IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:05/12/2017

Excise Appeal No.1989/2012

[Arising out of Order-in-Appeal No.21/AKJ/CE/JPR-II/2012 dated 12.04.2012 passed by the Commissioner of Customs and Central Excise (Appeals-II), Jaipur]

M/s.Scorodite Stainless India Pvt. Ltd. Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

Rep. by Shri O.P.Agarwal,CA for the appellant.
Rep. by Shri H.C. Saini, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.58272/2017

Per B. Ravichandran:

The appeal is against order dated 29.03.2012 of Commissioner (Appeals), Central Excise, Jaipur. The appellants are engaged in manufacture of excisable goods viz. S.S. Pipes & Tubes liable to central excise duty.

2. The dispute in the present appeal relates to valuation of such excisable goods. The appellant claimed that they were selling goods at the factory gate and paying applicable VAT at that time. Thereafter, they were also incurring freight, transport, insurance, etc and collected the same from the buyers. The dispute is regarding inclusion of these considerations in the dutiable value for central excise purpose in terms of Section 4 of the Central Excise Act, 1944. The lower

authorities held that these elements of expenditure are part of transaction value for duty purpose.

2. Ld. Counsel appearing for the appellant submitted that they are selling goods at the factory gate. The place of removal is factory gate. Any other activities post to such sale undertaken by the appellant, for which they are reimbursed by the buyer, cannot become part of the value for central excise duty. He relied on the various decided cases in support of his contention.

3. Ld. AR reiterated the findings of the lower authorities and held that these elements are all integral to transaction value and are accordingly liable to be held dutiable in terms of Section 4 of the act.

4. We have heard both the sides and perused the appeal record.

5. We also perused various sample invoices of sale submitted by the ld. Counsel. From the invoices, it is clear that the appellants are selling goods and discharging VAT on the value shown in the invoice. Excise duty is also paid on such sale. Thereafter, separate collection is shown towards freight, testing, forwarding charges, which are shown in the invoice and are collected from the buyers. It is clear from the invoice that the goods are sold at the factory gate. The appellants are undertaking certain post-clearance activities and are getting paid for that separately. We note that the Hon'ble Supreme Court in **TVS Motors Co. Ltd. – 2015-TIOL-299-SC-CX** held that pre-delivery testing charges are not includible in the assessable value. In **Ispat Industries Ltd. – 2015 (324) ELT 670 (SC),** it was held by Apex Court that when the place of removal is factory premises, the valuation of excisable goods should done on such sale value and in **Steel Authority of India Ltd. – 2012-TIOL-962-CESTAT-MAD,** the Tribunal held that when the transit insurance and transport charges are collected separately from

customers and the place of removal is factory gate, these charges cannot be included in the assessable value. We note that the above mentioned principle has been consistently followed by this Tribunal in various decisions.

6. Following the said ratio of the law, we find no merit in the impugned order. Accordingly, the same is set aside. The appeal is allowed.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.