, that in view of this the judgment of Hon'ble Punjab & Haryana High Court in the case of **Mauria Udyog Ltd. vs. CCE** (supra) is not applicable to the facts of this case, that when the appellant have paid duty at a price which is higher than the actual price of the goods at the time of clearance, the refund would be admissible to them and, as such, there is no infirmity in the impugned order.

4. We have considered the rival submissions.

5. In this case there is no dispute about the fact that though the supplies to MP State Electricity Board had been made during the period of dispute against a contract with price variation clause, there was no provisional assessment. It is settled law that

when there is no provisional assessment and the duty is paid on the goods in terms of the price quoted in the invoices at the time of clearance from factory, subsequent reduction of price cannot be the basis for claim under refund of duty. In this case other than a letter issued by an official of MP State Electricity Board, no evidence has been produced by the respondent in support of their claim that the price had been revised downward before the clearances of the goods, in question. In view of this, the impugned order is not correct. The same is set aside. The Revenue's appeal is allowed and the order passed by the original Adjudicating Authority is restored.

(Dictated and pronounced in the open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK