

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

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 79092 of 2018**

(Arising out of Order-in-Appeal No. 185/HWH/CE/2018-19 dated 17.07.2018 passed by the Commissioner of Central Excise (Appeals), Kolkata-II, Bamboo Villa, 3<sup>rd</sup> Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

**Commissioner of C.G.S.T. and Central Excise** : **Appellant**  
Howrah C.G.S.T. and Central Excise Commissionerate,  
M.S. Building, 15/1, Strand Road,  
Kolkata – 700 001

**VERSUS**

**M/s. Asbesco (India) Private Limited [Unit-I]** : **Respondent**  
Howrah Amta Road, Balitikuri,  
Howrah – 711 402

**APPEARANCE:**

Shri S.K. Singh, Authorized Representative, for the Appellant / Revenue

Shri S. Bhattacharya, Consultant, for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**  
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 77895 / 2025**

DATE OF HEARING / DECISION: 09.12.2025

**ORDER: [PER SHRI ASHOK JINDAL]**

The Revenue is in appeal against the impugned order.

2. The facts of the case are as under: -

- (i) The respondent is engaged in manufacture and clearance of Pole line & Transmission Line Hardware Fittings. During course of audit, on verification of their sales invoices and related purchase orders from different customers, the Department observed that the respondent had cleared their finished goods from their factory on FOR basis; they had delivered their finished goods to their buyer's premises and realized freight thereof aggregating to Rs.8,93,53,707/-

from such customers during the financial years from 2011-12 to 2015-16, but paid duty on the assessable value without inclusion of freight element therein.

- (ii) Thus, the Department felt that their place of removal is not the factory gate but the buyers' project site where such goods were actually delivered and sold in terms of section 19 of the Sale of Goods Act; accordingly, the valuation of such goods should be under section 4(1)(b) of the Central Excise Act, 1944 read with rule 5 of Central Excise Valuation (Determination of Price Of Excisable Goods) Rules 2000; such non-inclusion has resulted in short payment of central excise duty of Rs. 1,07,31,309/- during the period from September, 2011 to March, 2016 by way of suppression of facts and contravention of the provisions of Central Excise Rules, 2002 (the said Rules) with intent to evade duty.
- (iii) Accordingly, a Show Cause Notice dated 09.09.2016 was issued to them, proposing demand and recovery of duty of Rs.1,07,31,309/- by invoking the extended period, along with interest. Penalty under Rule 25 of the said Rules read with section 11AC of the said Act was proposed to be imposed on them.

2.1. After considering the submissions made by the respondent, the Id. adjudicating authority vide the Order-in-Original No. 38/JC/CGST & CX/HWH/ADJN/2017 dated 29.11.2017 dropped the entire proceedings.

2.2. The Ld. Commissioner (Appeals), vide the impugned order, also dropped the proceedings initiated against the respondent.

2.3. Against the said order, the Revenue is before us.

3. The Ld. Authorized Representative of the Revenue submitted that it is a fact that the respondent was supplying the goods to the buyer's place and charging transportation charges thereon. He contends that such transportation charges are required to be included in the assessable value, which the respondent has failed to do and therefore the impugned order is to be set aside.

4. Heard the Ld. Authorized Representative of the Revenue.

5. We find that the C.B.I.C. has issued a Circular bearing No. 1065/4/2018-CX. in F. No. 116/23/2018-CX 3 dated 08.06.2018 clarifying the position as to what is the "place of removal". For better appreciation of the facts, the said Circular is extracted hereinbelow: -

" *Circular No. 1065/4/2018-CX., dated 8-6-2018*

*F. No. 116/23/2018-CX-3*

*Government of India*

*Ministry of Finance (Department of Revenue)*

*Central Board of Indirect Taxes & Customs, New Delhi*

*Subject : 'Place of Removal' under Section 4 of the Central Excise Act, 1944, the CENVAT Credit Rules, 2004 and the CENVAT Credit Rules, 2017 - Regarding.*

*Attention is invited to Boards Circular No. 97/8/2007-CX., dated 23-8-2007 [2007 (215) E.L.T. (T24)], 988/12/2014-CX., dated 20-10-2014 [2014 (309) E.L.T. (T3)] and 999/6/2015-CX., dated 28-2-2015 [2015 (317) E.L.T. (T7)]. Attention is also invited to the judgment of Hon'ble Supreme Court in the case of CCE v. M/s. Roofit*

*Industries Ltd. - 2015 (319) E.L.T. 221 (S.C.), CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.), CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE & ST v. Ultra Tech Cement Ltd. dated 1-2-2018 in Civil Appeal No. 11261 of 2016 [2018 (9) G.S.T.L. 337 (S.C.)]. In this regard, references have been received from field formations seeking clarification on implementation of aforesaid circulars of the Board in view of judgments of Hon'ble Supreme Court.*

2. *In order to bring clarity on the issue it has been decided that Circular No. 988/12/2014-CX., dated 20-10-2014 shall stand rescinded from the date of issue of this circular. ....*

3. *General Principle : As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.) may be applied. Apex Court, in this case has upheld the principle laid down in M/s. Escorts JCB (supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. The observation of Hon'ble Court in para 16 in this regard is significant as reproduced below :*

*"16. It will thus be seen .... buyer's premises."*

4. *Exceptions :*

(i) *The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE v. M/s. Roofit Industries Ltd. 2015 (319) E.L.T. 221 (S.C.). To summarise, in the case of FOR destination sale such as M/s. Emco Ltd. and M/s. Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases. ....*

5. *...*

6. *Facts to be verified : This circular only bring to the notice of the field the various judgments of Hon'ble Supreme Court which may be referred for further guidance in individual cases based on facts and circumstances of each of the case. Past cases should accordingly be decided.*

7. *... "*

5.1. In terms of the said Circular, the place of removal in the present case is the factory gate of the respondent. In these circumstances, transportation charges are not required to be included in the assessable value and accordingly, the respondent is not liable to pay duty on such transportation charges.

6. In view of this, we do not find any infirmity in the impugned order. The same is upheld.

7. The appeal filed by the Revenue is dismissed.

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

Sd/-

**(ASHOK JINDAL)**  
MEMBER (JUDICIAL)

Sd/-

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

Sdd