**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EAST REGIONAL BENCH : KOLKATA**

Excise Appeal No. E/597/10, C.O. 114/10

(Arising out of the Order-in-Appeal No. 63/JSR/2010 dated-23/04/2010 passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi )

Commr. of Central Excise, JSR

...APPELLANT(S)

VERSUS

M/s. Shanti Udyog Co., JSR

...RESPONDENT(S)

APPEARANCE

Sri S. Mukhopadhyay, Supdt. (A.R)

FOR APPELLANT(S)

Sri K. Kurmi , Advocate &
Sri R. Sharma, Advocate

FOR THE RESPONDENT(S)

CORAM:

JUSTICE DR. SATISH CHANDRA, HON'BLE PRESIDENT
SHRI C.J. MATHEW, HON'BLE TECHNICAL MEMBER

**DATE OF HEARING & DECISION: 23/03/2018**

FINAL ORDER NO. : F/O 75815/18

The present appeal is filed against the Order-in-Appeal No. 63/JSR/2010 dated-23/04/2010 passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi. The Respondent has also filed cross objection.

2. Brief facts of the case are that the respondent is a manufacturer of

glued insulated rail Joints which are used by Indian Railway to prevent conductivity of current in railway tracks where automatic signalling systems are installed. Under the contract upon completion of manufacture, 4% of the glued insulated rail joints had to undergo a mandatory pull out resistance test that is tensile test by RITES, for quality inspection. The mandatory test had to be carried out inside the factory premises of the Respondent. The appellant was working on the job work basis. Freight was payable by Railways and the conversion charges was of ex factory basis. However, under the contract the Respondent was obliged to transport the final products to various sites of the Railways on freight reimbursement basis. The Freight was reimbursed by the Railways at the “specified rate”.

3. The Department is of the view that the amount of transport charges to be added to the value of the products for the purpose of excise duty.

4. Being aggrieved, the appellants have filed the present appeal.

5. With this background we heard Shri Sri S. Mukhopadhyay and Sri K. Kurmi, counsels for the parties.

6. After hearing both the parties and on perusal of the case records, we find that the place of removal and the conversion charges were fixed on ex factory basis. Therefore, freight or profits earned in transportation cannot be part of the assessable value of the goods in terms of Rule 5 of the Central Excise Valuation (Determination in Price of Excisable Goods) Rules, 2000 read with Section 4 (3) (d) i.e. definition of ‘transaction value’. The testing is mandatory and without testing the goods cannot be cleared from

the factory. The amount received by the respondent towards compensation for the charges is not includible in the ‘transaction value’ as per the ratio laid down in the case of CCE Vs. Gulf Oil Corpn. Ltd. reported in [2006 (201) ELT 433 (Tri.-Bang.). The excess transportation charges cannot be added to the ‘transaction value’ as per the ratio laid down in the case of Baroda Electric Meters Ltd. Vs. Collector of Central Excise reported in [1997 (94) ELT 13 (S.C.)] . By following the ratio laid down, we find no reason to interfere with the impugned order and the same is sustained.

7. In the result, the appeal filed by the Department is dismissed. Cross Objection is disposed of.

(Dictated and pronounced in the open Court)

Sd/- Sd/-

(C.J. MATHEW)
TECHNICAL MEMBER

( DR. SATISH CHANDRA)
PRESIDENT

k.b/-