IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/3/08

(Arising out of Order-in-Appeal No.55/CE(A)/GHY/07 dated 11.09.2007 passed by the Commissioner of Customs & Central Excise(Appeals), Guwahati.)

M/s. Nalari Ferro Alloys Pvt.Ltd.
Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Shillong
Respondent (s)

Appearance:
NONE for the Appellant (s)
Shri H.S.Abedin, AC(AR) for the Revenue

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

Date of Hearing/Decision :- 12.03.2018

ORDER NO. FO/A/76107/2018

Per CORAM.

When the case was called for hearing, none appeared on behalf of the appellant despite notice. No request for adjournment has been received. It is seen from the records that the case has been listed on board at regular intervals but, the appellants have not appeared. Since the matter is an old one, pertaining to the year 2008, the same is taken up for disposal.

2. The appellant is engaged in the manufacture of Ferro Silicon classifiable under chapter 72 of the Central Excise Tariff Act, 1985. The

appellant assessee was availing exemption/refund of the excise duty under Notification No.32/99-CE dated 08.07.1999. During the course of audit by the Central Excise Officers, it is noticed that the appellants sold their finished goods including the cost of transportation which resulted in over-valuation of the assessable value of finished goods during the period from 16.07.2003 to 31.03.2005, thus, contravening the provision of section 4 of the Central Excise Act, 1944 read with Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Notification No.32/99-CE (supra) (as amended) which resulted in excess refund to the appellants. Show cause notice 02.05.2005 was issued proposing to recover the Central Excise duty amounting to Rs.14,91,094/- refunded to the appellants along with interest and for imposition of penalty. The adjudicating authority dropped the demand of Rs.7,81,794/- and confirmed the demand of duty of Rs.7,09,300/- and ordered for recovery of the same along with interest. On appeal, the Commissioner (Appeals) rejected the appeal. Hence, the present appeal before the Tribunal.

3. Heard the ld. AC (DR) appearing on behalf of the Revenue and perused the appeal records.

4. It is the case of the department that the appellants have wrongly included the cost of transportation in the assessable value and as such they have inflated the transaction value and paid higher duty. Consequently the appellants have taken higher refund amount under Notification No.32/1999-CE (supra) and their customers have also taken higher amount of credit against the impugned goods supplied by the appellants.

5. We find that the issue is no more res-integra in view of the decision of the Tribunal in the case of Commissioner of Central Excise, Shillong Vs. Guwahati Carbon Ltd. [2009 (243) E.L.T. 307 (Tri.-Kol.)], where the appeal of the Revenue was allowed in an identical situation. The relevant portion of the said decision is reproduced below:-

> **"5.** After hearing arguments from both sides and perusal of cited case laws, we find that it is now well-settled that the customers' place cannot be held to be a place of removal, as the goods are not removed from there but are delivered there. The issue has been analyzed in detail in the case of *Aditya Birla Insulators Ltd.* v. *CCE, Kolkata-IV* - 2008 (226) E.L.T. 377 (Tri.-Kolkata) - with reference to various terms of contract as well as the qualifier in the definition of '*place of removal'* which reads as - "from where such goods are removed." The contention that the place of delivery is not the place of removal, and transportation and insurance charges cannot be included in the assessable value, also finds support in the following decisions :-
>
> (i) *Escorts JCB Ltd.* v. *Commissioner* - 2002 (146) E.L.T. 31 (S.C.);
>
> (ii) *Associated Strips Ltd.* v. *Commissioner* - 2002 (143) E.L.T. 131 (Tribunal).
>
> **6.** More recently, in the case of *CCE, Noida* v. *Accurate Meters Ltd.* - 2009 (235) E.L.T. 581 (S.C.), it has been held that transportation and insurance charges cannot be included in the assessable value, even though the goods were transported by the assessee from the factory gate to the place of State Electricity Board as per the contract. In this case, the Hon'ble Supreme Court while rejecting the contention for inclusion of freight and insurance charges in the assessable value and dismissing the appeal, also awarded cost for filing such appeal.
>
> **7.** In view of the above, the argument of the learned Advocate for the Respondents for inclusion of the freight and insurance charges in the assessable value cannot be accepted. The reliance on the case of *Jindal (India) Ltd.* (cited supra) is also misplaced. The Tribunal in the case of *Jindal (India) Ltd.* merely holds that where transport charges are shown separately, the same cannot be included in the assessable value. Such a decision is not an authority to include transportation charge in the assessable value, where it is not shown separately. We are also of the view that the reliance placed by the learned Advocate for the Respondents on -
>
> (i) *Yamaha Motors India Pvt. Ltd.* v. *CCE, Delhi-IV* - 2008 (231) E.L.T. 677 (Tri.-Del.);
>
> (ii) *CCE, Jaipur* v. *Rajasthan Spg. & Wvg. Mills Ltd.* - 2007 (218) E.L.T. 641 (S.C.);
>
> (iii) *Indian Oil Corporation Limited* v. *CCE, Kolkata-II* - 2007 (217) E.L.T. 134 (Tri.-Kolkata).

is entirely misplaced and not relevant to the case at hand. In our view, the ratio of the Hon'ble Supreme Court's decision of the Three Judges Bench in the case of *CCE, Noida* v. *Accurate Meters Ltd.* (cited supra) more appropriately covers the case at hand, in terms of which freight and insurance charges cannot be included in the assessable value.

8. Accordingly, we hold that the Respondents are not entitled to include freight and insurance charges in the assessable value and the duty on the impugned goods requires to be re-calculated accordingly. The Respondents would be entitled to the refund of duty paid on such re-calculated value in terms of the Notification No. 32/99-C.E. and their customers would only be entitled to duty credit of that amount, provided it has been paid in cash, as stipulated under the said Notification. The Respondents are also entitled to refund of the excess duty paid on the remaining portion representing freight and insurance charges as such duty in the first place is not required to be paid by them. Their customers would also not be eligible for taking credit of that portion of the duty on freight and insurance charges paid by the Respondents. The appeals of the Department are allowed in the above terms. Cross-objection filed by the Respondents also stands disposed off."

6. In view of the above discussion, we do not find any reason to interfere with the impugned order. Accordingly, the appeal filed by the appellant is dismissed.

(Operative part of the order was pronounced in the open court.)

(C.J.Mathew)
Member(Technical)

(P.K.Choudhary)
Member(Judicial)

T.K.