CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench - Court No. – I

Excise Appeal No. 3108 of 2012

(Arising out of **Order-in-Appeal** No.95/2012(H-I) CE, dated 30.07.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals I & III), Hyderabad)

Vijai Electricals Ltd., .. **APPELLANT**
Rudraram, Patancheru,
Medak District
Telangana – 502 329.

VERSUS

Commissioner of Central Excise, .. **RESPONDENT**
Customs & Service Tax,
Hyderabad – I
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

Appearance
Shri P. Makrand, Advocate for the Appellant.
Shri N. Bhanu Kiran, Assistant Commissioner for the Respondent.

Coram: Hon'ble Mr. ANIL CHOUDARY, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30909/2020

Date of Hearing:05.03.2020
Date of Decision:14.07.2020

[ORDER PER: P.V. SUBBA RAO]

1. The appellant manufactures electrical transformers and sell to various electricity boards. They quote the price of Transformers on Ex-works/Ex-factory basis and separately give the amount on freight and transit insurance to be paid in their tender documents. On being successful in their bids, purchase orders were issued in favour of the appellants mentioning value and tax at Ex-works/Ex-factory and freight and insurance separately. The contract is on terms of FADS (Free at Destination Stores). Thus the appellant is responsible for delivery of the transformers at the buyers premises (Destination Stores) after which they are free.

2. The appellant paid excise duty on the value Ex-works/Ex-factory but Revenue is of the opinion that the sale of goods being on FADS basis, the property gets transferred to the buyers only at the destination stores and therefore the "place of removal" under Section 4 shifts to the buyers' premises. Consequently, the cost of transportation and transit insurance from the factory to the buyer's premises is also includible in the sustainable value of the goods.

3. The assesse's position is that goods have to be valued at their premises and the cost of transportation and transit insurance from their premises to their buyers' premises cannot be included in the assessable value even if they are responsible for delivering the goods at the buyer's premises. The quantification of the amounts paid towards transport and transit insurance are not in dispute as these amounts have been seperately indicated in their contracts and in the purchase orders as well as invoices.

4. As per Section 4(1)(a) of the Central Excise Act, "where under the Act, the duty of excise is chargeable on any excisable goods with reference to their value, then on each such removal of goods, such value shall, in case where the goods are sold by the assessee for delivery at the time and place of removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for sale, be the transaction value". This case is covered by Section 4(1)(a) but the only dispute is what is the "place of removal" in the present case. Thus the crux of the issue in this case is whether in terms of Section 4(3)(c)(iii) of the Central Excise Act, 1944 which defines the term the "place of removal" is the seller's premises or the buyer's premises. In terms of Section 4 of Central Excise Act duty has to be charged on the price at which goods are sold for clearance at the "place of removal". Earlier, in the case of Roofit Industries Ltd., [2015 (319) ELT 221 (S.C.)] Hon'ble Supreme Court has observed that where the goods are sold on FOR destination basis the sale is not complete until the property is passed to the buyer which takes place only at the buyer's premises. Accordingly, the "place of removal" shifts from the seller's premises to the buyer's premises in such cases. Subsequently, in the case of Commissioner of Customs and Central Excise, Nagpur Vs Ispat Industries Ltd., [2015 (324) ELT 670 (S.C)] the Hon'ble Supreme Court has held that the buyer's premises can never be the "place of removal" and the place of removal has to be the seller's premises or a place relatable to them.

Para 22, 23 and 24 of this judgment are reproduced below:

22. To complete the picture, by an Amendment Act with effect from 14-5-2003, Section 4 was again amended so as to re-include sub-clause (iii) of old Section 4(3)(b) (pre 2000) as Section 4(3)(c)(iii). This amendment reads as follows :-

"(3)(c)(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;"

Also, Rule 5 of the Central Excise Rules was substituted, with effect from 1-3-2003, to read as follows :

"**Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

Explanation 1. - "Cost of transportation" includes -

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."

23. It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.

24. It will thus be seen that, in law, it is clear that for the period from 28-9-1996 up to 1-7-2000, the place of removal has reference only to places from which goods *are to be sold* by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods. As a matter of law therefore, the Commissioner's order and Revenue's argument based on that order that freight charges must be included as the sale in the present facts took place at the buyer's premises is incorrect. Further, for the period 1-7-2000 to 31-3-2003 there will be no extended place of removal, the factory premises or the warehouse (in the circumstances mentioned in the Section), alone being places of removal. Under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case.

Thus, after the judgment in the case of Ispat Industries Ltd., it is categorically held that the buyer's premises cannot be the "place of removal" and it has to be the seller's premises only even if the place of delivery is the buyer's premises. Respectfully, following the judgment of the Hon'ble Apex Court, this Bench had, in respect of the same appellant, decided this matter in favour of the appellant and against the Revenue (Vijay Electricals Ltd., Vs Central Excise [2019 (11) TMI 301 CE-Hyd].

5. We find no reason to deviate from our earlier decision. Accordingly, the appeal is allowed and the impugned order is set aside with consequential relief, if any.

(Order pronounced on 14.07.2020 in open court)

(ANIL CHOUDARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Jaya