CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No.209 & 210 of 2010

(Arising out of Order-in-Appeal No133/134/CE/BSBR/I/2009 dated 21.12.2009 passed by the Commissioner (Appeals), Bhubaneswar.

Commissioner of Central Excise & Service Tax., BBSR-I .... **Appellant**
C.R. Building, Rajaswa Vihar
Bhubaneshwar-751007

Versus

M/s Birla Tyres
AT/PO Chhanpur,Via Kuruda
Balasore, Orissa.

Appearance:

Shri D. Haldar, Authorized Representative for the Appellant

Dr. Samir Chakraborty, Sr. Advocate for the Appellant

CORAM:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

HON'BLE MR. P. DINESHA , MEMBER (JUDICIAL)

FINAL ORDER NO. 76978-76979/2019

Date of Hearing: 28.08.2019
Date of Decision: 28.08.2019

Per: Mr. P. Anjani Kumar

Heard both sides and perused the records of the case.

2. This appeal is directed against the Order in Appeal 132 to 134/CE/BSBR-I/2009 dated 21.12.2009 passed by the Commissioner (Appeals), Bhubaneswar. The issue of various discounts and deductions claimed by the respondents in the assessable value was

the subject matter for litigation between the appellant and the respondent over a long period of time. Many a time the issue went in circles between the original authority, Commissioner (Appeals) and CESTAT. Most of the issues raised relating to cash discounts, surcharge and turn over tax etc. have been settled. However vide the impugned order Commissioner (Appeals) had dismissed the department's appeal in respect of 2 Orders in Original passed by the Asst. Commissioner, Balasore Division in respect of secondary freight charges. The learned Commissioner (Appeals) finds that secondary freight from buyers placed to buyers destination is squarely covered by the order of CESTAT No. A-569/KOL/2008 dated 13.5.2008. Learned Commissioner (Appeals) quoted the relevant portion :

> " 3. As regards the admissibility of deduction of freight from the depot to the place of delivery, it is now settled law that such freight is not includible in the assessable value. Apart from the fact that the place of delivery cannot be taken as a place of removal, the lower appellate authority has correctly followed the decision of the Hon'ble Supreme Court in the case of Prabhat Zard factory Ltd. Vs. Commissioner of Central Excise – 2007 (146) ELT 497 (S.C.) in allowing deduction towards freight from the depot to the place of delivery. Hence, on this score also, the department's appeal fails.
>
> 4. Consequently, both the appeals filed by the department are rejected. "

3. Against this the department is in Appeal. The learned Counsel for the respondent submits that the very same order which was followed by the learned Commissioner (Appeals) is about, has been upheld by the High Court of Orissa, Cuttack vide order No.26/2008 vide order dated January 09,2019. Hon'ble High Court of Orissa has found that the reliance placed by the CESTAT on the decision was correct.

4. In view of the above we find that the issue is no longer Res Integra we find that the secondary freight charges incurred on transport of goods from the depot (point of sales) and the customers' premises (destination of goods). Therefore we do not find any merit in the appeals filed by the revenue. The appeals are accordingly rejected.

Sd/

(P. Anjani Kumar)
Member (Technical

Sd/
(P. Dinesha)
Member (Judicial)

sasi

)