**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH,COURT NO.I**

**Appeal No.E/3339/2010-Ex [DB]**

**(Arising out of Order-in-Appeal No.228/RPR-I/2010 dated 13.08.2010 passed by the Commissioner (Appeals) Central Excise Raipur-I)**

**M/s Balajee Steel Industries …Appellant**

**Vs**

**CCE Raipur …Respondent**

**Appearance:**
**Shri Manish Saharan, Advocate for the Appellant**
**Shri G.R. Singh, DR for the Respondent**

**COARM**
**Hon'ble Mr Justice (Dr) Satish Chandra, President**
**Hon'ble Mr Ashok K. Arya, Member (Technical)**

**Date of hearing: 15.03.2017**
**Date of Pronouncement:29.03.2017**

**FINAL ORDER NO.52614/2017**

**Per Ashok K.Arya:**

M/s Balajee Steel Industries is in Appeal against Order-in-Appeal No. 228/2010 dated 13.08.2010 whereunder Order-in-Original dated 18.01.2010 passed by Assistant Commissioner has been sustained. The Order-In-Original confirmed the demand of duty of Rs.2,68,964/- along with interest and equivalent penalty against the appellant assessee.

**2.** The brief facts are that:

(i) The assessee appellant Balajee Steel Industries collected additional amount over and above the sale value of the goods as 'freight' for the period of 2004-05 to 2006-07. The department's stand is that this amount has been collected over and above the assessable value in the guise of 'freight'; therefore, in terms of Section 4 of Central Excise Act, 1994, the duty of excise is chargeable on said amount.

(ii) Based on above facts, the department issued Show Cause Notice dated 9.3.2009 demanding total central excise duty of Rs.2,68,964.00, which was confirmed along with interest and equivalent penalty by the lower authorities. Hence this appeal before the Tribunal.

**3.** We have heard both the sides i.e. learned Counsels Sh Manish Saharan for the appellant and Shri G.R. Singh for the Revenue.

**4.** After careful consideration of the facts and the submissions of both the sides, it appears that the subject amount collected over and above the assessable value of the excisable goods is not part of the transaction value. When the goods had been removed from the factory gate on payment of central excise duty, this 'excess freight' collected from the customers cannot become the part of the assessable value of the excisable goods for the purpose of charging duty of central excise.

**4.1** In this regard, CESTAT in the case of *ICOMM TELE LTD Vs Commissioner of C. EX. Hyderabad* 2010(251) E.L.T. 105 (Tri.Bang.) has observed as follows:

> **5.** On a very careful consideration of the issue, it is seen that the duty has been demanded on the excess freight collected by the appellants. When the freight collected is in excess of the actual, the amount represented a profit made on the freight. It cannot form part of the assessable value of the goods. The issue is squarely covered by the Hon'ble Supreme Court's decision in *Baroda Meters* case [1997(94) ELT 13(SC)]. Moreover, the case laws relied on by the appellants as indicated supra are also squarely applicable. In view of this, there is no merit in the impugned order and the duty on excess freight is not demandable. Hence, interest and penalty cannot be levied. Therefore, we allow the appeal with consequential relief if any".

**4.2** The Hon'ble Supreme Court in the case of *Baroda Electric Meters Ltd Vs Collector of Central Excise, 1997(94) E.L.T. 13 (S.C.),* which has been quoted by the CESTAT in the above decision (supra) has held that duty of excise is a tax on the manufacture and not a tax on the profit made on transportation. Consequently, the Revenue cannot charge duty of Central Excise on the excess profit, though collected as a freight by the assessee appellant.

**5.** In the light of the above discussions, the impugning order is set-aside and the appeal is allowed with consequential relief to the appellant.

(Pronounced in the open court on 29.03.2017)

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| (Justice (Dr) Satish Chandra)<br>President | (Ashok Kr Arya)<br>Member(Tech) |

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