IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.2

APPEAL No.E/409/2010

(Arising out of Order-in-Appeal No.SB/100/Th-II/2009 dated 07/12/2009 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

Western Cans Pvt. Ltd., : **Appellant**

VS

Commissioner of Excise, Thane-II : **Respondent**

Appearance

Shri.J.N. Tiwari, Advocate for Appellant
Shri.S Hasija, Supdt. (AR) for respondent

CORAM:

Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sanjiv Srivastava, Member (Technical)

Date of hearing : 12/10/2018
Date of decision : 12/10/2018

ORDER NO.87797/2018

Per : Mrs.Archana Wadhwa

1. The short question involved in the present appeal is as to whether bill re-book, carriage outward freight, insurance charges, recovered by the assessee from their customers separately by way of issuance of debit note would be part of the assessable value opf the final products, i.e., Metal Tin Containers (plain and printed).

2. We note that the issue is no more *res integra* and stands settled by the Hon'ble Supreme Court in the case of *Ispat Industries Ltd., reported in2015 (324) ELT 670 (SC)* laying down such charges are not includable in the assessable value. In the present case, we find that the appellant was undertaking transportation and insurance

on behalf of their clients and was recovering actual amount incurred on the same. As such, it is not the case of the Revenue that a part of the cost of the goods was being recovered by the appellant under the garb of carriage outward freight and insurance charges. As such, by following the above decision of the Hon'ble Supreme Court, we set aside the confirmation of demand in respect of the said items.

3. Apart from the above, Revenue has also sought to include the various other charges, namely, art-work, moulds and dies charges, packing material cost, printing and plate making charges and processing charges recovered separately from their clients. The appellant is not disputing that the same are includable in the assessable value of their final products and have also paid duty in respect of the same, after the issuance of the show-cause notice to them. Their only prayer is that the penalty imposed on them on the said ground be reduced to 25%. He has also placed reliance on various decisions.

4. We uphold the demand in respect of such inclusions as not contested along with confirmation of interest. As regards the penalty, we find that the appellant had already deposited the dues before passing of order-in-original and as such, we reduce the penalty to 25%. The appeal is disposed off in above manner.

(Pronounced and dictated in Court)

(Sanjiv Srivastava)
Member (Technical)

(Archana Wadhwa*)*
Member (Judicial)

PJ