IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/1028/2010

[Arising out of Order-in-Appeal No: VSK/39/Th-I/2010 dated 24th February 2011passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

Indo Amines Ltd … ***Appellant***

versus

Commissioner of Central Excise
Thane – I ***…Respondent***

Appearance:

Shri Vinay Ansurkar, Advocate for appellant

Shri DS Chauhan, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:	**12/07/2018**
Date of decision:	**06/11/2018**

ORDER NO: A/87861 / 2018

Per: C J Mathew

M/s Indo Amines Ltd was proceeded against for recovery of duties of central excise amounting to ₹ 74,509 for the period from April 2001 to November 2004 on an excess recovery of ₹ 4,65,676 from some of their customers which they claim to be optional transportation charges expended on behalf of the buyers. The original authority confirmed the demand, along with interest thereon under section 11AB of Central Excise Act, 1944, and imposed penalty of like amount under section 11AC of Central Excise Act, 1944. The Commissioner of Central Excise (Appeals), Mumbai Zone-I, *vide* order-in-appeal no. VSK/39/Th-I/2010 dated 24th February 2011, discarded their plea of applicability of the decision of the Hon'ble Supreme Court in *Baroda Electric Meters Ltd v. Collector of Central Excise [1997 (94) ELT 13 (SC)]* with the counter that the said decision had been rendered in the context of the pre-amended section 4 of Central Excise Act, 1944 based on 'normal price' to uphold the decision of the original authority leading to the present appeal.

2. Learned Counsel for appellant, after narrating the facts, drew our attention to the culling of the value, on which differential duty was demanded, from the balance sheet of the assessee in which the amount recovered was specifically itemised as 'freight' and, by no stretch, includable in the assessable value. He also drew our attention to various decisions of the Tribunal which, relying upon the upon the judgement of the Hon'ble Supreme Court in *re Baroda Electric Meters Ltd*, held that, even in the 'transaction value' regime, the element of freight expended on behalf of the buyer was not includable in the assessable value.

3. According to Learned Authorised Representative, the excess recovery was consideration for goods sold by them and, hence, assessable to duty. He placed reliance on the decision of the Tribunal in *M/s JCT Ltd v. Commissioner of Central Excise, Jalandhar [2017-TIOL-1242-CESTAT-CHD]*, in *Mercedes Benz (I) Ltd v. Commissioner of Central Excise, Pune-I [2009 (10) LCX 0008]* as well as in *Saraswati Air Products Ltd v. Commissioner of Central Excise, Meerut [2009 (03) LCX 0322]* and in *AB Mauri India Pvt Ltd v. Commissioner of Central Excise, Raigad [2017 (6) GSTL 195 (Tri-Mumbai)]* to support his contention.

4. We find that the decision of the Hon'ble Supreme Court in *re Baroda Electric Meters Ltd* has laid down the principle that 'freight' has nothing to do with the activity of manufacturing which is the

object of taxation under Central Excise Act, 1944. This decision has been followed by the Tribunal in *IComm Tele Ltd v. Commissioner of Central Excise, Hyderabad [2010 (251) ELT 103 (Tri-Bang)], Commissioner of Central Excise, Vadodara v. Amod Industries [2008 (229) ELT 713 (Tri-Ahmd)]*, and *Commissioner of Central Excise, Salem v. WS Industries [2007 (213) ELT 413 (Tri-Chennai)]* all pertaining to the period after amendment of section 4 of Central Excise Act, 1944.

5. In *re JCT Ltd*, the addition approved by the Tribunal was that of 'travel insurance', in *re Mercedes Benz (I) Ltd* and in *re Saraswati Air Products Ltd* approval was accorded to adding of excess recovery of 'road delivery charges' while in *re AB Mauri India Pvt Ltd* approval was accorded to addition of freight on the return of goods to appellant. None of these apply to the facts of the present case and any referral therein to the decision in *re Baroda Electric Meters Ltd* were for distinguishing the facts in those disputes from that in the decision of the Hon'ble Supreme Court.

6. In the light of the above, the impugned order is set aside and appeal allowed.

(Pronounced in Court on 06/11/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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