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

APPEAL NOS: E/225 & 230/2010

[Arising out of Order-in-Appeal No: AKP/97NSK/2009 and AKP/96NSK/2009 both dated 11th November 2009, passed by the Commissioner of Central Excise & Customs (Appeals), Nashik.]

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

Tapi Prestressed Products Ltd
MK Kotecha Prestressed Products Pvt Ltd … ***Appellants***

versus

Commissioner of Central Excise & Customs
Nashik ***…Respondent***

<u>*Appearance*</u>*:*

Shri Vinod Awtani, Chartered Accountant for appellant

Shri AB Kulgod, Assistant Commissioner (AR) for respondent

CORAM:

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

Date of hearing:	**10/01/2019**
Date of decision:	**17/01/2019**

ORDER NO: A/85109-85110/2019

Per: C J Mathew

This appeals of M/s Tapi Prestressed Products Ltd and of M/s MK Kotecha Prestressed Products Pvt Ltd, manufacturers of pipes, engaged also in erection and installation of lift irrigation systems in pursuance of which the manufactured pipes are transported to the site of the customer for assembly, lies against upholding of differential duty of ₹ 7,13,398 held as recoverable under section 11A of Central Excise Act, 1944, along with interest as applicable under section 11AB of Central Excise Act, 1944, for the period from March 2003 to February 2007, on the transportation costs incurred for such movement but excluded from the assessable value at the time of removal from the factory. In addition, the penalty imposed under section 11AC of Central Excise Act, 1944, and upheld in appeal, is also under challenge.

2. In the impugned orders-in-appeal no. AKP/97NSK/2009 and AKP/96NSK/2009 both dated 11th November 2009 , Commissioner of

Central Excise & Customs (Appeals), Nashik has placed reliance upon the provisions of section 4 of Central Excise Act, 1944, as amended from 14th May 2003 specifically to incorporate the place of sale in the definition of 'place of removal', and the provisions of Sale of Goods Act, 1930 to isolate the premises of the buyer as location of sale.

3. According to Learned Chartered Accountant, the Hon'ble Supreme Court, in *Commissioner of Customs & Central Excise, Nagpur v. Ispat Industries Ltd [2015 (324) ELT 670 (SC)],* has since scrutinized section 4 of Central Excise Act, 1944 from the pre-1973 enactment through subsequent amendments of 1996, 2000 and 2003 specifically in the context of inclusion of costs after removal from the factory of manufacture, to conclude that

> *'23. It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.*
>
> *24. It will thus be seen that, in law, it is clear that for the period from 28-9-1996 up to 1-7-2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods. As a matter of law therefore, the Commissioner's order and Revenue's argument based on that*

> *order that freight charges must be included as the sale in the present facts took place at the buyer's premises is incorrect. Further, for the period 1-7-2000 to 31-3-2003 there will be no extended place of removal, the factory premises or the warehouse (in the circumstances mentioned in the Section), alone being places of removal. Under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case.'*

4. Further, he contends that the decision of the Tribunal in *EMCO Ltd v. Commissioner of Central Excise, Mumbai-IV*, disposing of appeal no. E/3026/02 vide order no. A/87958-87959/16/EB dated 14th June 2016, has also considered these aspects.

5. Learned Authorised Representative reiterates the various findings in the impugned order as well as that of the original authority and contends that, the place of removal being the premises of the buyer, it was obligatory that all costs up to, and including, the site of assembly should have been computed for determination of duty liability.

6. It is amply clear from the decision in *re Ispat Ltd* that the inclusion of transport cost beyond the factory of manufacture is allowed only upon establishing that the manufacturer continues to be the owner of the goods even at the site of assembly. Reliance placed upon the provisions of Sale of Goods Act, 1930 will not suffice when it is on record that the goods are supplied in accordance with a contract

entered into with government agencies and accepted at the factory after prescribed tests. It is also found from the records that the contract requires the appellant to assemble the goods in accordance with the pre-arranged design in a separate transaction in which the goods supplied cannot be rejected by the procurement agency. In the circumstances, there is no reason to accept the contention of Revenue that the sale has occurred at the premises of the buyer.

7. Respectfully following the decision of Hon’ble Supreme Court *supra*, we hold that the transportation costs are not liable to be included in the assessable value of the accessible goods. For this reason, we set aside the impugned order and allow the appeals.

(Pronounced in Court on 17/01/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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