**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Excise Appeal No. 1102 of 2010**

(Arising out of Order-in-Appeal No. 04/RPT-II/2010 dated 19.01.2010 passed by the Commissioner of Central Excise (Appeals-ii), Raipur)

DATE OF HEARING : 20.04.2017
DATE OF DECISION : 20.04.2017

**M/s Corefab Projects Pvt. Ltd. …. Appellants**
(Rep by Sh. Kumar Vikram, Adv.)

VERSUS

**CCE, Raipur …. Respondent**
(Rep. by Sh. Dharam Singh, DR)

**CORAM** : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
**HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 52991/2017**

**PER JUSTICE (Dr.) SATISH CHANDRA :**

The present appeal is filed against the Order-in-Appeal No. 04/RPT-II/2010 dated 19.01.2010 passed by the Commissioner of Central Excise (Appeals-ii), Raipur. The period in dispute is 2006-07.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the transportation of the goods. They collected the amount in excess of the actual paid for the transportation. The Department was of the view that the excess of the amount

collected pertaining to the transportation of such finished goods will have to be added into the value of the finished goods. So, by issuing the show cause notice a demand of Rs. 84,580/- was raised. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Kumar Vikram, learned counsel for the assessee-Appellants and Shri Dharam Singh, learned DR for the Department.

4. After hearing both sides and on perusal of record, it appears that an identical issue has come up before the Hon'ble Supreme Court in the case of **Baroda Electric Meters Ltd. vs Collector of Central Excise,** 1997 (94) ELT 13 (SC), wherein it was observed that :

> **"**The Tribunal accepted the position that equalised freight was charged by the appellant from everyone, but proceeded to say that even though freight cannot be a part of the assessable value that wherever freight actually paid was less than the amount collected by way of freight and transportation charges the difference was appropriated by the appellant and, therefore, the same would be a part of the assessable value. In our opinion, the Tribunal proceeded on an incorrect premise. It was clearly held in *Indian Oxygen Ltd.* v. *Collector of Central Excise* - 1988 (36) E.L.T. 723 (S.C.) = 1988 (Supp.) SCC 658, that the duty of excise is a tax on the manufacturer and not a tax on the profits made by a dealer on transportation. In view of that decision, the view taken by the Tribunal cannot be sustained.
>
> **2.** Consequently, the appeals are allowed and the impugned judgment of the Tribunal is set aside."

5. By following the ratio laid down by the Hon'ble Supreme Court (supra), we are of the view that the amount difference is not included in the assessable value since the duty of excise is on the manufacture and not on

the profit made by the dealer on transportation. Hence, we set aside the impugned order and allow the appeal.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

**(V. PADMANABHAN)**
**MEMBER (TECHNICAL)**

**(JUSTICE Dr. SATISH CHANDRA)**
**PRESIDENT**

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