IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 76303 of 2018

(Arising out of Order-in-Appeal No.16/Kol-I/2009 dated 16.09.2009 passed by Commissioner of Central Excise, Kolkata)

M/s Eastern Lamination Pvt.Ltd. **: Appellant**
2,No., Manicktala Industrial Estate, C.I.T. Scheme VIIM,
Kolkata-700054.

VERSUS

Commissioner of CGST & CX, Kolkata **: Respondent**
180, Shantipally, Rajdanga Main Road, Kolkata-700107.

APPEARANCE:

None for the Appellant

Shri D.Sue, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75212/ 2026

DATE OF HEARING :29.01.2026

DATE OF DECISION:29.01.2026

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order.

2. It is second round of litigation. The earlier round of litigation this Tribunal remanded matter back to the Ld. Commissioner (Appeal) without insisting any pre-deposit.

3. The facts of the case are that appellant is a manufacturer of electrical transformer and parts of transformer of chapter 85 of Central Excise Tariff and sale the same to the buyer. In this case after removal of the goods from the factory gate on excise invoice, the appellant raised separate commercial bills to the buyer i.e. M/s. Philips India Ltd. on

account of forwarding charges for transporting materials to TDR at a later time.

4. The Revenue is of the view that the said transportation charges are to be includable in the transaction value. Consequently, proceedings were to be initiated against the appellant and demand of duty was also confirmed alongwith interest and penalty were also imposed.

5. Aggrieved from the said order appellant is before us. The appellant has not appeared before this Tribunal and filed the return submissions submitting that the issue is squarely covered by the decision of this Tribunal in the case of Official Liquidator for Brimco Plastic Machinery P. Ltd., 2015 (324) E.L.T. 637 (S.C.) wherein the Hon'ble Apex Court has held that the consideration as to whether installation, erection and commissioning charges for equipment installed at customer premises the value thereof is not includable in the assessable value. We further relied on the decision of Commissioner of Customs, Nagpur vs. Ispat Industries Ltd. 2015, 324, E.L.T. 670 (S.C.) wherein similar situation the Hon'ble Apex Court held that the said transportation charges are not includable in the assessable value as they are host sale of the goods.

6. On the other hand Ld. Authorized Representative reiterated the findings of the impugned order.

7. Heard the parties. Considered the submissions.

8. Considering the fact that the issue has been decided by the Hon'ble Apex Court in the case of Ispat Industries Ltd. wherein the Hon'ble Apex Court observed as under:

"31. With this we come to two recent judgments of this Court. In CCE & Customs v. Roofit Industries Ltd. 2015 (319) ELT. 221 (S.C.), this Court, after distinguishing the Escorts JCB's case, stated:-

"The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected, namely, whether it is on factory gate or at a later point of time, i.e., when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of the provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with the Valuation Rules.

In the present case, we find that most of the orders placed with the respondent assessee were by the various government authorities. One such order, ie, order dated 24-6-1996 placed by Kerala Water Authority is on record. On going through the terms and conditions of the said order, it becomes clear that the goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, Central *excise duty, loading, transportation, transit risk and unloading charges, etc. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier, namely, the assessee. As per the "terms of payment" clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. From the aforesaid, it would be manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.*

The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of the Sale of Goods Act, the property in goods was transferred at that time only. Section 19 reads as under:

"19. Property passes when intended to pass. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the

contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

These are clear finding of facts on the aforesaid lines recorded by the Adjudicating Authority. However, CESTAT did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in Escorts JCB Ltd. [(2003) 1 SCC 281: (2002) 146 E.L.T. 31] Obviously the exact principle laid down in the judgment has not been appreciated by CESTAT."

32. It will be seen that this is a decision distinguishing the Escorts JCB's case on facts. It was found that goods were to be delivered only at the place of the buyer and the price of the goods was inclusive of transportation charges. As transit damage on the assessee's account would imply that till the goods reached their destination, ownership in the goods remained with the supplier, namely, the assessee, freight charges would have to be added as a component of excise duty. Further, as per the terms of the payment clause contained in the procurement order, payment was only to be made after receipt of goods at the premises of the buyer. On facts, therefore, it was held that the sale of goods did not take place at the factory gate of the assessee. Also, this Court's attention was not drawn to Section 4 as originally enacted and as amended to demonstrate that the buyer's premises cannot, in law, be "a place of removal" under the said Section.

33. As has been seen in the present case all prices were "ex-works", like the facts in Escorts JCB's case. Goods were cleared from the factory on payment of the appropriate sales tax by the assessee itself, thereby indicating that it had sold the goods manufactured by it at the factory gate. Sales were made against Letters of Credit and bank discounting facilities, sometimes in advance. Invoices were prepared only at the factory directly in the name of the customer in which the name of the Insurance Company as well as the number of the transit Insurance Policy were mentioned. Above all, excise invoices were prepared at the time of the goods leaving the factory in the name and address of the customers of the respondent. When the goods were handed over to the transporter, the respondent had no right to the disposal of the goods nor did it reserve such rights inasmuch as title had already passed to its customer. On facts, therefore, it is clear that Roofit's judgment is wholly distinguishable. Similarly in Commissioner Central Excise, Mumbai-III v. M/s. EMCO Ltd., this Court re-stated its decision in the Roofit Industries' case but remanded the case to the Tribunal to determine whether on facts the factory gate of the assessee was the place of removal of excisable goods. This case again is wholly distinguishable on facts on the same lines as the Roofit Industries case.

34. In the view of the law that we have taken as well as the facts detailed above, the statement made by Shri S.P. Dahiwade pales into insignificance as has been correctly held by the Tribunal. We, therefore, dismiss this appeal with no order as to costs.”

9. In view of the decision of the Hon'ble Apex Court in the case of Ispat Industries Ltd. we hold that as in this case also the appellant sold goods at their factory gate and thereafter on the request of the buyer they arranged transportation and make a separate bill for transportation of goods. In that circumstances the transportation charges are not includable in the assessable value of the goods in question. Therefore, the demand of duty on account of under valuation is not sustainable.

10. Consequently, impugned order is set aside and appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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